



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

ANNUAL MEETING, APRIL, 1916.

THE Annual Meeting was held on Thursday, the 13th instant, at three o'clock, P. M. The PRESIDENT and both Vice-Presidents being absent, the Society was called to order by the Recording Secretary, and Mr. ARTHUR LORD was chosen President *pro tempore*.

The record of the last meeting was read and approved; and the Librarian read the list of donors to the Library during the past month.

The Cabinet-Keeper reported gifts as follows:

Portrait of Mrs. William Minns, of Boston, by Ethan Allen Greenwood; a portrait of Miss Jane Clark, daughter of Jonathan Clark, who married John Lewis, attributed to Hogarth, London, 1739, and which was brought to Groton, Mass., by her son Jonathan Clark Lewis; a portrait said to be of Foucquet; a painting, "The Vidette," by Grolleron, and an engraving of Foucquet, by Nanteuil, 1661, from Miss Susan Minns; photograph of a portrait of James Lloyd, from Henry Cabot Lodge; photograph of Prof. George Martin Lane, about 1858, from Charles C. Smith; photograph of the capitol, Atlanta, Georgia, a lithograph of Libby Prison, 1863, seven wooden medallions of the Centennial Exposition, Philadelphia, 1876, six of the Chicago Exposition, 1893, the Liberty Bell Medal, and a Russian $\frac{1}{2}$ kopeck, from Grenville H. Norcross; fifteen engravings of American generals and views, from Edwin H. Brigham; an English poster of the present war, from Henry H. Edes; a medallion of Washington Irving, by the St. Nicholas Society, New York, 1907, from Charles P. Greenough; Bowdoin College Phi Beta Kappa medals of Dr. David Humphreys Storer (class of 1822), from Miss A. M. Storer; medal of the Fusileer Veteran Association, from Capt. E. S. Anderson; the bronze Harvard-Pasteur medal, from Baron Pierre de Coubertin, of Paris, France; and a photograph of a portrait of James Lloyd, owned by Mr. William A. Jeffries, of Boston, and sixty-seven medals, store-cards, and badges, by purchase.

The Corresponding Secretary reported the receipt of a letter from Charles Edwards Park accepting his election as a Resident Member of the Society. He also reported the receipt of a letter from the New Jersey Historical Society inviting the Society to send a delegate to the 250th anniversary of the founding of Newark on May 1. It was voted that the selection of a delegate be left with the President *pro tempore*.

The Editor said:

A year ago I announced an important gift from Mr. WILLIAM V. KELLEN, of photographs of some six thousand documents in the State Archives bearing dates in the seventeenth century, and commented upon its great utility in supplementing original papers in the collections of the Society. I now record a like accession of photographic reproductions, being about a thousand pieces contained in the private collection of Mr. CHARLES P. GREENOUGH. The privilege, generously accorded, of using in this manner the Massachusetts material in his gatherings of a lifetime gives to the Society copies of many interesting historical documents and of much that is curious and personal in illustration of our annals. While the wish may be expressed that a part of the originals may eventually come into the safekeeping of a public institution in Massachusetts, these reproductions will at least preserve a record of them in a form serviceable to all interested.

The Editor also reported the following gifts:

From the Most Worshipful Grand Lodge of Ancient Free and Accepted Masons of the Commonwealth of Massachusetts, through Mr. Melville M. Johnson, Grand Master, the Journal of Samuel Grant, merchant in Boston, from November 25, 1728, to December 31, 1737, containing 637 pages; and the Journal of a shipping and merchandise firm in Boston, as yet unidentified, running from May 2, 1763, to July 11, 1766, 440 pages. Unfortunately the first thirteen pages and some at the back of the volume have been lost. Mr. Johnson writes in his letter of gift: "These books contain frequent reference to men who were Freemasons, but they have a much wider interest, and it has seemed to me that they would be of more value in your library than upon our files. We therefore take pleasure in presenting these books to the Massachusetts Historical Society."

Samuel Grant is said to have been born in 1704.¹ He is known to have had a store in Union Street as early as 1736, known as the "Crown and Cushion," and lived in the rear of the store. He died November 14, 1784. He subscribed £50 in 1748 to promote the linen manufacture,² and he was one of three to whom John Ellery (1712-1746), of Hartford, left £200, "to be disposed of in pious and charitable uses as they should think would most redound to the glory of God."³ He married, January 1, 1729, Elizabeth Cookson,⁴ probably daughter of John Cookson. Mr. Grant bought in 1739 a dwelling house on Union Street, corner of Scott's Court (Friend Street), and in 1744 received from John Cookson a "wooden tenement" adjoining his property. His daughter, Elizabeth, married John Simpkins, August 30, 1764. A son Moses is frequently mentioned in the town records.

