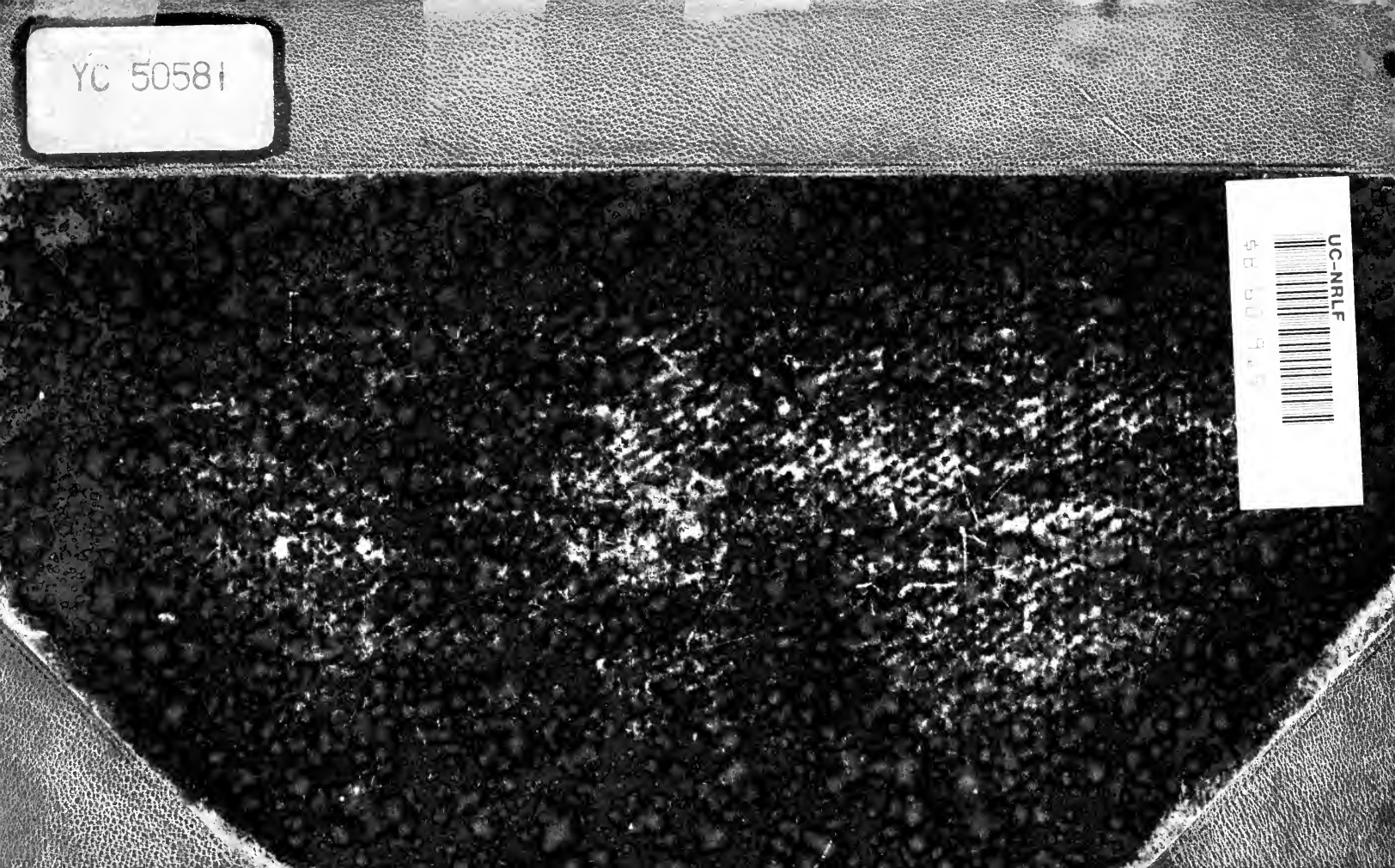

With the
compliments of

Stephen J. Field,

Justice of U. S. Supreme Court.

Washington D C

EXTRACTS FROM NOTICES

OF

DAVID DUDLEY FIELD.

INDEX.

EXTRACTS FROM NOTICES

OF

DAVID DUDLEY FIELD.

[From the New York Times of April 14, 1894.]

DAVID DUDLEY FIELD, the eminent jurist, died at his residence, 22 Gramercy Park, at 3.30 o'clock yesterday morning, April 13.

Mr. Field was ill only a few hours. His end was painless and peaceful.

He returned from Europe Tuesday, April 11, on the steamship Columbia. He went abroad to visit his only surviving child, Lady Musgrave, widow of Sir Anthony Musgrave, who at the time of his death was Governor of Queensland, Australia. Lady Musgrave lives in Sussex County, England. After his visit to her, Mr. Field went to Italy, whence he came home. It is supposed that he caught cold while crossing the ocean, but there were no signs of illness when he landed. He was hale and hearty and looked as if he might live many years longer.

Thursday afternoon a slight cough began to trouble him, and late in the afternoon his family deemed it serious enough to call in a physician.

Dr. Stephen Burt was summoned, and said that Mr.

Field had a congestive chill with symptoms of pneumonia. He grew worse so rapidly that Dr. Francis Delafield, an authority on diseases of the lungs and throat, was called in to consult with Dr. Burt.

At 6 o'clock Dr. Delafield left the house. Mr. Field appeared to be improving, and Dr. Delafield gave it as his opinion that he would recover.

Although Dr. Burt remained with Mr. Field there seemed to be nothing to do to add to his comfort. The progress of the disease was apparently checked. The patient rested quietly, and slept most of the time.

But at 3 o'clock in the morning it was seen that a change was coming over Mr. Field, and the household was aroused and gathered in his room.

Besides Dr. Burt there were present his daughter-in-law, Mrs. Dudley Field, Jr.; his niece, Miss Clara Field, and several of the family servants.

Restoratives were applied in vain, and at 3.30 o'clock Mr. Field passed quietly away.

When Mr. Field arrived from Europe, the Rev. Henry M. Field sent this telegram to Justice Field at Washington:

"Dudley arrived this morning in splendid condition."

In answer he received a letter from Justice Field inviting the two brothers to Washington for a visit.

The reply to this letter was this dispatch sent yesterday:

"Our brother passed away early this morning."

Justice Field arrived from Washington last night.

The funeral will be held Sunday afternoon at Calvary

Church, Fourth avenue and Twentieth street. The body will be taken to Stockbridge, Mass., for burial. Mr. Field's father and mother were buried there.

The pall-bearers are: Chief Justice Fuller of the United States Supreme Court, John Bigelow, Joseph H. Choate, William M. Evarts, Abram S. Hewitt, ex-Judge Charles A. Peabody, Chancellor MacCracken, Robert E. Deyo, Robert M. Gallaway, Charles Butler, Judge Charles Andrews, Judge A. R. Lawrence, and H. H. Anderson.

When the news of Mr. Field's death became known throughout the city, expressions of regret were heard on every hand. Mayor Gilroy ordered the flags on the City Hall displayed at half-mast, and the flag over the Lawyers' Club, in the Equitable Building, was also at half-mast.

Judge Pryor, sitting in Part I. of the Court of Common Pleas; Judge Bookstaver, holding a Special Term of the Court of Common Pleas, and Judge Giegerich, in Part III. of the Court of Common Pleas, adjourned court when they heard of Mr. Field's death.

The journals of the day were filled with notices of Mr. Field's life and career. Some of them are here reprinted at the suggestion of friends.

MR. FIELD'S REMARKABLE CAREER.

ONE OF FOUR BROTHERS, EACH OF WHOM ATTAINED DISTINCTION.

When four such brothers as David Dudley, Stephen J., Cyrus W., and Henry M. Field are born into one

family, unusual interest attaches to the stock from which they sprang. In a republic which recognizes the aristocracy of achievement as ranking the pretensions of wealth and family, lineage is certainly not overvalued, at least in the case of men. But in the case of the Field brothers there is conspicuous reinforcement and illustration of what Dr. Holmes has termed the dynamic force of New England's Brahmin blood.

The Rev. Dr. David Dudley Field, the father of the famous brothers, was the son of Captain Timothy Field of Guilford, Conn., a soldier in the war of the Revolution. He settled at Haddam, Conn., after being educated at Yale College, where he was the room-mate of Jeremiah Evarts, father of William M. Evarts. He received his doctorate from Williams College. Both father and mother lived until their first child, David, who was born February 13, 1805, was well past fifty years of age. In their declining years they reaped an ample reward of comfort and pride for their early labors. Coming from this clerical and military stock, there should be no surprise at the brains and spirit which ranked David Dudley Field among the first lawyers of his time.

In 1819 his father removed from Haddam, Conn., and became pastor of the church in Stockbridge, Mass., where his eldest son was educated at the academy along with Mark Hopkins, afterwards President of Williams College, and his brother Albert, professor of astronomy, all of whom entered the college, and their personal relations remained through life of the most affectionate character. Leaving college in 1825, he began the study of law in the office of Harmanus

Bleecker, at Albany. After a few months he aspired to a wider sphere, and came to New York. He travelled by river, as there were then no railroads. He boarded at 80 Canal street, having for his companions William Cullen Bryant and his wife. His new law teachers were Henry and Robert Sedgwick, who hailed from Stockbridge. In 1828 he was admitted to the bar as an attorney, as was then the custom, and in 1830 as counsellor. He was almost immediately admitted to partnership with the Sedgwicks, and was at once in the full tide of a practice which scarcely slackened for half a century. Within a half dozen years he had conceived in all its scope and symmetry the idea upon which his fame will rest. If his career is nearly unique for its mere length, it is no less remarkable that his first work was also both the ripest and soundest he ever did, and was left incomplete—probably never to be completed—by his death.

It is no proper part or province of an obituary record to discuss the merits of codification of the common law. That is a boundless field, full of controversy, and with weighty authority on both sides. Moreover, it is scarcely a popular subject, being fitter for professional journals. But no account of Mr. Field's life would be complete without an attempt to indicate to unprofessional readers the scope of his labors as a codifier and reformer of the common law. Caligula published his laws by inscribing them in small l tters at the top of a high pillar. But whoever broke the law was never excused because he could not read it. The common law so far improved upon this precedent that it was wholly "unwritten." The only way authoritatively to discover it was to take the opinion of a judge upon an actual

case. "Do you know how judges make the common law?" indignantly asked Jeremy Bentham, and answered himself: "Just as a man makes laws for his dog. When your dog does anything you want to break him of, you wait till he does it and then beat him for it. And this is the way the judges make law for you and me."

In the course of centuries unnumbered thousands of such decisions, taken together, composed the body of the common law. In one volume of New York Reports 5,037 cases were cited by counsel in arguing one hundred and twenty-three cases in a period of only two months. None of those lawyers could know the law until the judge had spoken, and as for clients, they experienced the working of Jeremy Bentham's remark, even though they never heard of it. The task with which David Dudley Field associated himself was to go through thousands of volumes containing

> That codeless myriad of precedents,
> That wilderness of single instances,

and reduce them to form and order. By extracting principles, by rejecting superfluous cases, by reconciling, condensing, and rejecting, Mr. Field contended that the law could be compressed into a single book, where any man could go for himself and read his rights and duties according to the natural measure of his intelligence. The most acute and industrious master of literature, Macaulay, after personal experience as member of the Supreme Council of India, declared codifying the law to be "among the most difficult tasks upon which the human mind can be employed." Mr. Field's opponents went beyond this. They contended that the task was impossible, and that if it were done, it would

be harmful by introducing inflexible monarchical methods into a community which preferred to make its law from day to day, as cases arose.

Seldom, if ever, was there such a legal battle. Mr. Field's first formal proposal was outlined in a letter to Senator G. C. Verplanck in 1839. From that day for half a century he was ready to fight in its behalf at any provocation, and he was kept busy most of the time. The bar almost as one man protested that he was an impracticable visionary. The Bar Association formally resolved against him, and retracted the resolution after argument in its own halls. But it sent committee after committee to appear against him before the Legislature's committees, and the field was threshed over almost yearly. Sometimes the bill would pass one house, sometimes the other, and twice it passed both, only to be vetoed and recur again in later years.

His elaborate "Codes of Civil and Criminal Procedure" were completed in 1850, and were later adopted by the State Legislature. In 1857 Mr. Field was appointed head of a commission to prepare a political and civil code for the State of New York. They were completed in 1865. The State only adopted the Penal Code.

Now Mr. Field has gone, leaving the substantive common law of New York codified, indeed, but not enacted. But the criminal law has been both codified and enacted, and so has the law of both civil and criminal procedure. If this were all, it would be very much; but while his own State was hard-hearted toward the codifier and reformer, other States and nations welcomed his work with flattering enthusiasm. His entire work has been adopted in two States; the Code of

Civil Procedure has been adopted to some degree in a majority of the States, while seventeen States have enacted the Criminal Code.

Nor is this all. His labors have been effective literally around the world. In India and Japan and in many British colonies the scheme of law which New York rejected at the hands of its own citizen was adopted by them from the hands of an alien, and the principles he first formulated to remedy century-old abuses now enter into the legal system of every English-speaking people.

It was in 1866 that he brought before the British Association for the Promotion of Social Science a proposal for a general revision and reform of the law of all nations similar to that which he had before undertaken of the civil and criminal law. A committee of eminent jurists of different countries was appointed to draw up an international code, which it was hoped would receive the approval of, and be adopted by, the Governments represented as the recognized law of nations. The members of the committee found it impossible to agree, and Mr. Field took upon his own shoulders the whole work. His "Outlines of an International Code," the result of seven years' hard work, attracted the attention of the whole world, and was translated into French and Italian. An international association was formed, including in its membership jurists, economists, legislators, and politicians, the object of which was the reform and codification of the law of nations and the substitution of arbitration for war in the settlement of disputes between nations.

It is not intended in the least to ignore or belittle the labors of Mr. Field's coadjutors, Messrs. Loomis, Gra-

ham, A. W. Bradford, Noyes, and others. They were good assistants, it is true, but no one of them wishes to rank with him in this matter. Mr. Field's similar scheme for the codification of the law of nations made good progress and rests in able hands, being the special charge of an international organization of lawyers, of which he was president. How far it will proceed remains to be seen. Mr. Field was the incarnation of the idea that "the way to codify is to codify." If his survivors are likeminded, something may be done in an urgent field. But even though he left his tasks unfinished he did enough to rank him among the foremost philosophical lawyers, not of his State and nation merely, but of his generation.

In 1884 Messrs. Appleton published two volumes of his miscellaneous addresses and arguments which gave an excellent idea of the quality of his genius and the range of his work.* Prominent among them were his argument against military tribunals for civilians, in which the friend, admirer, and counselor of Lincoln and Stanton checked, nevertheless, their assumption of power over human life. In the Cummings case he made test oaths odious ; in the McArdle case, although in advance of popular sentiment during the trying period of reconstruction, he paved the way for abolishing military government of the State by establishing its unconstitutionality. The Cruikshank case in 1875, argued when he was past the Biblical limit of age, would have done credit to a constitutional lawyer in his prime for its exposition of the true constitutional theory of State rights.

*A third volume has since been published, and a fourth will be added by his surviving brothers, who are his literary executors.

Mr. Field's political career calls for scant remark. He was first a lawyer, and only accidentally an aspirant for public office in order to serve his leading aim. Thus he sought to enter the new York Legislature in 1837 to advance his codification schemes, but he was defeated through the opposition of Bishop Hughes on the educational issue which still vexes politicians. In 1877 he sat in Congress for about two months, being elected to fill Smith Ely's unexpired term. He was a Democrat of the very rare anti-slavery type. In the former capacity he helped nominate Van Buren upon a platform of no more territory for the ownership of human flesh and blood. Even as early as 1847 he cast into the Syracuse Convention his "fire-brand-of-freedom" resolution, which was adopted as the cry of the Free Soil Party, and was long kept standing in the Barnburner newspapers. He is credited—or debited—with devising the scheme of the Electoral Commission, which, if it saved the country bloodshed, did so at the cost of the Democratic party and to the nation of the loss of the services as President of S. J. Tilden. Whatever view be taken of this episode politically, the legal portion of it well sustains Mr. Field's repute for the successful novelty of his ideas.

Mr. Tilden had 8,000 majority of the popular vote in Louisiana. The Republicans, however, claimed the electoral vote. The decision of the question which then arose was complicated by the fact that the United States Senate was Republican and the House of Representatives Democratic. A law was then enacted, at Mr. Field's suggestion, creating an "Electoral Commission" of fifteen members—five Judges of the Supreme Court, five members of the Senate, and five members of

the House—to decide the case. Mr. Field was one of the counsel for the Democratic party before the Commission. Mr. Hayes was declared elected by a majority of one vote of the Commission. Mr. Field always protested that Mr. Tilden was wrongfully kept out of the White House.

Although a Democrat, he was so far from being a Copperhead that so good a judge as Henry J. Raymond allotted to him a share in the nomination of Abraham Lincoln by helping to defeat Seward in the convention of 1860. After Lincoln's election he strove to avert war by heading New York's delegation to the Peace Congress at Washington, but after Sumter was fired on, he was as ready to fight it out on that line as even the great General himself.

Mr. Field was over six feet in height, not stout, and yet he weighed 200 pounds. In some moods there was a suggestion of the martial sternness which characterizes some of the pictures of the burly Bismarck. His personal manner was agreeable; but his professional manner was rather easy and cool than elegant. He lacked the charm of Depew, or the eloquence of Choate; but there was no lack of conviction, or of convincing quality, in the cold but robust manner in which difficulties were not evaded or slurred, but fairly conquered by great learning and pitiless logic. He was a maker of precedents rather than a respecter of them, and liked nothing better than to triumph by establishing sound principle against apparent authority. It would be easy to recall instances both of something like truculence against arbitrary power and of very contrary and much more amiable traits. Thus, when Chief Justice Noah Davis fined such lawyers as Graham, Fullerton, and

Bartlett—who will scarcely be recognized as weaklings —they submitted. But when Mr. Field returned from the absence which saved him from being their associate in judicial censure, instead of doing nothing—as he very well might—he published a contemptuously-phrased avowal of equal fault, and challenged the infliction of a like penalty, by which the right and justice of the punishment might be tried before the highest tribunal. On the other hand, hearing that T. G. Shearman, without personal acquaintance, but upon observation of the facts, had defended him in a company where his fidelity to slippery clients was made a reproach to his own character, Mr. Field sent for Mr. Shearman, and proffered him the rich reward of a partnership.

Although so hard a worker and fighter, and although of so large frame, Mr. Field was not in vigorous health in early life. Like many others, he almost lost his health before he learned to preserve it. As a young man, he was not athletic, although with some fondness for water sports, and in early manhood he saw signs of breaking vigor in severe headaches. The worthlessness of gymnasium work and machine exercise was soon apparent, and thereafter he was accustomed to walk to and from his residence in Gramercy Park, and afterwards from Park Avenue, a mile further up town, to his office in lower Broadway, a distance of six or seven miles, daily. He also rode horseback a great deal, and was temperate in eating, using a little wine and no tobacco. Mr. Field was thrice widowed, his first wife dying as early as 1836. His son and partner died in 1880, inflicting a severe blow to a fond and appreciative father. His daughter married Sir Anthony Musgrave,

then Governor of British Columbia, who died a few years since while Governor of Queensland. She is now living in Sussex County, England. Mr. Field was a great traveler. His European journeys were frequent, giving him an acquaintance abroad equal to that at home. Once he journeyed around the world, and it is well within the mark to say that his foreign acquaintance and repute were second to those of no other American lawyer.

HOUSE AND SENATE ADJOURN.

ALBANY, April 13.—Both House and Senate adjourned this morning out of respect to the memory of David Dudley Field. In the House, Mr. Sulzer made the announcement of Mr. Field's death, and moved that the House adjourn, and that the Speaker appoint a committee of nine to take suitable action to show the regard in which it held Mr. Field. Adjournment was ordered until 8.30 o'clock Monday night, and the chair appointed as the Memorial Committee, Messrs. Fish, Sulzer, Bush, Howe, Friday, Kneeland, Foley, Thornton, and Dowling.

The announcement to the Senate of Mr. Field's death was made by Mr. Coggeshall, who said he voiced the universal feeling of the people when he said that the news of the death of this great man wakened a feeling of profound regret. Mr. Field was a ripe scholar and a distinguished lawyer, who died crowned with honor. His life was a lesson and an inspiration.

Senator Saxton made a brief speech of eulogy, refer-

ring to Mr. Field's services in codifying and simplifying the rules of legal procedure, and saying that up to the day of his death he took an interest in good legislation.

[From The World of New York of April 14, 1894.]

At 3.30 A. M. yesterday, while the last fitful gusts and mutterings of the storm that killed him were still sounding around the house, DAVID DUDLEY FIELD, in his ninetieth year, died as calmly and peacefully as a little child falls asleep. He had come back to his native country only two days before, a hale, hearty, vigorous old gentleman, to whom death was only a remote possibility. But the American shore that he greeted with so much joy and love gave him an icy welcome, and almost his first breath of his native air brought death. He died of pneumonia, brought on by the great storm, in the height of which he arrived from the glowing warmth of the Mediterranean Sea.

Now that he, the oldest, has followed his famous brother, Cyrus West Field, only two of the four great brothers who made the name of Field a noble and cherished one are left—Stephen Johnson Field, now seventy-seven years old, who has been on the bench of the Supreme Court of the United States for over thirty-one years, and the Rev. Dr. Henry Martyn Field, now seventy-two years old.

It was this gentle-faced, kindly, white-haired old preacher, who, sitting sadly yesterday in the quiet parlor of the big house at No. 22 Gramercy Park, with David Dudley Field's silent form lying in the room above him, told, with an exceeding great love and tenderness, of the

last hours of the brother of whom he had been so proud. He began with an account of the tour abroad, from which David Dudley had returned on Wednesday morning, and, after telling how he had missed meeting his brother on the Hamburg line pier, he said:

"So I drove back to the house here as fast as I could go. And when I got in, why, there he was ahead of me, the fine, big, dear fellow." The old preacher removed his spectacles and wiped them furtively. He had to do it many times. "I heard his ringing, cheery voice shouting, 'How are you, brother Henry?' and I found him warming his hands before the big fire, and looking wonderfully tall and strong. I never saw the dear old man's face shine as it did then. He was full of life, and the improvement in his appearance over what it was when he went away was delightful to see. We went upstairs, and spent an hour or two conversing, and it was amazing to find how much he was interested in everything that had happened since he went away. He spoke, too, of foreign affairs and of the friends and others whom he had met abroad, with all the vigor of a young man. That indomitable energy had always been a feature of his. He was fond of early rising, like our whole family, and until a few years ago there was no more familiar figure on the avenue than my brother Dudley. He preserved his intellectual activity to the end.

"After we had talked for a long time, I left him, but came again in the afternoon, when he was still feeling well. But about 3 o'clock in the morning he awoke in a chill and, ringing the electric bell, called his valet, Watson, who had been with him for years, and is so well trained and experienced that he is competent to act as nurse and almost as doctor, and he did everything for my brother until the doctor came."

Dr. Stephen S. Burt, of No. 37 West Thirty-second street, the physician of the Field family, then told how

he had come early Thursday morning and found Mr. Field suffering from a bad chill, together with a fever, and showing all signs of a rapid collapse. His old heart trouble, from which Dr. Burt said Mr. Field has probably not been entirely free any time during the last twenty or twenty-five years, naturally asserted itself, and the patient grew worse hour after hour. The valet told the doctor that there had been some delay at the pier after the ship reached it, and that Mr. Field went suddenly from a very hot place into the cold air on the dock. This, with the excitement consequent on getting home, made him, as Dr. Burt expressed it, go all to pieces. Before noon Thursday his condition was so low that his death was looked for hourly; but under the action of powerful stimulants he rallied and seemed to recover. At 7 P. M. Dr. Burt returned to the house with Dr. Francis Delafield, of No. 12 West Thirty-second street, an expert on heart and lung troubles.

They found Mr. Field's condition improved. He seemed to breathe more freely. But by 10 P. M. his breath came in fits and starts, and a warning rattle came into his throat. He was apparently unconscious, save at intervals, during which he recognized his daughter-in-law, Mrs. Dudley Field. Meanwhile he suffered no pain. At 3. A. M. yesterday the nurse called the doctor, and he saw at once that the great lawyer was going before the greatest Judge. Without a tremor, without a motion or a sigh, he passed away, and within half an hour all was over.

The Rev. Dr. Field had gone home when he heard that the patient's condition was improved, and he did not know that his brother was dead till he came to the house yesterday morning. What the news meant to

him can be known only by those who know how the brothers loved each other. Dr. Field had in his pocket a letter from the other brother, Justice Field, written in Washington Thursday, in which he acknowledged the former's telegram announcing that "Dudley arrived this morning in splendid condition," and asked most affectionately that Dudley visit him in Washington. The writer of this happy letter received the answer by wire: "Our brother passed away early this morning."

Messages were also sent to Lady Musgrave, Mr. Field's daughter, and to all friends abroad and in this country. Before noon many callers came to the house, Joseph H. Choate being among the first, and there was a steady procession of carriages all day long.

SIGNS OF PUBLIC REGRET.

The flags on the Federal, State, and municipal buildings were half-masted. Both branches of the Legislature in Albany were adjourned. The courts of record here made minutes in Mr. Field's honor, and Judge Pryor, in adjourning Common Pleas, said:

"It is eminently proper that this court and every court—not only of the State of New York, but in the United States—should concurrently, by every species of eulogistic homage, testify their respect to the character and services of this very eminent American citizen. But not only was Mr. Field in his day, while not actively practising, *facile princeps* at the head of the bar, in learning and ability beyond the province and compass of any other lawyer in America, but he has contributed to promote law reform by imparting to our profession the accuracy and symmetry of a progressive science. Undoubtedly to-day, in all countries of the

globe, Europe, Asia, or Africa, where there is one jot of civilization, if a subject or resident should be asked who is the greatest American lawyer, without hesitation he would say, 'David Dudley Field.' And I therefore direct the minute to be made upon record; and, in view of the high esteem in which this court holds the memory of David Dudley Field and its inexpressible sorrow at his untimely death, instead of being content with this small tribute, I shall direct the court to be adjourned."

A GRAVEYARD MADE FAMOUS.

Mr. Field will be buried in the home of his parents, Stockbridge, Mass., in the village churchyard. There where the chimes ring out every evening from the square tower erected by Mr. Field to mark the site of the first church, lie his father, the Rev. Dr. David Dudley Field, the country parson who was the father of the four great-hearted brothers; his wife, whose father, Captain Noah Dickinson, fought under gruff old General Putnam, and Cyrus West Field, who laid the first Atlantic cable.

There will be no services other than the Episcopal committal service at the grave, as the formal funeral ceremonies will be held here at 4.30 P. M. to-morrow in Calvary Church, at Fourth avenue and Twenty-first street.

David Dudley Field was very proud of his daughter, Lady Musgrave, and her three boys, whom he always called his trinity. He never tired of telling what sons of Anak they were. His pride in them was justifiable, for Dudley Field, the eldest, though only twenty-one years old, is now a midshipman in the British navy, at present being at Bombay. Arthur David, nineteen

years old, is captain of a British battery at Shoeburyness, and the youngest, Herbert, though only seventeen years old, has just passed his examination at Woolwich for the army, standing second among 400 applicants. It is probable that they will receive the bulk, if not all, of Mr. Field's estate.

The marriage of his daughter to Sir Anthony Musgrave was a most happy one. He was Governor of Newfoundland at the time of the laying of the Atlantic Cable in 1866, and then became acquainted with Cyrus W. Field, whom he afterwards visited in New York, where he first met Miss Field. He died about three years since, while Governor of Queensland. It was to visit this daughter and to attend the celebration of the twenty-first birthday of the midshipman that Mr. Field went to Europe on November 8. He did it against the advice of his friends, as he had not fully recovered from his severe illness of about four years ago until last summer. He spent Christmas at Lady Musgrave's estate in East Grinsted, Sussex, and on January 8 started for Paris. Cannes was the next point visited, and a few days were then spent in Monte Carlo.

Mentone, Genoa, Naples, and Pompeii were also visited, after which he spent a few weeks in Rome, where he was surrounded by admirers and friends, who were all delighted with the youthfulness of the old gentleman. It was the same in Florence. He sailed from Genoa, March 29, on the Hamburg-American line steamship Columbia and arrived here Wednesday morning. During the exceedingly rough voyage he and one other man were the only two passengers who were not seasick or otherwise indisposed. He said then that he expected to spend the summer in the Berkshires, and

that his one great ambition was to have his law codes adopted all over the world.

HE STARTED LIFE WITH A BIBLE AND ONLY TEN DOLLARS.

His brother, Dr. Field, said yesterday:

"In his life there is a great lesson. When he left home our dear father took him into his study and kneeled by his side and prayed with him. Then he gave him $10 and a Bible! That was all he had when he started in life, $10, a Bible, and his father's prayers! When he came to New York he met a young man who was earning $500 a year, and he has often told me that then to reach that point was his highest ambition. He was an indomitable worker. He would work whole nights through until he had finished the task he had set for himself. What saved him was that the minute his work was done he could lie down, like Napoleon, and *fall asleep instantly*, and sleep soundly. He had wonderful ambition, and his monuments are the great volumes which contain the results of his earnest work to reform the law.