Mr. Johnson has also permitted the Society to retain a copy of a manuscript record of twenty-five pages of the first Provincial Lodge of Free-Masons in America, established at Boston, July 30, A. M. 5733 [1733]. This interesting record, in the writing of Francis Beteilhe, the secretary of the Lodge, contains the application for and the establishment of the Lodge, its by-laws, its members, votes, etc., to 1736. It was bound with Franklin's issue of *The Constitutions of the Free-Masons*, 1734, one of the rarest of his imprints. When this volume was sold in the Brinley library, in 1880, the manuscript was erroneously believed to be that of Franklin.

From Mr. Edward Gray, of Milton, letters and log-books of a voyage from Boston to Canton, China (1843), Hong Kong to Manila and return to Macao (1843), and from Canton to New York (1844), kept by Horace C. Story (1823-1847), a son of Franklin H. Story, and nephew of Justice Joseph Story.

From the Dedham Historical Society, a manuscript copy (on paper with water mark "1815") of the constitution of the Washington Benevolent Society for the county of Worcester, Mass., society formed in 1813.⁵

¹ The *Boston Rec. Com.*, xxiv. 39, mentions the birth of a Samuel, son of Joseph and Mary Grant, October 13, 1705.

² *N. E. Hist. Gen. Reg.*, xvi. 91; XLIV. 324.

³ *Ib.*, XLIII. 314.

⁴ *Boston Rec. Com.*, xxviii. 149.

⁵ See p. 285 n., *supra*.

From H. de F. Lockwood, of Boston, a number of papers of the Low family, of Wells, York County, Maine, comprising deeds, commissions and notes.

From Grace Williamson Edes (Mrs. Henry H. Edes), British letters patent issued in 1874 to Alexander Melville Clark, of London, covering improvements in automatic chemical telegraphs; together with a transfer, dated 1875, of all his rights by Clark to William Edward Sawyer of Washington, D. C. The great seal is perfect, being enclosed in a tin box, and the papers in the usual shagreen box. A similar document is framed and hung in the Patent Room, Boston Public Library.

From Francis J. Garrison, a letter from a professional slave-catcher of Carlisle, Pa., as follows:

CARLISLE, [PA.,] March 25th, 1856.

FRIEND SEED, — Dear Sir. I Received your Dispatch you want to know if it will Pay. i say yes it will Pay \$40.00 any how and probly more Mr Fienny wants them caught Bad.

he Lives in Clear Spring M. D. they lost them in Harrisburg. they say that the intention of the Blacks ware to go to Philadelphia. i cannot give you an acarate Discription of em i have not got the Bill yet But will send it asson as i get it. there are three men one Slave woman and one free woman in the Party and 2 children the [one] at the Breast and the other older. the one man has on a Brawn Coat and Black hat hair long curled under the 2 children Light Molotta if you find them Just Spot them and let me know and i will Fetch the master on with me we can make a good thing of it

You will get more Particluars when i get them Yours truly

JOSEPH STUART.

Thomas Russell Sullivan, of Boston, was elected a Resident Member of the Society; and George Macaulay Trevelyan, of England, a Corresponding Member.

The chairman announced the death of James Burrill Angell, a Corresponding Member.

The Society then proceeded with the business of the Annual Meeting. The Recording Secretary read the following report, prepared by the senior Member-at-Large of the Council, Mr. CHARLES P. GREENOUGH, who was absent.

REPORT OF THE COUNCIL.

The meeting commemorative of our late President, Charles Francis Adams, was held by the Society in the First Church in Boston, on the afternoon of November 17. The memorial address was made by Hon. Henry Cabot Lodge, the invocation by Rev. George Angier Gordon, and the benediction by Rev. Charles Edwards Park. The church was filled in every part, and the occasion was marked by great dignity, simplicity and impressiveness.

The Society also lost by death its second Vice-President, Hon. John D. Long.