"He loved little children dearly. Last summer, at Stockbridge, he used to drive over to a home which a friend had erected to give children the fresh air. When he came they would run to him, screaming with joy, and would climb all over him, hanging round his neck and hugging him, so that it was a delight to see him. Then his kind face, all smiles, was good to look upon."

The white-haired preacher paused, and wiped his glasses with a hand that trembled just a little, and concluded, in a low, uncertain voice: "And now—and now we shall take him Monday to the Berkshire Hills, that he loved so well, and lay him to sleep in that beautiful valley."

Sixty-six years ago David Dudley Field was admitted to the bar, and for half a century he stood in the front rank of lawyers, not only of America, but the world over. For the course of thirty years his fame as a law reformer has been coextensive with the limits of civilization.

Of the quartet of distinguished brothers, David Dudley Field is the second to pass away. Of the other who is dead a distinguished statesman once spoke: "Columbus once said, 'Here is one world, let there be two;' but Cyrus W. Field said, 'Here are two worlds, let there be one;' and both commands were obeyed."

Of the brothers who survive, Stephen Johnson Field is one of the Justices of the Supreme Court of the United States, and Dr. Henry M. Field sits in the editorial chair of a great and influential religious journal, The Evangelist.

The father of these four men, into whose lives, stretching into widely diverging paths, so many honors and achievements have been crowded, was a New England clergyman and a son of a captain in the war of the Revolution. Friendly investigators who have searched the archives of the English Heraldry Office found that the American Fields are sprung from a Norman knight who helped William the Conqueror invade England. But the Field family are content with their well-established descent from the celebrated English astronomer John Field, who was the first to introduce the Copernican system into England.

Zachariah Field, who came to America in 1632 and settled in Northampton, Mass., was a grandson of the astronomer, and from him the ancestral chain of the Fields is unbroken down to the Rev. David Dudley

Field, the minister of a Congregational church in Haddam, Conn., from 1804 until 1818. To him was born, February 13, 1805, a son to whom he gave his own name, whose long life of honor has just closed, ending the great career of probably the foremost lawyer of the century.

The salary of the Rev. Mr. Field as pastor of the church was only $500 a year, but notwithstanding this he determined to give his son a collegiate education. He himself had been graduated from Yale, where he roomed with Jeremiah Evarts, the father of William M. Evarts. When the youth was nine years old his father began to teach him Latin, Greek, and mathematics. In 1819 the family removed to Stockbridge, Mass., and there he was sent to the academy, over which a famous teacher, Jared Curtis, presided.

When he was sixteen, Dudley, as he was always called by his family and his intimates, entered Williams College, upon leaving which, four years later, he went to Albany, where he read law in the office of Harmanus Bleecker, remaining there only three or four months, when he removed to New York City and entered the office of Henry and Robert Sedgwick, who came from Stockbridge. The Sedgwicks were lawyers of ability, with a large practice, and they took an interest in the advancement of the young student.

In 1828, when he was twenty-three years old, he was admitted as an attorney and solicitor, and two years later he was made a counsellor. Shortly afterwards the elder Sedgwick retired from the firm, and the younger brother, Robert, took Mr. Field into partnership. Up to this time his struggle for existence and education had been rather severe, but after he entered

into partnership with Mr. Sedgwick prosperity came to him, to endure until the day of his death. The firm of Sedgwick & Field lasted until 1835, when Mr. Field began to practise on his own account. Immediately as many clients as he could desire came to him. He was then recognized as one of the ablest young men at the bar, and who had a great future before him.

One of the things which is remembered in connection with Mr. Field's career was the part he played in the Erie litigations. He was never more severely criticised than he was for acting as counsel for the management of the road. The newspapers inveighed against him for lending the prestige of his name in putting forth his great skill and ability in defence of what they denounced.

Mr. Field's defenders, and they were not few, declared that his idea of professional honor did not permit him to refuse his counsel in important cases coming before court. He held that a lawyer had a duty to his clients which he was not at liberty to throw off because a case was unpopular. To desert a client when he had incurred public odium, justly or unjustly, would have been an act of cowardice and a professional disgrace. Mr. Field drew a broad and deep line between his duty as a practitioner and as a law reformer. As counsel defending his clients in the Erie suits he used the writ of injunction as it had seldom been used, but when he was called upon to improve and simplify the statutes he condemned the facility with which such a writ could be obtained, and urged its restrictions.*

* Mr. Field thus speaks of professional ethics in his address to the graduating class of the Albany Law School, March 23, 1855: "There is no profession, not even the military, which puts in use the senti-

THE CASE OF TWEED.

A few days ago there died in this city a man who gained great fame by defending William Tweed. John Graham had almost passed beyond the public ken. David Dudley Field had found additional fame in defending those prosecutions against Tweed, who had been convicted upon twelve counts of the indictment and sentenced by Judge Davis to one year's imprisonment on each of them, making twelve years in all. Mr. Field declared that the judge was wrong in pronouncing this cumulative sentence, as it was called.

When Tweed had been a year in prison Mr. Field secured a writ of habeas corpus and demanded Tweed's release. It was the first time that a writ of habeas corpus had been invoked for such a purpose. The customary procedure in such a case would have been a writ of error. The Supreme Court decided against Mr.

---

ment of honor more than our own. There are daily intrusted to us the property, the reputation, the lives of our clients: yet, when have they been betrayed? The secrets of families are in our keeping, and who will complain of their having been divulged? So far as the relations of the lawyer to his client are alone concerned, nothing could be more unexceptional: they are under the safeguard of that honor which has never yet failed to regulate and preserve them. And what I conceive alone to be wanting is to extend the same sentiment beyond the client to the adverse party and his witnesses, and to the court. The fundamental error, on this head, I suppose to arise from forgetting that the profession of a lawyer is a means to an end, and that end the administration of justice. His first duty is undoubtedly to his own client, but that is not the only one; there is also a duty to the court that it shall be assisted by the advocate; a duty to the adversary not to push an advantage beyond the bounds of equity; a duty to truth and right, whose allegiance no human being can renounce: and a duty to the State, that it shall not be corrupted by the example of unscrupulous insincerity."

Field, but the Court of Appeals unanimously reversed the decision of the lower court and ordered Tweed released.

The antagonism between Judge Davis and Mr. Field during the suit was intensely bitter. Tweed's other counsel, Mr. Graham, Mr. Fullerton, and Mr. Bartlett, signed a petition requesting Judge Davis not to preside at a subsequent trial, on the ground that he had already expressed an opinion in the case. Judge Davis called these lawyers before him, reprimanded them severely, and fined them for contempt of court.

Mr. Field was in Europe at the time. When he returned he sent an indignant letter to the Albany Law Journal, reaffirming in stronger terms all that was said in the petition, and challenging Judge Davis to punish him for contempt of court. Judge Davis gave no public heed to this letter, but he never sat on the bench in any of the Tweed suits that followed in which Mr. Field appeared.*

---

* On this subject the American Law Review, in its May and June number of 1894, observes:

"He was subjected to much criticism because of having been counsel for William M. Tweed; but we do not understand that in what he did in behalf of Tweed he stepped beyond the bounds of professional propriety. Tweed, though an enormous criminal, had a right to counsel and to be defended; and it was the duty of Mr. Field, as his counsel, to see that he had his legal rights, and that, if punished, he should be punished only according to law. The right of the criminal to counsel is equal to the right of the innocent, and the criminal has in this right all the rights of the innocent. It cannot be certainly known in advance of a judicial inquiry whether a man accused of crime is guilty or innocent of that of which he stands accused. It is contrary to the genius of our law and unworthy of any civilized community, that he hould be punished without the opportunity of making a competent defence; and the privilege of counsel is one of the means of enabling him to make a competent defence and of making

The reconstruction policy of the Republican party after the war was opposed by Mr. Field, and he was

---

the trial an inquisition in which both sides of the controversy are exhibited to the jury, and not an *ex parte* proceeding in which the government alone is heard."

On this subject Mr. Field, in addressing the jury in the Tweed case, spoke as follows of the rights of parties and the duties of counsel:

"From the time when this suit was brought last spring, down to the time of trial, we heard nothing but denunciations of the defence for impeding the course of justice. There was, indeed, no real defence, it was said, and repeated so often that they who said it, at first in ignorance or bad faith, may have come at last to think they had reason to believe it. We have now reached a decisive trial of the merits, if a first trial of a cause so important can ever be thought decisive, and, after two months of hard labor, what is the result? Why, that the plaintiffs are already defeated in respect to more than two millions of their claim, a sum worth contesting for, to my thinking, and we are now coming to you, gentlemen, to decide whether the claim shall not be still further reduced or rejected altogether.

"Above all other things is justice: success is a good thing; wealth is good also; honor is better; but justice excels them all. It is this which raises man above the brute, and brings him into communion with his Maker. To be able to stand impartial in judgment, amid circumstances which excite the passions, to maintain your equipoise, however the surging currents may be around you, is to have reached the highest elevation of the intellect and the affections. To have the power of forgetting for the time self, friends, interests, relationship, and to think only of doing right towards another, a stranger, an enemy perhaps, is to have that which man can share only with the angels, and with Him who is above men and angels.

"The part which you are now called to perform in an official act, designed to be an act of justice, is unhappily beset with difficulties. The just indignation of a betrayed and defrauded people, the abhorrence that every true man feels of robbery, public or private, the cry for redress, the thirst for vengeance, the suspicions which fall alike upon the innocent and the guilty, the corruption of our politics long accumulating, and more and more corrupted by the demoralizations of the war, the malversations in office, which seem to grow day by day, the stories of these wrongs repeated, exaggerated, distorted by

retained in many of the great cases growing out of the legislation of that period, cases which came before the

---

a press which lives upon sensation, and operating upon a people becoming every year less sedate and more impulsive, until it seems ready to fall under the reproach once cast upon an ancient race, 'unstable as water, thou shalt not excel'—all these things have brought us into a condition as frightful as it is abnormal, which would almost justify for once the language which the greatest of English dramatists has used for other turbulent times: 'Judgment has fled to brutish beasts, and men have lost their reason.'

"It is easy to see what act of each of us would commend us most to the clamorers of the hour. If the learned judge, who has presided with so much dignity and patience, had yesterday announced from the bench that the defence is a miserable subterfuge, unworthy of a moment's serious consideration, instead of ruling as he did, he would have been applauded this morning by half the newspapers of the city as a Daniel come to judgment; if you, gentlemen of the jury, were to render a verdict for the whole amount claimed, without leaving your seats, you would be greeted with the welcome of good and faithful servants; and if we, who are conducting the defence, with what fidelity you may judge, were to betray our client, and suffer judgment to pass against him, with only a seeming effort in his behalf, we should have the comfort of being informed in the same newspapers that we had half redeemed ourselves from the disgrace of defending him at all. This might happen to-day. But how would it be ten years hence? If you should then look back to this court-room and these surroundings, and read the journals which you read this morning, and those others which you have read from day to day during the trial, what would you say or think? Are you sure that you would then regard most of the comments on this trial which you now see printed and spread before your eyes each day as anything better than the babblements of idiots?

"How will it be with each of us in our judgment of ourselves? How will it be with a new question? What you do, what the judge does, what the counsel do, will be thought of for a long time hereafter. There are many other people than those who now surround us who will observe, criticise, and judge all our acts without partiality and without passion.

"For myself, personally, this trust has been an occasion of great embarrassment. Severe illness in my family during the whole period

Supreme Court of the United States. One of these, the Milligan case, commanded special attention among

---

has caused me anxiety by day and interrupted sleep by night, which have, in a measure, unfitted me for the discharge of my whole duty to my client. What that duty is, that is to say, what is the duty of an advocate to his client, I have had frequent occasion to explain, and every day's experience and observation have but served to confirm the convictions of my earlier life. The ignorant and the wicked always wish to take the law into their own hands. The wise and the good get the best judges they can, procure as good laws as they are able, and leave the administration of justice to those to whom it is confided and who alone are competent to its due performance.

"In this country we who rejoice that we are the heirs of all the ages have, in our own conceit, at least, built on broader foundations than our fathers and with stronger walls the defences of human rights, and among them all there is not one of greater significance than this, that no man shall be deprived of life, liberty, or property without due process of law. The people of our State have placed it in their State constitution, and since the late troublous times the people of the whole country have placed it in the Constitution of the nation. There it stands, and will ever stand, so long as either the nation or the State remains, *Manet et manebit.* How idle, then, it is to talk of excluding any person whomsoever from defence or opportunity of defence to any charge whatever! In conformity to this fundamental law, a summons is served upon every defendant to answer a written complaint. It is his right to answer. How can he exercise that right without the aid of counsel? Therefore he, whoever he may be, who denies the right and duty of counsel to defend any man seeking his aid in defence, denies the right of the man to defend himself, and whoever in this country denies the right of any man to defend himself, must be accounted either a knave or a fool.

"I am quite indifferent to the reproaches that out of doors have been cast upon me for my defence in this case. When, however, the reproaches come into this court-room, and are made as if they could affect you, I feel bound for that reason alone to take notice of them, so far, and so far only, as to say that I despise them. I prefer the judgment of my brethren of the bar. If the press were unanimous, which it is not, nor anything like it, the bar is stronger than the press. It does not make so much noise, but its influence, though silent, is irresistible. Mr. Willis invented the convenient phrase of the 'upper

lawyers, as it involved the constitutionality of military commissions for the trial of civilians in States where the courts were open and in full exercise of their jurisdiction, as the Cummings and Garland cases, both of which he argued, involved the constitutionality of the test oath. The next year, in 1868, he argued the celebrated McArdle case, where the issue was the constitutionality of the Reconstruction act. He appeared also in the Cruikshank case, in 1875. Chief Justice Chase said of these arguments that they were among the ablest on the subject of military rule and reconstruction that he had heard in or outside the court. The State of Georgia against General Grant was another famous case in which Mr. Field appeared.

---

ten thousand.' Using it here, not in relation to general society, but to the society of lawyers, I venture to say that the opinion of the upper ten thousand of American lawyers will sooner or later become the opinion of the American people. I am well aware that in this State at least some traces of the irritation may yet remain which a lifetime of warfare against legal abuses has engendered. By many of my elder brethren I am regarded as one who has overthrown their idols and brought their false systems into derision. I do not complain. I have had my reward. The Reformed American System of Procedure, as it is called by one of the best legal writers of our time, opposed and derided as it was at first, has made its triumphant march around the world, and is already written in the laws of half the English-speaking people, and will yet be written in the laws of them all. Even now, while I yet speak, they are writing it in the law of Australasia. But whether any trace of the irritation which this has thus occasioned is remaining or not, I am ready to leave my defence of this case to the vindication of my brethren throughout the country, confident that they will say I am maintaining, as I have ever maintained through a long life, the dignity, honor, and independence of my profession, my order—the order of advocates, to which I am proud to belong—and in that way, for they are inseparable, the rights of all the people."