The Society closes another year — its one hundred and twenty-fifth — in full confidence of maintaining its position as a depository of historical records and of continuing its publications of material in a manner most useful to the historian. Its collections have increased by gift and by purchase. Additions have been made to its files of Massachusetts newspapers of the colonial period, and the acquisition of an almost complete file of the Portsmouth (N. H.) *Oracle*, 1793-1901, gives it a good political record of a sister New England State for that period. By confining its attention to early Massachusetts newspapers it competes less with libraries buying more generally in time and in space; and this concentration enables it to obtain what would otherwise be scattered in a number of institutions. In its peculiar field of collecting — manuscripts — the Society has gained by gifts. The notable Lopez-Ayrault-Champlin collection, presented by a corresponding member, Hon. George Peabody Wetmore; the papers of Charles Deane, given by his children, and the photostatic reproductions of the early documents and letters in the State Archives, presented by Mr. Kellen, may be named. The total comprises thousands of pieces of historical interest, increasing the value of the material already in the Society by much more than mere numbers indicate. During the coming year it is expected that a list of the larger collections will be prepared, not by individual pieces but as collections, to serve as a general guide to what is in our possession. It is safe to say that nowhere in New England does there exist so large and so rich an aggregation of colonial papers

of a historical character, not even in the combined archives of the New England States.

The Society has issued during the year a volume of *Proceedings* (XLVIII in the series) and the second volume of the *Commerce of Rhode Island, 1775-1800*. This latter volume, closing the Seventh Series (vol. LXX), was printed through the generosity of Senator Wetmore. It did not contain the customary index of the ten volumes in the Seventh Series, as the reason for such an index passed with the elaborate indexing of individual volumes, but little related to one another in contents. In the coming year it is planned to issue a volume of *Proceedings*, and one of *Collections*, being the "Adams-Warren letters," a correspondence between John Adams and James Warren during the War for Independence. The late Mr. Frederick L. Gay had arranged to share the expense of a volume on Captain William Phips's search for treasure in the Bahamas, the material for which would come from his rich collection of transcripts from British sources. This arrangement will be carried into effect, Mrs. Gay having generously expressed such a wish.

Mention should be made of the *Autobiography* of Charles Francis Adams, prepared in the latter years of his life to serve as the material for a memoir, and left to the Society with full powers of publication. The character of the work demanded something more than a publication in the *Collections* of the Society, and it has appeared through the publishing house of Houghton Mifflin Company, but in a form which enables it to be placed with the issues of the Society. The volume also included Mr. Lodge's memorial address.

The photostat has been in constant use during the year and is justifying the expense involved. The number of prints taken in the twelve months was 20,000, and had a wide distribution. The reproduction of the *Boston News-Letter* has now been carried to the end of 1714, giving ten years of the first newspaper to be regularly issued in an English colony in North America. The 436 numbers reproduced include every known issue of the journal and sets have been placed in subscribing institutions. This rich material is made available for the first time to Massachusetts as well as Wisconsin and Washington (D. C). It is the intention to continue the reproduction in the coming year so as to carry it to the end of 1726.

The Society has also reproduced its unique file of the *Georgia Gazette*, from No. 1, April 7, 1763, to No. 346, May 23, 1773, upwards of 1450 pages. The two series of newspapers reproduced comprise a total of 782 issues, an achievement in itself worthy of notice. For the first time so long a series of colonial newspapers has been reproduced by any process, the most extensive undertakings of the past being four years of the *American Weekly Mercury* (Philadelphia, 1719-1723) and the *Newport Mercury*, begun by the John Carter Brown Library. What this Society has already accomplished in this direction thus gives it a position in the very front.

The Society has gained by the instrument in photostats of broadsides, manuscripts and newspapers needed to complete its collections, and arrangements for exchanging material are being extended wherever an opportunity is offered. From the New York Historical Society were obtained prints of all the Massachusetts broadsides in its collections, and from Mr. Wendell prints of an important collection of Wendell-Quincy letters temporarily in his custody. The records of the Lincolnshire Company (in what is now Maine), 1720-1785, have also been secured in this form, as well as some thousand individual pieces from various sources. Missing pages and even an entire number of a serial publication have been reproduced to complete imperfect volumes or series. The difficulty lies more in meeting the demands made upon the instrument and its operator than in discovering objects worthy of the attention of the Society.

For the advantage is not confined to the Society. The notable achievement of Dr. Charles L. Nichols, of Worcester, in assembling negatives of sixty-five almanacs printed in Massachusetts before 1700, enabled him to offer sets in photostatic form to libraries. The printing was done in this Society, and with creditable results. The success of this undertaking opens a field for like series of related issues of the colonial press, great rarities, often existing in a single known copy. Much has also been done on orders from other parts of the country, even from California, for the reproduction of books, essays, prints, maps, manuscript and broadsides needed by scholars, collectors and investigators. This service is of the best, for it removes the risk of total loss should accident befall a unique original, and it enables any individual or institution to obtain the second best

form of the subject — a photographic reproduction, at a low cost.

The war has made itself felt in this field of the Society's activities, for the situation in the chemical industry has compelled a resort to substitutes of less efficiency and greatly increased cost. These difficulties are being met so far as is possible with the expert operation of the machine, but it is at an increased expense in money and in waste of material. The Society has received from the manufacturers every facility for solving the problems thus entailed, and hope is expressed of an end to them in the current year.

In the matter of collecting, the Society maintains its recognized policy. Receptive to what comes to it by gift, it seeks to complete its holdings by purchase, but without coming into competition with other institutions or catering to inflated values prevalent in the book markets. It has no jealousy of the growth of other libraries and collections, for the time is past when such a feeling can be justified. The liberal management of the present day places at its call the best that can be found in public and private possession, and this mutual aid and good understanding bear fruit to all concerned. The Society seeks to make what it has of service to the public, and no material is sealed except when deposited for safe-keeping and the owners insist upon such a restriction. Its photostat serves the public before meeting its own demands and the quality of service is gained at its own expense. In this consists the Society's tribute to scholarship and investigation, which it can well afford to pay. It is gathering a library of historical publications, limited in scope but supplemented by its manuscript wealth. The reference library has been materially strengthened.

The want of space is a problem of increasing moment and can only be solved in a satisfactory manner by the construction of stacks on the unoccupied lot owned by the Society. There are no spaces available for new shelving, such necessities as map and print cases can find no location, and the walls offer little for paintings. The weight upon the upper story cannot be increased with safety to the building, and the cellar space is fully utilized. There is no room for receiving and assorting material, and the catalogue case is as full as its antique and awkward shape and location permit. The want of a reading and consulting room,

properly furnished and lighted, is also to be noted as among the desirables. There is not a reader's table in the whole building, and there is no room in which a student may be placed where he will be assured from noise and interruption. It is a curious situation, in which the Society serves the outsider better than it does its members. The inquirer who is not a member has every facility for seeing what he wants and of using the various collections freely. There is little to tempt members to frequent the rooms and indulge their taste in reading or study. A quasi-public institution, its public functions and services are greater than those of a private nature.

The Society is not in a position to beg, but it is always so placed that it can use larger funds than are now available. The gaps in its collections, the large quantity of unbound material, printed and manuscript, the reproduction of rarities when an unusual opportunity occurs, the sharing of its advantages with other institutions, its coins and pictures, and its publications — all make demands upon the income of the Society, and almost any one item named will give a field for useful expenditure beyond the sum now assigned to it. Then there is the future question of enlarging the building by an already much needed book stack and portrait gallery. At some time in the near future the larger wants will be met, and present aid, however moderate, will help to meet the situation. To the liberality of members and to a wise management of the funds in the past the Society owes its present strong position. No reason exists for not expecting a like generosity and good management in the future, and upon a still larger scale.

REPORT OF THE TREASURER.

In presenting his annual report on the finances of the Society Mr. LORD said:

I desire to make a brief statement of the financial condition of the Society, supplementing what is set forth in detail in the Treasurer's report submitted in print to-day.

The property of the Society other than its Books and Collections may be divided conveniently as follows:

1. The Land and Buildings, which stand on the books at \$97,990.32 and are valued by the City Assessors at \$196,000.

2. The Investments of the Society are carried on the books, as appears in the Investment Account, Exhibit I of the Treasurer's Report, at \$482,326.39. Of this sum the two centenary funds amount to \$69,320.18, of which amount \$63,800.98 is the principal of the Sibley Centenary Fund and \$5,519.20 the Anonymous Fund. Under the terms of the bequests the income of these funds must be added to the principal until the expiration of one hundred years from their receipt, or, in the case of the Sibley Centenary Fund, the year 2002, and in the case of the Anonymous Fund, the year 1991.

The gross income of the Society from all sources the past year was \$32,040.93, of which \$24,774.35 was the income of the invested funds. From this gross income must be deducted the income of the two centenary funds, which under the terms of the gifts are to be added annually to the principal, amounting to \$3,300.96, and leaving a balance of income available for all purposes of \$28,739.97.

The expenditures were \$27,344.89, leaving a balance of income over expenditures for the year of \$1,395.08. The Society has received no money gift or bequest during the past year.

The expenses of operating the photostat during the year were \$3,326, and the sale of copies of manuscripts and newspapers was \$2,871 — an apparent deficit of \$455. The Society has, however, gained largely in prints for its own collections, to the number of some thousands.