He was never what is known as a politician, but he exerted a great influence in the moulding and formation of political forces, the creation of political principles. He refused an appointment to a judgeship of the Supreme Court of New York. He was a member of Congress for eight weeks, going there for a specific purpose. The only other public office he ever held was that of commissioner to codify the laws of New York, which he held for two years.

Mr. Field's political faith was grounded on Jeffersonianism. He made his first political speech more than half a century ago in Tammany Hall, when Robert H. Myers was a candidate for Mayor. When the Democratic party soon after began to be used to uphold slavery he revolted, and as far back as 1844 he made a speech against the admission of Texas. That year Martin Van Buren was supplanted by James K. Polk, who was nominated on a platform committing the party to the annexation of Texas and the extension of the area of slavery. Texas came into the Union as a result of the Mexican War, and the anti-slavery sentiment of the North rose to a higher pitch than ever. The Wilmot proviso, adopted by the House, but rejected by the Senate, added fuel to the flame.

"*Resolved*," it read, "That, as an expressed and fundamental condition to the acquisition of any territory from the Republic of Mexico, neither slavery nor involuntary servitude shall ever exist in any part of the said territory."

Of this proviso there was no more earnest advocate than David Dudley Field, and his hand wrote the secret

circular and joint letter, the direct object of which was to rally the anti-slavery Democrats of the North against the aggressive pro-slavery of their Southern brethren.

In the Syracuse Convention, in 1847, when the Democratic party of the State was split on the slavery question, Mr. Field offered the famous resolution that was afterwards known as the corner-stone, and which anti-slavery newspapers kept standing at the head of their editorial columns. This was the resolution:

"*Resolved*, That, while the Democracy of New York represented in this convention will faithfully adhere to all the compromises of the Constitution and maintain all the reserved rights of the States, they declare, since the crisis has arrived when the question must be met, their uncompromising hostility to the extension of slavery into the territory now free or which may be hereafter acquired by any action of the Government of the United States."

Mr. Field supported Van Buren and Charles Francis Adams when they were nominated on the platform which declared against the extension of the slavery area. He made speeches for them in New York and in New England. From that time until Fremont was nominated his voice and pen and all the influences he could command were on the side of freedom. So great was this influence that he was charged right and left with disloyalty to Democracy, and this called forth the letter of May, 1856, in which he said:

"Though I have not hitherto acted with the Republican party, my sympathies are, of course, with the friends of freedom, wherever they may be found. I despise equally the fraud which uses the name of De-

mocracy to cheat men of their rights, the cowardice which retracts this year what it professed and advocated the last, and the falsehood which affects to teach the right of a people of a Territory to govern themselves, while it imposes on them Federal Governors and Judges, and indicts them for treason against the Union because they make a constitution and laws which they prefer, and collect forces from the neighboring States and the Federal Army to compel them to submission."

THE NOMINATION OF LINCOLN.

When the Republican Convention met in Chicago in 1860, to nominate a President, Mr. Field, though not a delegate, (for he was not in favor of the New York candidate,) was present and very active in opposing Mr. Seward, whose defeat was ascribed by Henry J. Raymond, in a letter to the New York Times, largely, if not chiefly, to the determined opposition of Horace Greeley and David Dudley Field.

Mr. James A. Briggs, who was long resident in New York, and well known among the leaders of the Republican party, was from Ohio, and as such attended the Chicago Convention to urge the claims of Mr. Chase. He knew all the parties and saw the inside workings of the convention, and was fond of telling how one evening, when the tide seemed to be turning towards Seward, Greeley came into Mr. Field's room and threw himself down in despair, saying that "It was all over, and that Mr. Seward would be nominated on the morrow;" to which Mr. Field answered: "No, it is not over; let us up and go to work," and immediately started out on a round of the delegations, which he addressed with the utmost earnestness, and came back at midnight, saying, "Lincoln is going to be nominated!"

With all this in mind, Mr. Briggs always said that "Abraham Lincoln owed his nomination to David Dudley Field more than to any other man."

After Mr. Lincoln was inaugurated and the Southern States began to secede, a Peace Congress was held in Washington to consider the possibility of averting civil war. In this congress Mr. Field was at the head of the New York delegation, and, while anxious for peace, had the courage to declare that he did not believe in the abandonment of principles; and that he thought it was wiser to fight the conflict out than to postpone it to a future generation. After the war began no man was more determined in its vigorous prosecution.

COUNSEL FOR TILDEN.

He voted and acted with the Republican party after the close of the war, but he did not approve the restoration and reconstruction measures. He voted for Rutherford B. Hayes, but after the election did not hesitate to declare that he believed Mr. Tilden had honestly won the victory. The election of Smith Ely as Mayor of New York made a vacancy in Congress that year, and Mr. Field filled out the term. He was at once recognized by the Democracy all over the country as one of their ablest champions in the election contest. The upholding of Mr. Tilden's interest in the House devolved on him to a greater extent than on any other of the Democratic leaders, and he performed this work with an ability which won for him the admiration of his opponents. He probed to the very bottom the crooked operations of the Returning Board of Louisiana, and showed conclusively that the members of it had been

engaged in a conspiracy to falsify the returns and give the vote of the State to the candidate for whom it had not been cast.

In the complication that followed Mr. Field favored the Electoral Commission bill, and when that body assembled he argued before it the case of Mr. Tilden with a remarkable degree of ability and skill. He fought every step and resisted to the last the counting in of Mr. Hayes. Though he submitted to the decision, he never ceased to maintain that a great fraud had been committed, and that a man who had not been elected was seated in the President's chair by unscrupulous partisanship. It was after this that Mr. Field returned to the Democratic fold.

THE WRITER OF OUR CODES.

But the great work of Mr. Field was neither in politics nor in his regular practice as a lawyer. The great work of his life, and that which gave him the greatest fame, were his splendid services in the cause of law reform. He laid the foundation of the great monument of codification which he erected, more than forty years ago in a letter to Gulian C. Verplanck.

He was defeated in his effort to become a member of the Constitutional Convention in 1846, but he made himself so effectively heard in it that the convention adopted the novel scheme of abolishing the distinction between courts of law and courts of equity, and substituting a code in place of common law practice and pleading, and directed the appointment of commissioners to prepare codes. He was known to be so radical that he was at first refused an appointment on the com-

mission, but he obtained a place before it began its work. From that time until his death he was the undisputed leader of law reform. The great work began timidly and proceeded slowly. The first instalment of the Code of Civil Procedure was reported to the Legislature in February, 1848, and became the law, with slight alterations, in July following. This was only the beginning. Four different reports, embodying the residue, were made between that date and January, 1850.

HIS NEW CIVIL CODE.

In 1865 Mr. Field submitted three other codes to the Legislature: the Penal Code, the Code of Criminal Procedure, and the Civil Code. The Penal Code was adopted in 1882, and the Code of Civil Procedure the year before.

The Civil Code, which Mr. Field had first prepared, had been so added to, so changed, that instead of being contained in one volume, it made three volumes as large as a Family Bible. Therefore, Mr. Field submitted a new Civil Code. It has not yet been adopted. The measure has come up repeatedly in the Legislature, and been passed by one House or the other. Twice it passed both Houses, but was vetoed by Governor Robinson and Governor Cornell.

Meanwhile the general code system of New York has been adopted by twenty-four States and Territories. The Criminal Code has been adopted in eighteen States and Territories. Mr. Field substantially rewrote the Civil Code eight times, and some parts of it as many as eighteen times. Mr. Field's adopted code work stands as a great monument to him, even though it has taken many

decisions to determine just what some of its sentences really mean, and even though on some points adequate construction has not yet been reached.

AN INTERNATIONAL CODE.

At the meeting of the British Association in Manchester in 1866, Mr. Field proposed a revision of the entire body of international law. He was appointed then a member of a committee of jurists from different countries to make a revision that would be acceptable, or that should become the basis of a revision. It was not possible for the committee to act in concert, and Mr. Field took the whole work upon himself. The result of his labor was a large volume, which he presented in 1873 to the Social Science Congress. It was entitled "Outlines of an International Code." It attracted the attention of the most eminent jurists in the world, and has been translated into French and Italian.

Mr. Field was thrice married. His first wife was Jane Lucinda Hopkins, of Stockbridge, who died in 1836, a cousin of Mark Hopkins, President of Williams College; his second, Mrs. Harriet Davidson, widow of James Davidson, who died in 1864; his third, Mrs. Mary Elizabeth Carr, widow of Dr. Samuel J. Carr, who died in 1876.

Of his three children only one survives him, a daughter, who was married in 1870 to Sir Anthony Musgrave, who was successively Governor of Newfoundland, British Colombia, Natal, South Australia, Jamaica, and Queensland.

Mr. Field retired from active practice in 1885, but he did not give up the law altogether, still acting as counsel for several great corporations. His home was at

No. 22 Gramercy Park, where he had a valuable law library.

HIS PERSONALITY.

Mr. Field was six feet two inches tall, broad-chested and powerfully made, and walked with an erect figure. His forehead was bald and his hair thin. He enjoyed almost perfect health up to within two years ago, when he began to show signs of failure. Not long ago he was asked to what he attributed his remarkable good health, and he replied: "First a good constitution, and second, hard work." "Hard work," he added, "has never killed any one; idleness has slain thousands. Then again exercise has helped me. I have never allowed a day of my life to pass—hot, cold, wet, or dry—without walking several miles in the open air. Cabs and street cars I cannot abide. As for eating and drinking, I follow no special rule. I take what I like and let the rest alone. I find that course to agree with me."

For many years Mr. Field, taking his daily exercise, was a familiar figure. Always sought after socially, he has preferred of late years the quiet and peace of his library. The last public honor bestowed upon him was the gift of a gold medal containing $100 worth of metal. It was one of two struck off in the Philadelphia Mint at the order of the American Bar Association. The other was given to the Earl of Selborne, better known in this country as Sir Roundell Palmer.

[From the New York Evangelist, April 19, 1894.]

The event of the week has been the death of DAVID DUDLEY FIELD. While we are writing they are laying him to rest in that cemetery in the Berkshire Hills, be-

side his parents and brothers and the wife of his youth, the mother of his children. The chimes are ringing from the tower that he gave to Stockbridge, his beloved summer home, as a lasting memorial to his honored parents; note by note those silvery tongues drop down the melody of the hymns he loved so well, the chiming hymns that so lately as last summer he delighted to listen to, floating upward on the air to his home on the hillside, dropping now like angel's tears upon his grave. Only one brother—the editor of this paper—is with him as they lay him away to rest; for the other surviving brother, Justice Stephen J. Field, was not in strength to bear the exposure at this season of the year. His place is filled by nephews and other relatives and by the towns-people of Stockbridge, gathered to pay the last honors to him to whom, as a public-spirited and generous fellow-citizen, they owe so much.

The news of his death came upon the community—still more upon his family—with a terrible shock. Only two days before he had landed from Europe in high health and spirits, "in splendid condition," as Dr. Field telegraphed to Justice Field in Washington. A sudden chill, a brief and almost painless illness, and he had breathed his life away as calmly and sweetly as ever he fell asleep in his mother's arms. It was a lovely ending to a noble life, and well might the city and the State, and even the nation, cease awhile from their activities, in deep respect for such a man. The flags were lowered to half-mast as soon as it was known that he had passed away; the Courts of Common Pleas adjourned, and both branches of the Legislature at Albany.

His was a life for which no words of appreciation

can be called too eulogistic, because it was wholly dedicated to a noble purpose. The great powers of his mind, the deep devotion of his heart, were not frittered away upon many minor interests, however important; in this his life was as nearly perfect in unity of purpose and in continuity of effort as it may be given to human life to be. His whole life was a counsel of perfection. From his early manhood he had before him one high aim, to free the law from technicalities and make *justice* prevail—that divine attribute in which are summed up all the virtues, the tender and merciful no less than the strenuous and stern. And to-day there is not a quarter of the globe that does not feel the influence of this life-long purpose. To quote from an editorial notice in The Sun:

"His Code of Civil Procedure, originally adopted in New York, was the model of similar codes in a score of other States, and has been copied in British colonies in all parts of the globe. Its essential features are embodied in the existing system of procedure in the High Court of Justice in England. All over the world, wherever the prevailing jurisprudence has had its origin in the English common law, the form and manner of conducting litigations and transacting the business of the courts are due largely to the influence of David Dudley Field."

Civil procedure was not the only department of the law to occupy his attention. Eighteen States and Territories have adopted his criminal code; while his "Outlines of an International Code," presented to the Social Science Congress in 1873, attracted the attention of all jurists, and has been translated into French and Italian.

The ablest minds of England were glad to own the debt they owed to him. Some years ago, as he was on the eve of sailing for America, he was invited to attend a session of an English Commission created for the purpose of revising the laws on the basis of the principle to which his life had been given. He went; there were present five men who at one time or another had held the office of Lord Chancellor—the highest legal position in Great Britain. Through a long evening they took counsel together, and when at last the session broke up, the then Lord Chancellor thanked Mr. Field in the warmest terms for his services to the cause of justice in the world. Tributes no less intelligent, if from men less distinguished, it has many a time been his fortune to receive.

In these days just past such tributes have been many and most appreciative. A few extracts from the daily papers may properly find a place here. The Herald said of him:

"No man ever raised a higher standard of the function of a lawyer or aimed more devotedly to reach it. In his own words, 'The true function of the lawyer is not alone to guide his clients aright, not alone to gain lawsuits, not alone to win fame or fortune, but to make the law itself better.' On this principle Mr. Field acted from the beginning to the end of his remarkably long career at the bar. . . . It may be a long time yet before codification of the law of nations and international arbitration are formally adopted by the leading powers of the world. But when that era in the progress of nations is reached, no name will be more glorified than that of David Dudley Field, and no country will be entitled to higher honors than that of which he was a citizen."

From the Brooklyn Eagle come words which might be deemed extravagantly eulogistic, did they not evince so true an apprehension of the noble purpose which raised this life so far above the level of common lives:

"He was a very great man. His manly greatness was expressed in results which made the world better for his living in it, and which will make the world forever better because he lived in it. He added signal causes to the claim of the nineteenth century to fame, to wonder, to gratitude, and to emulation evermore. He made it the century of law codification. That should be written with steam navigation, telegraphy, the telephone, the phonograph, the locomotive, the policy of arbitration, the emancipation of the serfs and the freedom of Afro-Americans among the immortal and invaluable achievements of this century.