REPORT.

IN compliance with the requirements of the By-Laws, Chapter VII., Article 2, the Treasurer respectfully submits his Annual Report, made up to March 31, 1916.

The special funds now held by the Treasurer are thirty in number. A list of these funds, with the income and expenditure of each fund the past year, appears in Exhibit V in this report. An account of twenty-nine of these funds, giving a brief history of each fund, will be found in the Treasurer's Report for the year ending March 31, 1910 (*Proceedings*, XLIII. 529); the thirtieth is described in the Treasurer's Report for the year ending March 31, 1911 (*Proceedings*, XLIV. 568). The securities held by the Treasurer as investments on account of the above-mentioned funds are as follows:

INVESTMENTS.

SCHEDULE OF BONDS.

Chicago & West Michigan R. R. Co.	5%	1921	\$14,000.00
Chicago & North Michigan R. R. Co.	5%	1931	1,000.00
Rio Grande Western R. R. Co.	4%	1939	5,000.00
Cincinnati, Dayton & Ironton R. R.	5%	1941	5,000.00
Atchison, Topeka & Santa Fé R. R.	4%	1995	14,500.00
Atchison, Topeka & Santa Fé R. R.	4%	1995	9,000.00
Chicago Jct. & Union Stock Yards	5%	1940	10,000.00
Oregon Short Line R. R. Co.	5%	1946	10,000.00
Oregon Short Line R. R. Co.	4%	1929	10,000.00
Boston & Maine R. R. Co.	4½%	1944	6,000.00
American Tel. & Tel. Co.	4%	1929	10,000.00
Northern Pacific & Gt. Northern R. R.	4%	1921	50,000.00
Long Island R. R. Co.	4%	1949	6,000.00
New York Central & Hudson River R. R.	4%	1934	15,000.00
Bangor & Aroostook R. R. Co.	4%	1951	10,000.00
Detroit, Grand Rapids & Western R. R.	4%	1946	2,000.00
Fitchburg R. R. Co.	4%	1927	9,000.00
Kansas City, Clinton & Springfield R. R.	5%	1925	3,000.00
Lowell, Lawrence & Haverhill St. R. R.	5%	1923	2,000.00
Washington Water Power Co.	5%	1939	10,000.00
United Electric Securities	5%		25,000.00
Blackstone Valley Gas & Elec. Co.	5%	1939	10,000.00
Western Tel. & Tel. Co.	5%	1932	5,000.00
Seattle Electric Co.	5%	1929	5,000.00
Detroit Edison Co.	5%	1933	5,000.00
U. S. Steel Corporation	5%	1963	5,000.00
Boston Elevated Railway	5%	1942	8,000.00
New England Tel. & Tel. Co.	5%	1932	10,000.00
Connecticut Power Co.	5%	1963	10,000.00
Boston & Albany R. R.	5%	1938	10,000.00
Cleveland Short Line R. R.	4½%	1961	10,000.00
Arlington Gas Light Co.	5%	1927	10,000.00
United Elec. Lt. & Power Co.	4½%	1929	10,000.00
Wilmington City Electric Co.	5%	1951	5,000.00
City of New York	6%	1916-17	5,000.00
City of Cleveland	5%	1917	8,000.00
Old Colony Gas Co.	5%	1931	5,000.00
Dedham Water Co.	5%	1935	5,000.00
United Zinc & Chemical Co.	5%	1928	30,000.00

(with 60 shares pfd., and 60 common)

Par value \$382,500.00

SCHEDULE OF STOCKS.

50	Merchants National Bank, Boston	\$5,000.00
50	National Union Bank, Boston	5,000.00
50	Second National Bank, Boston	5,000.00
50	National Shawmut Bank, Boston	5,000.00
35	Boston & Albany R. R. Co.	3,500.00
25	Old Colony R. R. Co.	2,500.00
25	Fitchburg R. R. Co. Pfd.	2,500.00
150	Chicago Jct. Rys. & Union Stock Yards Co. Pfd.	15,000.00
75	American Smelting & Refining Co. Pfd.	7,500.00
158	Atchison, Topeka & Santa Fé R. R. Co. Pfd.	15,800.00
302	Kansas City Stock Yards Co. Pfd.	30,200.00
10	Cincinnati Gas & Electric Co.	1,000.00
6	Boston Real Estate Trust	6,000.00
5	State Street Exchange	500.00
120	Pacific Mills	12,000.00
52	Puget Sound Traction Light and Power Co. Pfd.	5,200.00
5	“ “ “ “ “ “ Common	500.00
50	American Telephone & Telegraph Co.	5,000.00
1218	Shares Par value	<u>\$127,200.00</u>

SCHEDULE OF SAVINGS BANK BOOKS.