"He grew to his work. He began at the beginnings of law reform. He first sought to reconstitute and reorganize the judiciary. He found it of less importance how courts were made and graded than what the law itself should be. So he undertook the completion of codes of civil and criminal procedure. . . .

"It is no matter whether men think his scheme utopian or not. On the scale of its projection it may have been utopian. . . . The benign scheme and purpose David Dudley Field had in view, whether practicable or not, should write his name among perhaps that ten of the human race who will be household words around the earth a thousand years from now. Shakespeare, Bacon, Cicero, Cæsar, Napoleon, Washington, Lincoln, are perhaps seven out of this possible ten. David Dudley Field should, we think, be made the eighth, and, we think, will be. The two others may be left to speculation and to time. . . .

"To talk with him was a help. To listen to him was instruction. To know him was a liberal education. He suffered a little under the fact of being a man devoted

to one idea, but the idea, whether attainable at the present stage of development or not, was as far reaching and as uplifting in its purpose and tendency as any ever in the brain and heart of man. . . . David Dudley Field's object was to simplify, harmonize, and universalize justice. Mankind and not the Bar was his thought. Humanity and not the Judiciary was his solicitude. The identity of litigation with justice was his desire. He would have made rights so clearly 'statable' that the wrongs infracting them would be as odious as obvious. The much he did was a noble achievement. The more he sought to do was an even nobler dream. If his idea was an error, its spiritual quality made it an error to be revered. If his hope in his time was an illusion, it is an illusion which, we trust, may ere long wrap the world in its angelic form."

Two men of all who have lived in modern times have labored to realize the normal unity of the human race, and these two were brothers. Cyrus W. Field bound the whole round world in one by his submarine telegraph. David Dudley Field sought to make all human hearts beat in true harmony through the realization of that idea of human justice which is in the mind of God.

In the physical and in the moral sphere no one act, no one thought of man, can do more than these to realize the prayer we say each day, "Thy kingdom come;" the prayer of our Saviour breathed in His last hours, "That they may all be one."

Now, after eighty-nine years of noble service he sleeps well. Two years ago, in the splendid vigor of his eighty-seven years, he wrote a simple poem, published then in The Independent, which we are glad to read again to-day. It tells us what life was to him, as full of simple joys as of noble duties; it tells us what

death was to him—no thing of terror, no messenger of dread, but a true and kindly friend.

DAVID DUDLEY FIELD AT EIGHTY-SEVEN.

What is it now to live? It is to breathe
The air of Heaven, behold the pleasant earth,
The shining rivers, the inconstant sea,
Sublimity of mountains, wealth of clouds,
And radiance o'er all of countless stars;
It is to sit before the cheerful hearth,
With groups of friends and kindred, store of books,
  Rich heritage from ages past,
  Hold sweet communion, soul with soul,
On things now past, or present, or to come,
Or muse alone upon my earlier days,
  Unbind the scroll, whereon is writ
  The story of my busy life;
Mistakes too often, but successes more,
  And consciousness of duty done.
It is to see with laughing eyes the play
  Of children sporting on the lawn,
  Or mark the eager strife of men
  And nation seeking each and all,
  Belike advantage to obtain
  Above their fellows; such is man!
It is to feel the pulses quicken, as I hear
  Of great events near or far,
  Whereon may turn perchance
The fate of generations ages hence.
It is to rest with folded arms betimes,
  And so surrounded, so sustained,
  Ponder on what may yet befall
  In that unknown mysterious realm
Which lies beyond the range of mortal ken,
Where souls immortal do forever dwell;
Think of the loved ones who await me there.
And without murmuring or inward grief,
  With mind unbroken and no fear,
Calmly await the coming of the Lord.

THE LAST TRIBUTE.

The scene in Calvary Church on Sunday afternoon, April 15, was most impressive and most touching. The great church was packed, the whole center aisle being given up to those who especially mourned his loss and delighted to do him honor; his family, delegates from various learned bodies to which he belonged, and members of the legal profession. So distinguished a body of men is not often seen. Among the pall-bearers walked the Chief Justice of the United States and many men whose names are known wherever distinguished ability is honored; of the inner circles of those who most nearly feel his loss, his own immediate family, were two other Justices of that most august judicial body in the world, his brother and his nephew.

There was no funeral sermon, no eulogy of the great man who was gone. Far more seemly, more touching, more soothing, the sublime words of the burial service, the noble resurrection chapter, the sweet processional and recessional hymns from many voices of boys and men, going to meet the coffin as it entered the church, and preceding it to its place in the chancel and again to its temporary resting place when the service was over.

On Monday morning the last journey was made to the place he loved best on earth, the Stockbridge home, the narrow house in the rural God's Acre.

DAVID DUDLEY FIELD.

Words of his youngest brother in The Evangelist, April 26, 1894.

He is gone to the grave! Neither shall he return to his house any more! He hath no more a portion forever in anything that is done under the sun!

So quickly has one on whom I have leaned all my life vanished out of my sight that I am stunned by the blow. But more than any other man that I ever knew, he lived while he did live. Even when he had entered his ninetieth year he was so full of life, of such vitality, that continued until within a few hours of the moment when he breathed his last, that I can hardly realize that I shall no more feel the warm grasp of his hand or hear his cheering voice.

Such a life cannot end without leaving a great void behind it, and it is due both to his memory and to those who survive him that they should know something of his history and of the influences that made him what he was. He was not the child of fortune. He was born under the humble roof of a country minister. The Hartford Courant (by the pen, we presume, of Charles Dudley Warner) says :

"David Dudley Field was born in this good old State of Connecticut a little more than eighty-nine years ago. But for the migration of his father from a

Connecticut pastorate to a Massachusetts one, he would doubtless have followed the parental footprints to the doors of Yale; as it was, Williams had the honor of giving him his sheepskin. That was in 1825. Three years later he hung out his shingle in the city of New York and began the practice of the law. It is worth noting that in one of his first cases he appeared as counsel for a fugitive slave."

In this city he lived more than sixty-five years, and it is safe to say that there was no man better known by sight, if not from personal acquaintance. For many years it was his custom to take his morning exercise on horseback, and residents up town, who were abroad at an early hour, observed him as he rode out to the Central Park. Still more familiar was his figure on the street. It was his custom to walk from his home in Gramercy Park to his office in lower Broadway, and his tall, erect figure and quick, firm step gave him a military appearance, as he passed on with the stride of a grenadier. Indeed he was once mistaken on the Rhine for a Marshal of France!

It was early in life that he rose to the front rank of his profession, and for full fifty years it is probable that the business of his office was equal to that of any in the city.

But his chief distinction was not in the winning of great cases, but in his efforts for the reform of the law, which he found encumbered with technicalities, whereby litigation was so prolonged that many a man felt that it was better to suffer wrong than to attempt to secure justice with an issue so doubtful and so remote. But in this movement for reform he had to fight, not only against old habits and traditions, but against the great

body of his own profession, who were wedded to the old forms, with which they had become familiar. The labor was spread over a long succession of years. It is just fifty-five years ago (in 1839) that he wrote his first letter on the Reform of our Judicial System, and then began the agitation which was to occupy him nearly forty years. In 1851, while in England, he had an interview with Lord Brougham, who commended his efforts for the fusion of law and equity, but doubted if it could ever be effected in England. He soon changed his mind, however; for a few months after he wrote a letter in which he said that sooner or later fusion was sure to be adopted in England.

The next year Mr. Field was again abroad, and a dinner was given to him in London by the Law Amendment Society, at which Robert Lowe, afterwards Lord Sherbrooke (who so distinguished himself in Parliament, and as Chancellor of the Exchequer under Mr. Gladstone), paid him a tribute such as has seldom been paid to any legislator, living or dead. Among other things he said:

"He trusted that his honorable friend, Mr. Field, would go down to posterity with this glory—that he had not only essentially served one of the greatest States of America, but that he had also provided a cheap and satisfactory code of law for every colony that bore the English name. Mr. Field, indeed, had not squared the circle; he had not found out any solid which answered to more than three denominations; he had not discovered any power more subtle than electricity, nor one that would bow with more docility to the service of man than steam. But he had done greater things: he had laid the foundation of peace, happiness, and tranquillity, in the establishment of a

system which would make law a blessing instead of a scourge to mankind. He believed that no acquisition of modern times—if he rightly understood what had been done in the State of New York—he believed that no achievement of the intellect was to be compared to that by which Mr. Field had removed the absurdities and the technicalities under which New York, in common with this country and the colonies, had so long groaned. While England was debating upon the propriety of some small and paltry reforms in the administration of law, a great master in the art of administrative reform had risen there in the person of his distinguished friend, Mr. Field, and had solved the problem which they in England were timidly debating. America had a great future before her in the establishment and diffusion of the arts of peace. Let them leave to others—to absolute governments—to have their subjects shot down in the streets, rather than wait even for the headlong injustice of a court-martial; but let it be the lot of England, hand in hand with America, to lead the way in the arts of jurisprudence, as well as in other arts—let them aim at being the legislators and the pacificators of the world."

But that was only the beginning of the herculean task which he undertook, while carrying on a large professional practice, and that extended over many years, till one by one appeared five complete Codes: of the Civil Law and the Criminal Law; and of Civil and Criminal Procedure; and a Political Code.

As the work went on it was watched with great interest in England, where the law was still burdened and confused by the innumerable acts of Parliament passed through many centuries, which led to the appointment of a Parliamentary Committee and of a Crown Commission to consider the whole subject of law reform. In 1867 Mr. Field was in London, and was invited to

meet there English reformers and explain the features of the law reform which he had inaugurated in America. There were present the most eminent legal authorities of the Kingdom, including five Lord Chancellors—Lord Westbury and Lord Cranworth; Sir Page Wood, afterwards Lord Hatherly; Sir Hugh Cairns, afterwards Lord Cairns; and Sir Roundell Palmer, now Lord Selborne. The conference lasted till late into the night, and when they arose, Lord Hatherly took him by the hand and said: "*Mr. Field, the State of New York ought to build you a monument of gold!*"

These codes were adopted in part in half the States of the Union, and portions of them in England and the British colonies, to the most distant parts of the empire. It was a moment of triumph for Mr. Field when, travelling round the world, he found under the Southern Cross, at Singapore, and again at Hong Kong, the very enactments that he had prepared thirty years before in America.

His last great service to civilization was in what he contributed to the peaceful intercourse of nations. At a meeting of the British Association for the Promotion of Social Science in Manchester in 1866, he proposed the appointment of a committee to prepare an International Code—a proposal which was accepted with enthusiasm, and a committee appointed of great jurists from England, France, Germany, and the United States; but, as usual, the burden fell upon him, and the work which appeared some years later was purely his own. He was the most earnest and influential advocate on either side of the ocean of arbitration as the way of settling differences between nations, instead of going to war—the wisdom of which has been so splendidly illus-

trated in the settlement of the Alabama Claims and of the question of the Bering Sea.

All this is matter of history. That to which I turn in this sad hour is the inner life which was revealed only to those who were closest to him. To the world he appeared stern and cold; a great combatant in the struggles of the bar; who never asked for favors from any quarter, however formidable; who took and struck tremendous blows. But there was another side to the man which none knew but those who saw him in his own home—a gentleness and sweetness that showed itself in a love for children, of which Mr. John E. Parsons speaks in the letter printed below; and in innumerable acts of kindness to the humble and the poor; while in his domestic circle he was the most affectionate of men; and those who stood nearest to him think, not so much of the great advocate and lawgiver, as of the warm and tender heart that was hidden under that iron breast.

All this came over me like a flood, as I followed him to the grave. It was in the old burying ground at Stockbridge, where have been laid to rest so many of the honored as well as the sainted dead for a hundred and fifty years, from the time of John Sargent, the apostle to the Indians, who desired to be buried near him that they might rise with him at the resurrection. There a willow droops over a new-made grave, where we laid him down who had just passed from among us, and turned away with a feeling of loneliness that will remain till we, too, are laid in the same peaceful spot, to sleep till the heavens be no more. H. M. F.

MR. FIELD AMONG THE CHILDREN.

During the summer of last year, which Mr. Field spent in the Berkshire Hills, his favorite drive was to a rural retreat, which had been fitted up for the children who are sent from the city to the country to get a life-giving and health-giving draft of fresh air. So frequent were his visits that all the children knew him, and as he took his seat on the porch, would gather about him like bees. He would take them on his knees and tell them stories, and often pile eight or ten into his large carriage and send them off for a drive over the hills. It was the frequent occurrence of this sight which has called forth the following from Mr. John E. Parsons, the creator of that beautiful charity which bears the name of a beloved daughter:

NEW YORK, *April* 15, 1894.

DEAR DR. FIELD:

In a sermon which I heard this morning was told this story of Thomas Guthrie: When near his end it was proposed to sing to him. He was asked to select a hymn. "Sing to me a bairn's song!" was his reply.

I have seen your brother Dudley in many of the experiences of his varied career; in the heat of the fierce conflicts of the profession of which he was so distinguished a member; pressing with untiring persistency the reforms with which his name will ever be associated; defending himself with matchless courage and vigor, and with faith which never wavered against any imputations that he had not adhered to the highest standards of personal and professional ethics—exalting that pro-

fession which he honored and which was honored in him. But it is not thus that I shall recall him, nor even as I have seen him drinking in the invigorating air of his Berkshire home, and gazing upon the Berkshire Hills which he loved with an abiding passion.

My memory goes back to the past summer and to the daily visits which he made to St. Helen's Home. I can see him now, with two or three little city waifs on each knee, telling them the stories and repeating the verses which he had learned as a little child. Many of them are looking forward to the time this summer when they may again see their friend. Of all the honors which came to him, of all the tributes which will be paid to his memory, I doubt if one would be more valued by himself than the affection which he had inspired in the hearts of these little ones.

"This is one of the greatest pleasures that I have ever known," he said to me one afternoon. In the name of his little friends and for them permit me to extend sympathy and express sorrow at this great loss.

Sincerely and respectfully yours,

JOHN E. PARSONS.

From Rev. Dr. Henry van Dyke, who was Mr. Field's companion on his last voyage.

Dear Dr. Field: It was a great shock and sorrowful surprise to hear of your brother's death. He was so well on the steamer in which we crossed the Atlantic together, so happy, so energetic, such a cheerful and inspiring companion, that in spite of his great

age he seemed young, and the thought of death was far from him. I am sure those last days of his life were pleasant and profitable ones. He enjoyed them; and he increased the pleasure of others. I shall be glad always to think that I was a fellow-traveller of his and privileged to listen to much of his wise and cheerful conversation.

To you, my dear Doctor, in your sorrow and loneliness, I offer my sincere sympathy. One after another the strong men whom your family has given to the world are called home. I know your heart is heavy with a brother's grief. But you have the best of all consolations, the brightest of all hopes, and your sunny faith of a lifetime will shine brightly still, and God will maintain and increase your strength according to His promise to Christ Jesus our Lord. This is the sincere prayer of

Yours faithfully, HENRY VAN DYKE.

HIS UNOBTRUSIVE GENEROSITY.

Mr. Field gave liberally and largely to persons needing assistance within his means, and his gifts were various and numerous: to aid young men in their education, to encourage improvement in villages, and in aid of charities for children of the poor, or for the sick or infirm. But of them he never spoke unless in answer to inquiries. He never proclaimed his benefactions. He also gave twenty-five thousand dollars to Williams College for the professorship of astronomy, and ten thousand dollars for erecting the tower in

Stockbridge on the site of the old church built for the Indians.

A pleasing instance of his unostentatious generosity is related by Mr. Irving Browne in the London Law Journal:

"Mr. Field, writes Mr. Browne, was very frugal in small matters, but in large matters he was generous. A little more than a year ago he wrote me—certainly with no design of having it heralded, at least in his lifetime: 'It may interest you to know, since I have been charged with parsimony, that in my chagrin at the failure of the bar of the country to keep its promise, made at a meeting in Washington, after the death of Chief Justice Taney, to look after his family, I gave to the clerk of the Supreme Court my personal bond to pay to a daughter of the Chief Justice $500 a year, during her life or mine, I forget which; and that I paid this annuity from the date of the bond in 1873 till the daughter's death in 1891, so that I actually contributed out of my private funds $9,000 to save the credit of the bar. I had never seen the two daughters, nor the Chief Justice himself, except on the bench, and I loathed his decision in the Dred Scott case.' Mr. Field was an intense optimist, and had the most profound religious convictions."

PROCEEDINGS UPON THE DEATH

OF

DAVID DUDLEY FIELD.

Extract from the Minutes of the Association for the Reform and Codification of the Law of Nations—Resolution of the International Arbitration and Peace Association—Minute of the Proceedings of the Faculty of Washington and Lee University.

The Association for the Reform and Codification of the Law of Nations.

33 Chancery Lane, W. C.,
London, *4th May*, 1894.

To Lady Musgrave.

My Lady: At the request of the Council of the above Association, I beg to forward you the annexed copy of a resolution which was adopted at its meeting last evening.

In doing so may I take the liberty of expressing my own personal sympathy, and my regard for your late esteemed and revered father. It was my honour and privilege to be associated with him in the work of the London Peace Congress of 1890, and I could not help being struck with his extraordinary vigor, ability, and force of character which won my warm admiration.

I am yours, very sincerely,
W. Evans Darby,
Hon. Sec. pro tem.

Extract from the Minutes of the Executive Council held on Thursday, 3d May, 1894:

"The Executive Council of the Association for the Reform and Codification of the Law of Nations at this, its first meeting since the death of the Hon. David Dudley Field, one of the founders and past President of the Association, and at the time of his death Honorary Vice-President, desires to express its regret at the loss which the Association and the whole civilized world has thereby sustained, and respectfully tenders its sympathy with his family in their bereavement."

International Arbitration and Peace Association.
Offices: 40 and 41, Outer Temple, Strand,
(Opposite the Royal Courts of Justice.)

London, W. C., 3*d May*, 1894.

Madam: I am desired by the Committee of this Association to forward you the enclosed copy of a resolution adopted by the Committee with reference to the death of your distinguished father, Mr. David Dudley Field.

Yours, faithfully, J. Fred'k Green,
Secretary.

Lady Musgrave.

Copy of Resolution.

Death of David Dudley Field.

Resolved, That this Committee have heard with regret of the death of Mr. David Dudley Field of New York, and desire to place on record their sense of the great services rendered by him to the cause of international unity, both as a jurist in his "Outlines of an International Code" and other works, and by his lifelong devotion to the principle of International Arbitration.

The Committee would more especially note the dig-

nity and ability with which Mr. Field, notwithstanding his advanced years, presided over the Second Universal Peace Congress, held in London in 1890.

The Committee feel sure that when the substitution of Law for War in international affairs shall have become generally established—a prospect happily increasing in probability—the name of David Dudley Field will be honored among the most distinguished of the pioneers in promoting the establishment of the juridical status among nations as a practical step towards the brotherhood and solidarity of men.*

* In a letter to a brother of the deceased, the Hon. John Randolph Tucker, of Virginia, thus speaks of the movement of Mr. David Dudley Field:

"What a wonderful projection into the future he has pushed his inventive and suggestive thought for the international arbitrament in peace of the controversies of nations! When his ideal is realized, as it must be, the world will lay on his tomb the tribute of its homage as the bold and intrepid pioneer in making the Prince of Peace the arbiter of the international disputes of the world. This, even more than his energy and genius in pressing the code procedure, will be the solid foundation of his fame."

At a banquet at the Hotel Metropole in London, in July, 1890, given by members of the British Parliament to the members of continental Parliaments and other distinguished persons attending the Universal Peace Congress, the Right Hon. Mr. Shaw-Lefevre rose and stated that he had been requested to supply the place of Mr. Depew, who, to the regret of all, was absent on account of illness, and he then introduced one of the guests of the evening, Mr. David Dudley Field, who spoke as follows:

"My Lords and Gentlemen," began the distinguished American jurist, "I am going to preach you a very short sermon upon the text proposed by Mr. Shaw-Lefevre—an international parliamentary movement. Last week I had the honor of being present at the unofficial congress, composed of private individuals of many nations, earnestly bent on doing what they might to further the cause of international arbitration. To-night I am proud to address a body of parliamentary representatives inspired by the same lofty ideal. I hear people declare us visionary enthusiasts, dreamers, and unpractical folk chasing after a phantom.

"But stop a moment! Think a moment! Is it true we are unpractical? What is that prayer we hear Sunday after Sunday, 'Give peace in our time, O Lord.' What does that mean? It means that we have the consciences of the world with us. Things change as time

Washington and Lee University, Lexington, Virginia.

At a meeting of the faculty of Washington and Lee University, held May 14, 1894, the following minute was adopted:

The Faculty of Washington and Lee University have heard with deep sensibility of the death of Hon. David Dudley Field, eminent as lawyer, statesman, and publicist, whose generous gifts to this institution entitle him to the gratitude of all who are interested in its welfare.

No American has lived in this generation who has taken a more prominent and useful part in the advancement in jurisprudence, municipal and international.

---

rolls on. Suppose the common people in the time of the Plantagenets and Tudors had claimed the right to manage the affairs of the nation. What would the nobles have said? And what do the nobles say now? Things have changed, and things will change, and church bells will finally be heard ringing peace over all the world.

"IS THAT UNPRACTICAL?

"We are called unpractical, but when the German Emperor demands more battalions for his armies, and a representative of the groaning German people rises in the Reichstag and asks with whose blood and whose money those battalions are to be paid for—is that unpractical? And when the statistician tells you Englishmen that during the whole of this century, for every pound of public money raised 16*s.* 3½*d.* have been spent for war—is that unpractical? And when you learn that to-day out of 670 members of the House of Commons there are 234 ready to vote for an arbitration treaty, and that if only one hundred members more will join us, the problem is solved—is that unpractical?

"No! we are not unpractical, but the most practical of men, and the task we have set ourselves of arousing public opinion against the ghastly horrors of war is a noble task.

"I will conclude with an old stanza which used to be very dear to us Americans at the time of our own Civil War:

'For right is right and God is God,
And right shall surely win;
To doubt would be disloyalty,
To falter would be sin.'"

This spirited response called forth enthusiastic applause.

In the science of judicial procedure, in the promotion of peace among nations by making the law between them certain and fixed, and by provision for arbitrament of all difficulties between them, and in his broad and unsectional sympathy with his whole country in upholding the constitutional principles of the fathers as the supreme law for all the States, Mr. Field has held an advanced position, which makes his name illustrious in our history.

In grateful memory of his kindness to this University, and of his public services, the Faculty place this minute upon their record as their testimonial of esteem for his character, of admiration for his career of noble activity for the good of mankind, and of appreciation of the results of his useful, well-spent, and philanthropic life.

A copy: JOHN L. CAMPBELL,
Clerk of the Faculty.

A paper was read before the American Bar Association, at Saratoga, in August, 1894, by Hon. John F. Dillon, on "The True Professional Ideal," with the understanding that it should have some relation to the subject of legal education, in one or more of its aspects.

In the article Judge Dillon refers to the career of Mr. David Dudley Field, as illustrating several phases of that character. The article was published in the Albany Law Journal, and by his permission it is reproduced here entire, with the exception of the synopsis given of the studies pursued at the law school of Harvard University.

THE TRUE PROFESSIONAL IDEAL.

By Hon. John F. Dillon.

I have been honored with an invitation to read before the Section on Legal Education a paper on "The True Professional Ideal," with the implication, I presume, that it should have some relation to the subject of legal education in one or more of its many aspects.

The time limit fixed of thirty minutes or less will not enable me to do more than to glance hurriedly at one or two of the more important questions that might be fitly considered under the general title of "The True Professional Ideal." It can never, I think, be entirely out of place—certainly, in my opinion, it is not out of place at the present time—to impress upon the bar and society the essential dignity, worth, nobility, and usefulness of the lawyer's calling. The true conception—ideal, if you please—of the lawyer is that of one who worthily magnifies the nature and duties of his office, who scorns every form of meanness or disreputable practice, who by unwearied industry masters the vast and complex technical learning and details of his pro-

fession, but who, not satisfied with this, studies the eternal principles of justice as developed and illustrated in the history of the law and in the jurisprudence of other times and nations so earnestly that he falls in love with them, and is thenceforward not content unless he is endeavoring by every means in his power to be not only an ornament but a help unto the laws and jurisprudence of his State or nation. In his conception, every place where a judge sits—although the arena be a contentious one, where debate runs high and warm—is yet, over all, a temple where faith, truth, honor, and justice abide, and he is one of its ministers. With what majestic port may not the lawyer approach that temple when he reflects that he enters there not by grace, but of right, craving neither mercy nor favor, but demanding justice, to which demand the appointed judicial organs of the State must give heed under all circumstances and at all times.

There is, I fear, some decadence in the lofty ideals that have characterized the profession in former times. There is in our modern life a tendency—I have thought at times very strongly marked—to assimilate the practice of the law to the conduct of commercial business. Between great law firms with their separate departments and heads and subordinate bureaus and clerks, with their staff of assistants, there is much resemblance to the business methods of the great mercantile and business establishments, situate close by. The true lawyer—not to say the ideal lawyer—is he who begrudges no time and toil, however great, needful to the thorough mastery of his case in its facts and legal principles; who takes the time and gives the labor necessary to go to its very bottom, and who will not cease

his study until every detail stands distinct and luminous in the intellectual light with which he has surrounded it. The temptations and exigencies of a large practice make this very difficult, and the result too generally is that the case gets only the attention that is convenient instead of that which it truly requires. The head of a great firm in a metropolitan city, a learned and able man, was associated with another in a case of much complexity and moment. He expressed warm admiration of the printed argument of his associate counsel, which had cost the latter two months of laborious work, adding, however, that he could not have given *that* much time to it because, commercially regarded, it would not have paid him to do so.

It is unquestionably the duty of the profession to preserve the traditions of the past—to maintain lofty ideals—and to this end to guard against what I may perhaps truly describe by calling it the "commercializing" spirit of the age. The utterance of Him who spake with an authority greater than any lawyer or judge, "man lives not by bread alone," should never be forgotten or unheeded by the lawyer, and will not be by any who come within the category of what may be termed the "Ideal Lawyer."

Mr. J. H. Benton, Jr., of the Boston bar, under the conviction that few persons, even among those of the profession, realized the full extent in which the bar has participated in the government of this country and given directions to its policies and public affairs, read before the Southern New Hampshire Bar Association, in February of the present year, a most instructive paper on the "Influence of the Bar in Our State and Federal Government."

A few of the facts which he has laboriously ascertained and stated may be here briefly mentioned as bearing upon the subject of the present paper. Of the 56 signers of the Declaration of Independence, 25 were lawyers, and so were 30 out of 55 members of the convention which framed the Federal Constitution. Of the 3,122 Senators of the United States since 1787, 2,068 have been lawyers; of the 11,889 Representatives, 5,832 have been lawyers. "The average membership of lawyers in both branches of Congress from the beginning has been 53 per cent." In the present Constitutional Convention of the State of New York, 133 out of the 175 members are members of the bar. Lawyers constitute, as nearly as can be ascertained, one in every 400 of the male population of the United States at the present time. The statistics show, with one exception, that in the legislatures of all the States the legal profession has, and always has had, a membership excessively greater in proportion to its number in the population of the State.

Not less marked is the influence of the bar in the executive departments of the Federal and State governments. Of the 24 Presidents, 19 have been lawyers; and Mr. Benton states that "of the 1,157 governors of all the States, 578 of the 978 whose occupations I have been able to ascertain have been lawyers."

It is scarcely necessary to mention the fact that the entire body of the other co-ordinate department of the national and State governments—the judiciary—have been members of the profession. And in our polity the judiciary have a power and are clothed with a duty unique in the history of the governments, viz., the power and duty to declare legislative enactments and executive acts

which are in conflict with our written Constitution to be for that reason void and of no effect. In this America has taught the world the greatest lesson in government and law it has ever learned, namely, that law is not binding alone upon the subject, and that the conception of law never reaches its full development until it attains complete supremacy in the form of written constitutions, which are the supreme law of the land, since their provisions are obligatory both upon the State and upon those subjected to its rule, and equally enforceable against both, and therefore *law* in the strictest sense of the term.

Two forces in society are in constant operation and are necessary to its welfare, if not to its very existence: the conservative force, to preserve what is worth preserving; the progressive, without which we would have stagnation and death. The character and state of the law, as well as the social condition of any people, is the result of the conflict between these healthful although antagonistic forces. As the ocean keeps itself pure by the constant movement and freedom of its waters, so the like movement and freedom are necessary to preserve what is good in existing conditions, or to remedy what is either bad or inadequate.

Changes in the law of any living and progressive society are therefore absolutely necessary in order to make the law answer the current state and necessities of the social organism. So far as law is expressed in written form, whether in constitution or statutes, it is crystallized and almost, although perhaps never quite, stationary. Owing to the doctrine of judicial precedent as it exists in our law, this theoretically makes what is adjudged almost, although in practice not quite,

as stationary as law in written form. True wisdom requires that the law shall with all convenient speed be made to harmonize with existing needs. This makes law amendment or reform a constant continuing and ever existing necessity.

Nothing is more difficult than the work of law improvement. It requires a knowledge of the law both theoretical and practical; scientific, so as to know the relation of each department of the law to every other department; practical, so as to appreciate existing defects and the needed remedy. Doctrinaires, jurists, and legal scholars may see, indeed are often the first to see, or to suggest and urge the required changes, but are, generally speaking, incapable of wisely effecting them. With the notable exception of the changes wrought in the law of evidence, Bentham's vast labors bore almost no direct fruit. Austin filled for many years a large space in the field of jurisprudence. My own judgment is that his legal theories have proved to have little intrinsic or permanent value. Though feeling constrained to say this, I must also add that in my opinion the world is much indebted to these eminent men for their bold and free criticisms of our laws and for arousing the attention of the bar to the need of amending them, and especially for making some portions at least of the profession in England and this country feel the need of a more scientific jurisprudence. Brougham, Mackintosh, Romilly, and Langdale were, in a way, their disciples, and labored faithfully in the cause of reform in England. But they went about it in the conservative and timid manner so characteristic of the English mind. Their efforts were confined to single, sporadic, specific ameliorations of certain felt griev-

ances, but their labors proceeded upon no scientific plan to effect comprehensive reforms of either substantive law or of the law of procedure.

Such, roughly sketched, was the general condition of law reform when the late David Dudley Field entered upon the work of law amendment in this country. It seems to me that the career of Mr. Field illustrates several phases of the subject under discussion. For this reason, as well as because it is proper that some notice should be taken in this body of the labors of this eminent man, at one time the president of this association, I shall refer for a few moments to the main work of his life, and endeavor to draw from it the lessons it teaches. In my judgment no mere doctrinaire or closet student of our technical system of law is capable of wise and well-directed efforts to amend it. This must be the work of practical lawyers. Mr. Field had this needed qualification, for he was throughout his long career at the bar a busy and active practitioner.

When Mr. Field commenced his work of law improvement, the gap between the law as it existed and what the welfare of the community required, especially in the law of procedure, was very wide. The system of pleading and procedure had grown to be so technical as to defeat in many cases the cause of justice. This was eminently true of the common law system of pleading and procedure, and even the system of equity was equally open to the reproach of undue technicality and of intolerable delays. The need for a cheaper, simpler, and more expeditious procedure at law and in equity had become a crying want. Mr. Field, if he did not originate the idea, clearly put himself at the head of the movement to remedy the evil. This he did at an

early stage in his professional life, and to this as well as to the codification, looking to improvement in criminal law and procedure, as well as in substantive law he gave without ceasing, being instant in season and out of season, more than fifty years of his active career, He advocated the principle of codification everywhere. He was a man of strong feelings and passions. Every man of real force is so, almost necessarily. He, therefore, fought for codification; and he fought with dauntless courage everybody who opposed him. We may think that he unduly estimated the scope, the value, and the beneficence of codification. He may have done so. Effective and true reformers are apt to go too far. But this detracts not the least from the estimation in which he is justly entitled to be held by the bar and public. I do not wish to surround him with a haze of golden panegyric. He does not need it. Look at his public labors in municipal and international law, extending from 1839 to 1894, and what lawyer in this country, dead or living, has ever dedicated half as many years as he to conscientious efforts to improve our laws and jurisprudence. In this view he stands without a peer. Consider the success which has crowned his work in this country and in England and in the English colonies, and his career is strikingly distinctive. True, some of his schemes of law amendment failed of adoption, those more especially relating to the codification of the common law, but he seized upon one principle which he made eminently successful, and which in turn made him famous, and justly so, namely, the simplification of the law of procedure. The New York Code of 1848, in substance or principle, Mr. Field lived to see adopted in a large majority of the States and Territories

of the Union and in the Judicature Act of 1873 of the British Parliament.

Mr Field had lofty professional ideals of the lawyer's duty toward the law. Love of the pecuniary gains of his calling, though he was not insensible to them, was yet ever subordinate in his regard to those public labors which he felt that he owed to his profession and the law. Although in active practice in a great metropolitan center for over sixty years, he accumulated no more than some contemporary men at the English bar, and perhaps some in the same city have done in less than a tenth of the same period. But it may be said that he was ambitious, that his ambition was boundless, and that this was his incentive. Be it so. So, doubtless, it was. Exercised for worthy ends, this, so far from being the last infirmity, is the highest quality of noble minds. Nor had official place, either for the conspicuousness which attracted and was flattered by the public gaze, or for the power which men of lower aims who live only in the present, love to wield, any controlling charms for him. His eye was lifted higher and was fixed chiefly on the generations who should come after him. Of the present he regarded himself, if I may so phrase it, as a tenant for life, but with a reversion in fee in the limitless future. Cheerful in the prolonged autumn of his days, he had for nearly a generation seen the "leaves fall over the roots of the tree of life," but this as he looked above only gave to his vision a freer and more unobstructed view of the past and future. With great felicity of expression, Sir Walter Scott makes Kemble, on finally leaving the Edinburgh stage, say he hoped to enjoy

"Some space between the theatre and the grave:
That like the Roman in the Capitol,
I may adjust my mantle ere I fall."

Such, too, was Mr. Field's hope, doomed however to disappointment. On his return from Europe, only three or four days before he passed beyond the range of our mortal vision, he was reported to have said, in answer to the question what he intended to do, that he expected to spend the coming summer in the Berkshires at work on his autobiography, and that his one great ambition was to have his codes adopted all over the English-speaking world. All old men live in the past, and to this Mr. Field, who had crossed the Delectable Mountains and was already in the country of Beulah, was no exception. It was natural that he should love to survey, in the serene evening of his days, the toils and labors which had marked his active life and the successes with which these had been rewarded. But only men of the higher type can turn, as turn he did, to the future, see it spread itself out before their enraptured gaze, feel themselves fanned by its intoxicating breezes, behold its sunlit heights and proudly feel that it, too, is their inheritance.

With this let us contrast the life and professional career of an eminent English contemporary of Mr. Field's earlier life. I refer to Sir William Follett, who in his day was as distinctly the leader of the bar as was Lord Erskine in his. The picture has been drawn by Sir William's own friend, the accomplished Talfourd, who, in his "Vacation Rambles," tells us that there was brought to him in 1846, when on his journey through Italy, the usual register of visitors, and that, turning over its pages, he was startled by the name of

Sir William Follett written in tremulous characters just before his death, which had occurred but a short time before Talfourd saw his signature. After reviewing Follett's professional career, usually pronounced so brilliant, Talfourd mournfully inquired, "What remains?" And he answered, "A name dear to the affections of a few friends; a waning image of a modest and earnest speaker, though decidedly the head of the common law bar; and the splendid example of a success embodied in a fortune of £200,000 acquired in ten years, the labors of which hastened the extinction of his life; these," he added, "these are all the world possesses of Sir William Follett. To mankind, to his country, to his profession, he left nothing; not a measure conceived, not a danger averted, not a principle vindicated; not a speech intrinsically worth preservation; not a striking image, nor an affecting sentiment; in his death the power of mortality is supreme. How strange—how sadly strange—that a course so splendid should end in darkness so obscure."

Follett did not discharge the debt he owed to his profession, and therefore did not answer to the completest professional ideal of the lawyers. Mr. Field not only paid the debt due to his profession, but overpaid it and thus became its creditor, and in this answered more fully than lawyers like Follett the professional ideal.

In the report on legal education before mentioned it appears that there are over fifty law schools in the United States, having a membership of more than six thousand students—the committee not having the means of ascertaining the number of students who were pursuing their studies in private offices outside of the law schools. I fully concur in the following observations

of the committee. Their soundness will not be questioned, I think, by any one who hears me: "The mind of the lawyer is the essential part of the machinery of justice; no progress or reforms can be made until the lawyers are ready. Their influence at the bar, on the bench, and in legislation is practically omnipotent."

The following observation seems to me to be specially weighty and important: "The progress of the law means the progress of the lawyer, not of a few talented men who are on the outposts of legal thought, but the great army of the commonplace who contribute the majority of every occupation. What the lawyers do not understand, or what they pronounce visionary or impracticable, will not be accepted by the legislatures or courts of the country."

It is no part of my purpose to offer any observations upon the methods of law instruction, much less upon the different or competing methods of such instruction Doubtless the method of teaching law or how it can best be taught is an important subject, but it is not all important. It is wise to discuss and consider it, but it would not be wise to let it engross our whole or even chief attention. What Pope said of forms of government may, I think, be said with much more justness of methods of teaching: "That which is best administered is best." The man whom nature designed to be a teacher of law will, despite theories, teach it after his own manner. He will impress his own personality upon his work. It is the man, not the method, that tells. The crucial test is whether the teacher can inspire a living interest in the student and get from him the best work that in him lies; for, after all, the student must himself do the work and the thinking which shall ac-

complish him in the learning of his profession. Vastly more important therefore than the methods of teaching is the course of instruction or the branches to be taught.

This general subject is very fully, and, I need not say, ably discussed in the report of the committee on legal education of this association, submitted in 1892. After reviewing the course of instruction in the law schools of this country (and it is substantially the same in all of them) the committee say:

"It is evident that the course of study, with a very few exceptions, is confined to the branches of practical private law which a student finds of use in the first years of his practice. It is a technical or philosophic view of the law which is taught. It may be said of all our law schools that the instruction is too technical. It is not elementary enough. The view of the law presented to the student is technical, rather than scientific or philosophical."

What is meant by the course of instruction being confined to private law which the student will find of practical use in the earlier years of his practice, may be illustrated by the course of instruction in what is justly regarded as one of the very foremost law schools of this country, that of Harvard University. I select it for illustration because of the deserved eminence of the school and because it covers all the students embraced in a three years' term. * * * *

The subjects taught and the books used show more clearly than any general description the intensely technical and practical character of the course of instruction. This may stand, as I think, as the general model or even the highest type of legal instruction in this country.

I agree in the main with the spirit of the criticisms of the committee which I have quoted above, but I would phrase my own views in somewhat different language. I insist, for I believe it to be true, that the stereotyped course of legal instruction in this country is defective, not so much for what it contains as for what it omits. It is defective in that no adequate provision is made for instruction in historical and comparative jurisprudence, and in the literature, science, and philosophy of the law—in what may perhaps be compendiously expressed as "general jurisprudence." If this is what the committee means by the expression that the course of instruction is too technical, I agree to it. But it is to be remembered that it is of the essence of our legal systems that they are in their historical development and nature technical, and so far as they are so, instruction, to be adequate and thorough, must itself be technical, and in an important sense it is not predicable of it that it is too technical. Having in view the circumstances which surround the subject of legal education in this country, I approve the wisdom of the general course of instruction in our law schools, so far as it gives chief attention to the usual and enumerated branches of practical private law. But I still insist that it is defective in the want of adequate instruction in the history and the literature of the law and in what I call for short "general jurisprudence."

Great lawyers like Coke and Blackstone, and Eldon may be made by the current methods; but the growth of greater lawyers like Hale, Bacon, and Mansfield, who in their day wisely amended and improved the law, and who represent the higher professional ideals,

is not adequately promoted or encouraged by the existing course or methods of law instruction in the law schools in this country.

I fully realize that to set up an impracticable standard defeats the object sought. Nevertheless I insist that it is entirely practicable for our law schools to enlarge and liberalize the scope of their instruction by requiring at least one hundred hours of the course to be given specifically to the subjects which I have above ventured to indicate as essential to any well-ordered course of instruction that makes any just claim to being adequate or complete.

And this view is the sole practical point of this paper to urge and enforce, to the end that the generations of lawyers who shall come after us may be adorned more abundantly than else had been with examples of the highest and truest professional ideals. And to this end, moreover, I should be glad to see the members of the section on legal education take the initiative by recommending the American Bar Association to adopt a resolution in substance that in its judgment adequate instruction in historical, comparative and general jurisprudence is an essential part of a thorough course of legal education, and that accordingly it recommends to all of the law schools of the country that such instruction should be made a distinct and specific branch of the course of required study therein.

In May, 1894, Mr. Austin Abbott, LL. D., Dean of the Law School of the University of the City of New York, wrote an exceedingly interesting and appreciative essay on the work of Mr. David Dudley Field. It was published and COPYRIGHTED by the Review of Reviews Co. in the same month. By the courtesy and kindness of Mr. Albert Shaw, the editor of that magazine, permission is given to use the article, and the following is accordingly here reprinted:

THE WORK OF DAVID DUDLEY FIELD.

BY AUSTIN ABBOTT.

For at least a third of a century David Dudley Field was the most commanding figure at the American bar. Tall, erect, stalwart, alert, and decided in movement, courteous and graceful in bearing, he impressed the observer at once as a man of marked gifts and force. This impression every advance in acquaintance deepened. Those who knew him intimately saw an imperious nature, equipped with great intellectual power, and restrained by an intuitive appreciation of the amenities of social life.

Other men at the bar have perhaps had a more profound knowledge of the technical details of law, but none have seen the law more truly in its immediate relation to public welfare. Other men have been more devoted to research and gathered richer stores of erudition to throw light upon the law, but few, if any, have known so well how to inspire others in research, or with such good judgment to select from its fruits that which was of prime importance to his purpose. There have been other men more given to close and sustained

reasoning, but few able to put such a forceful personality into the presentation of legal reasoning. There have been other lawyers with more notable gifts of wit, humor, satire, and invective, but few, if any, whose prepossessing presence and keen-minded powers, in a personal controversy, delivered harder blows or sharper thrusts, yet with so much respect for forensic and parliamentary proprieties. Others have been more eloquent to the popular appreciation, but few have had such a vigorous grasp of thought, or such convincing power in forcing hesitating minds to a firm conclusion.

The public, however, are interested not only in the professional service of this remarkable man, but also in the greater service which he rendered to the profession, and through the profession to the country at large, in improving the law itself.

Notwithstanding all the badinage which is expended upon lawyers, the obvious truth is unobscured that the administration of justice has been built up by what they have done, and that its maintenance is due to them; and that all the community enjoys of the security of law and the suppression of social violence and wrong is owing to the success with which the bar and the bench, in their professional functions, maintain that justice which Daniel Webster well said "is the great interest of man upon earth." Mr. Field, in the midst of arduous duties of private practice and antagonisms into which he, to a degree beyond most practitioners, was occasionally drawn, labored persistently for about half a century, and with large success, to improve the condition of the law itself, and the procedure by which it is applied to the controversies of men.

At the time Mr. Field commenced his career as a law

reformer many antiquated forms of procedure, handed down to us from the English law, had, in the great advance in general intelligence and judicial ability, become useless incumbrances to the prompt and inexpensive administration of justice.

* * * * * * *

There had grown up in the mediæval history of the law of England two classes of judges, the common law and the chancery. Volumes have been written on the origin of this distinction and the reasons for its perpetuation. For the present purpose it may be well characterized as the distinction between routine and discretion. We see to-day essentially the same distinction between inflexible rules and a power to dispense with such rules in almost all organized arrangements that involve delegation of power. The reason that led the King and the English Parliament to support two distinct systems, one of common law judges who were bound to follow the law, another of chancery with power to administer equity beyond the law, and even to restrain any particular person from enforcing the law, when injustice would result, was in its nature the same as that which leads a great railroad company to maintain in its principal passenger station a ticket office where the official has power to sell tickets but no discretion as to their use, and upstairs an official who has no power to sell tickets but a discretion as to their use. If a ticket holder lets the day pass and desires to use his ticket on a later day than the date it bears, the ticket agent must refuse the application. His is the office of routine. *He* must enforce the contract. The applicant is sent thence to the superintendent upstairs, where he may state his case and find a discretionary

power which can interfere with routine and redress the complaint. If a customer of a bank wishing to withdraw paper which he has left with the discount clerk, and which has been passed upon by the board, applies to the discount clerk to have it returned and the entry cancelled, he will be turned away from that wicket; he must make his application over again to the cashier or president or some officer with discretionary powers.

For the same reason the common law judges were compelled by penalties and punishments, often inflicted upon them in early times, to adhere to the routine of the law, and administer with all practicable uniformity "the laws and customs of England;" and yet at the same time, appointed by and responsible to the same government, was the Court of Chancery, standing nearer to the King as the fountain of justice, and acting as his immediate representative, clothed with discretionary power to hear complaints that routine could not entertain, and to redress unusual grievances even to the extent of compelling one who was doing unjustly, in a case where was no law, to make redress, and even to compel one who was using the routine of the law in an unconscionable manner to cease. The details of procedure were all arranged to fit this double system. If a suitor prevailed at law, he was entitled absolutely to costs as matter of right. If a suitor prevailed in chancery, it was in the discretion of the court to make him pay the costs as a condition of obtaining relief, or to impose costs on the defendant as if he had been sued at law. If the debtor concealed his property so that the sheriff could not enforce execution, chancery could compel him to produce and surrender it. If a man preferred to break his contract rather than perform it,

and the law only allowed damages as a redress, chancery could compel him to perform it or go to prison, instead of allowing him to pay the legal price he preferred to pay for the liberty of refusal. And so on through the entire circuit of rights and duties which the conscience of statesmen recognized outside of the old limits which the routine of common law had defined.

* * * * * * *

When our American governments were established a Supreme Court (being a court of common law only) and a Court of Chancery were founded in New York upon the English system, and the same complex double procedure continued down to 1846. In the formation of our Federal government powers of the common law courts and powers of a court of chancery were both conferred upon the United States Circuit Court, but to be separately exercised by the same judge, sitting in the same court-room, and he was, therefore, bound by the old rules of routine law in one class of cases, but clothed with the discretionary powers of a chancellor whenever those were invoked by a bill of complaint addressed to him as if he were a chancellor.

* * * * * * *

Mr. Field proposed that the judge having the common law jurisdiction be vested with the powers of a chancellor, and might exercise them in a common law case in the simple manner of an order on motion on a few days' notice.

There were other artificial distinctions in procedure besides this duplex system of courts, which had become similarly cumbrous and unnecessary.

The professional reader and perhaps some others

may be interested in a few words relating to the chief of these.

It is a principal function of the lawyer to know in what cases an action will lie to redress a wrong, and in what cases it will not; and in the effort to systematize our knowledge upon such a question it is necessary, as it is in every branch of science, to deal with classes of cases, and perceive by a process of generalization what are the elements essential to each class. Of course as the complexity of human relations and transactions giving rise to controversy increased, the classes of cases might be expected to increase. This process of classification of rights of action came very early to be of great importance in the administration of justice, because the writ to be issued to bring the defendant before the court was required to state or at least indicate to him what kind of an action he would have to respond to, whether an action to compel him to pay a debt, or to pay damages for breaking a covenant, or to answer for a trespass on land, or a trespass on the person or on personal property, and also in cases of trespass whether it was a direct trespass by force, or a matter of negligence, and the like.

Some centuries ago, after the clerks of court had by issuing successive writs in a great many cases developed a considerable number of classes of cases, Parliament, thinking to check the growth of litigation, interposed and forbade the invention of new writs, and allowed them to be issued only in such cases as those in which they had been previously issued, or in like cases. The ingenuity of the bar and of the clerks of court was thereafter exercised with some effect in devising writs for new cases which were not too different from any-

thing previously known to be called "like cases," but the result of this legislation was to crystallize pre-existing forms, to emphasize the necessity that each new action should be described as within some pre-existing class. Another effect was to increase vastly the number of applications to the chancellor by bills of complaint to get redress in new kinds of grievance where there was no adequate remedy at law, because no allowable writ. The ingenuity of men in doing injustice in new forms went on developing, but Parliament had put a check on the ingenuity of the common lawyers to devise corresponding writs.

This intervention of the legislative power thus had, in course of time, these two great effects, both probably unanticipated: 1, the arrest of the development of the full adaptation of common law to the needs of society; and, 2, the acceleration of the development of a more discreet and equitable system of justice through resort to chancery.

The question at once occurs to the progressive-minded reader of the present day, how could an arrangement ideally so absurd as two systems of courts and of law for the same people and the same controversies hold its place for centuries as the means for administering civil justice among so practical people as the English and Americans?

Two reasons may be suggested to the reflective reader as we pass this interesting question: 1, the lack of men in the profession fitted to master and administer both kinds of law; and, 2, the reluctance of lawyers who feel proper responsibility for the interests of clients to accept a new and untried system in place of that which is settled and to which all their clients' affairs have been

adjusted. The first of these hindrances perpetuated the double judicial system long after the causes of the division ceased. Just as there are men in the profession admirably fitted by temperament or training or both to serve as advocates, but not to serve as judges, and others sure of success and usefulness as judges and of failure as advocates, so there have been many excellently equipped for the common law bar or bench, but poor material for chancellors and solicitors. Whether this has been for lack of training I will not undertake to say; but the profession, even since the merger of the two systems, are every-day observers of the fact that some judges give better satisfaction to the sense of justice of the bar while sitting with a jury in actions for debt or damages, and others uniformly give better satisfaction while sitting to determine according to an equitable discretion controversies which inflexible rules are not so well adapted to settle. Whatever we may think of the cause of the long persistence of this antiquated division of judicial labor, we need not be surprised that the Americans should become ready to abolish it before the English did, nor that among Americans the great State of New York, where enterprise and conservatism combine in the strongest forms for safe progress, should be the jurisdiction in which the experiment was tried.

Mr. Field was admitted to the New York bar in 1828. He devoted himself to the thorough study of the practice both in the common law courts and in chancery. His method of dealing with procedure in his subsequent code shows that his antagonism to the old systems did not spring from ignorance of them but from a complete mastery of both, a just appreciation of the

best features of each, and a comparison of them with procedure in other States, especially Massachusetts, which had no chancery, and with continental European systems founded on the civil law. To this technical knowledge of existing methods was joined a statesman-like appreciation of the real function of litigation in superseding private controversy, and of the consequent necessity that remedial justice should be expeditious, simple, and inexpensive.

The then existing system was imbedded beyond legislative power in the constitution of 1821. Mr. Field commenced in 1839 to agitate the subject of reform. Five years afterward the constitutional convention was held, which formulated the provisions that cleared the way for the reform that Mr. Field desired to carry out. The majority of the Judiciary Committee reported a plan embodying Mr. Field's suggestion of a single court having general jurisdiction both in law and equity. Charles O'Conor, the leading member of the convention from the New York bar, proposed a plan different in detail, but if anything more radical than Mr. Field's in this respect, for his proposal did not mention law and equity as if different functions vested in the same court, but simply declared the "judicial power of the State" to be vested in the one court, subject to appeal.

Mr. Field was not a member of the convention, but was active in suggesting and advocating the change, and his memorial to the succeeding legislature led to the appointment of a commission to prepare an act to simplify the procedure. It is said that he was not at first appointed on this commission because he was regarded as too radical, but upon the occurrence of the first vacancy the legislature appointed him in place of

the retiring member, and he immediately devoted himself to the practical part of the task he had undertaken.

The genius of Bentham, who had given years of time and volumes of writing to criticising and satirizing English legal institutions, may fairly be said to have been only destructive. The mediæval absurdities which lingered in the "perfection of human reason" he dissected with great skill and power; but his suggestions as to details of what ought to be in place of what was, have never to any considerable degree commended themselves to men concerned with maintaining practical justice. Mr. Field's genius was essentially constructive. He conceived the simple, well proportioned system that the country needed, and his attack on what was, he carried on simply to make way among the old law for the introduction of the new.

The foundation of the new structure was laid in the declaration that the Supreme Court has general jurisdiction in law and in equity, and that all the forms of action heretofore existing are abolished.

The main pillars of the superstructure were the following regulations:

1. Pleadings are to state facts, and state them truthfully, as it is proposed to prove them on the trial.

2. Equitable defences and counter-claims are available in all actions, so that one who formerly had to bring a new suit in chancery to enjoin an inequitable use of process at law could now state his objection as a defence to the action brought against him.

3. The power exercised by the chancellor in equity suits to compel parties to testify and to produce their books and papers was conferred on the court for all actions.

4. If the evidence at the trial (which now must be taken there openly in all actions, instead of the secret method of *ex parte* examinations allowed in equity) varies from the pleading, the action should be dismissed only where it made a different case (for then the adverse party could fairly say that he had not received fair warning of what facts he was to try); and that any variance short of that might be either disregarded or be cured by amending the pleading, according to the seriousness of the discrepancy, and that the court might allow amendment to supply an omitted allegation.

The Code of Procedure embodying these principles and carrying them out by readjusting the mechanism of an action accordingly, made in the form first adopted a statute of 371 sections, filling less than seventy pages.

Then ensued a contest between the conservatives and fossils of the bar on the one hand and the progressives and young men on the other which lasted for years. Before the objurgations against the new procedure died out the code had been adopted in some twenty-four States and Territories, and in other apparently conservative States, where the name of code is not spoken, these four leading principles have been adopted in statutes designated as Practice Acts, &c.; and in some of these instances the terse, vigorous, and untechnical language in which Mr. Field expressed them is copied word for word. The extent of the adoption of the code as such does not measure the influence of his work. It is not too much to say that, with a few local and unimportant exceptions, the main features of the new procedure have been accepted throughout the country, and have been accepted in other respects even where the distinctive tribunals and the contrast between suits at law and in equity survive.

Mr. Field's reform of judicial organization and procedure was only the first step in a scheme of general improvement in both the form and substance of the law. His conception was noble in its breadth and simplicity, admirable in its clearness. Its feasibility, or the usefulness of any practicable execution of it, is the great question which divides professional opinion to-day.

His conception was, all law reduced to the form of a statute, so that a man could carry in his hand the printed record of all that the State ordained for the regulation of human conduct.

The basis of his arrangement of the law was: 1, a *Political Code*, to contain all that part of the law which public officers and citizens having to do with public officers need to know; 2, a *Civil Code*, to contain all of the law that members of the community need to know in regard to their civil rights, duties, and responsibilities in respect both to personal relations, property, and obligations; 3, a *Code of Procedure* (already spoken of) which should contain all of the law that courts and lawyers engaged in the administration of civil remedies need; 4, a *Code of Criminal Procedure* for the courts and bar engaged in criminal cases; and, 5, a *Penal Code*, to contain the law of crimes and the corresponding punishments.

The success and the finally conceded usefulness of the Code of Procedure led to the adoption after some years of the Code of Criminal Procedure and the Penal Code. The great contest not yet concluded has been waged over the Civil Code. The ablest, most experienced, most learned, and most fit experts in the profession are divided in opinion both as to the desira-

bleness of reducing the law to the form of a statute and as to the success of this particular effort in that direction.

It appears to me probable that the Civil Code would long since have been adopted in the State of New York, as it already has been in several other States, were it not for two reasons, which, if I am not mistaken, have thus far turned the scale against it.

In the first place, it contains many new provisions changing the existing law.

Another cause of the delay to adopt the code I think may be seen in the general want of confidence in legislation as compared with the work of the courts. If our legislators were as faithful in their public services as our judges, the community would be more ready to accept at their hands a body of law reduced to the form of a statute. But such a code the legislature would be likely to amend every year, as they do other work of their own, according to the pressure brought to bear upon them; and the distrust of the legislative power which recent times have aroused has been very unfavorable to the progress of codification.

The last great work undertaken by Mr. Field was the International Code, of which Mr. Abbott says it is the crowning work of his life.* Here, with an energy and

*It is stated in one of the notices printed above:

"At the meeting of the British Association in Manchester in 1866, Mr. Field proposed a revision of the entire body of international law. He was appointed then a member of a committee of jurists from different countries to make a revision that would be acceptable, or that should become the basis of a revision. It was not possible for the committee to act in concert, and Mr. Field took the whole work upon himself. The result of his labor was a large volume, which he presented in 1873 to the Social Science Congress. It was entitled 'Outlines of an International Code.' It attracted the attention of the most eminent jurists in the world, and has been translated into French and Italian."

industry which left all the other members of the committee behind, he formulated the great principle of the external policy of nations in their relations with each other, in a clear and systematic arrangement. This statement of international law embodies all the rules of general acceptance found in the writings of jurists whose authority is recognized at the present day, and it includes also a codification of all the conventional provisions common to many treaties between different nations, now in force; so that it may be truly said to embody a consensus of opinion on the whole field of the law between nations. Its close adaptation to existing law has made it already an accepted authority often cited by writers on international law, although it has not yet received governmental adoption.

The admirable qualifications of Mr. Field for the great task which he accomplished would not have been complete without his advanced conception of the law itself. He was not a "case lawyer." He appeared to survey law in the direct relation which the whole and each part bears to public welfare. Without discussing the metaphysics of the subject, he seemed to regard the law as a system of partly developed principles; a few of which are familiar to all intelligent men; some of which have been through long discussion reduced to clear and concise statement capable of being understood by all intelligent men; and others of which are yet involved in uncertainty and controversial discussion, but which he held must be reduced to the same form. He dealt with the law as a system of principles. I cannot remember in our conferences a single instance in which he mentioned a case as an authority, save in consultations in which he was simply preparing to argue a

case in court. Conflict and confusion in authority were no obstacle. He wished to know if they existed, to take the measure of the doubt, and to clear it up by a statement of the principle. His labors in codification were in the knowledge of the relative value and place of great principles, the discernment of certainty in the midst of others' doubt or dissension, the organizing faculty which saw these principles in a scientific relation and expressed them systematically as a harmonious whole.

His work will never be forgotten, because it forms a conspicuous part of the progress of man himself toward that intelligent regulation of life which is the object of all law.