M. A. Parker Fund	\$1,214.73
Brattle St. Church Model Fund	211.35
	<u>\$1,426.08</u>

RECAPITULATION.

Bonds, par value	\$382,500.00
Stocks, par value	127,200.00
Savings Bank Books	1,426.08
	<u>\$511,126.08</u>

Represented by Balance, Investment account \$482,326.39

The balance sheet follows and shows the present condition of the several accounts:

BALANCE SHEET, March 31, 1916.

Investment Account,		Funds, Exhibit III . . .	\$443,190.83
Exhibit I	\$482,326.39	Accumulated Income of	
Cash on hand, Exhibit II	9,688.25	Funds, Exhibit IV . . .	48,823.81
	<u>\$492,014.64</u>		<u>\$492,014.64</u>

EXHIBIT I.

INVESTMENT ACCOUNT.

<i>Balance April 1, 1915</i>			\$480,817.22
Bought during year:			
\$10,000 Chicago Jct. & Union Stock Yards, 5%,			
1940		\$9,919.44	
5,000 Dedham Water Co., 1st Mortgage, 5% 1935		5,050.00	
50 Shares American Tel. & Tel. Co.		6,400.00	
Accrued Interest M. A. Parker Savings Bank Book		47.14	
" " Brattle St. Church Model Bank Book		8.20	
<i>Total Additions, Exhibit II</i>			<u>21,424.78</u>
			<u>\$502,242.00</u>
Securities matured, etc.:			
\$13,000 Chicago Jct. & Union Stock Yards		\$13,051.61	
6,000 West End Street Railway Co.		6,000.00	
Liquidation State National Bank		145.00	
" National Bank of Commerce		719.00	
<i>Total Deduction, Exhibit II</i>			<u>19,915.61</u>
Balance, March 31, 1916			<u>\$482,326.39</u>

EXHIBIT II.

CASH ACCOUNT.

<i>Balance on hand, April 1, 1915</i>			\$6,501.38
<i>Receipts during year to March 31, 1916:</i>			
Sales by Library:			
Publications	\$848.35		
Photostat	2,871.42		
Duplicates	3,253.64		
Bindery	69.25		
Royalties, Little, Brown & Co.	9.88	\$7,052.54	
Rebates60	
Credited to General Fund Income		7,053.14	
Interest on Bank Balances	213.44		
“ on Savings Bank Books	55.34		
Income from Investments	24,719.01		
Total		24,987.79	
Total credited to Income of Funds, Exhibit V.			32,040.93
Securities matured, etc.			19,915.61
			<u>\$58,457.92</u>
<i>Charges during year to March 31, 1916:</i>			
Investment Account, Securities bought	\$21,369.44		
Savings Bank Interest	55.34		
Total additions, Exhibit I	\$21,424.78		
<i>Income Account:</i>			
Bindery, Wages	\$1,143.02		
Supplies	272.35	\$1,415.37	
Binding, outside	178.70		
Books, Pamphlets, Newspapers, and Mss.	2,306.34		
<i>Building:</i>			
Cleaning	\$324.60		
Engineer	1,046.54		
Fuel	525.00		
Furniture	146.15		
Insurance	1,050.00		
Light	251.61		
Repairs	966.02		
Telephone	106.53	4,416.45	
Photostat ¹	3,326.33		
Portraits and Medals	265.02		
Postage	144.04		
Carry forward	\$12,052.25	\$21,424.78	<u>\$58,457.92</u>

¹ For receipts, see above.

CASH ACCOUNT — *Continued.*

Brought forward	\$12,052.25	\$21,424.78	\$58,457.92
Printing:			
Proceedings, vol. 48	\$1,530.31		
" " 49	470.17		
Illustrations and Reprints	582.50		
Collections:			
Rhode Island Commerce	147.71		
Sibley's Harv. Grad. IV	187.00		
Phips Volume	2.29	2,919.98	
		<hr/>	
Miscellaneous		231.25	
Salaries:			
Librarian's Assistants	\$4,537.00		
Editor and Assistant	6,080.00	10,617.00	
		<hr/>	
Stationery		90.10	
Treasurer's office:			
Bond	\$25.00		
Bookkeeper	600.00		
Safety Vault	50.00		
Certified Public Accountant	25.00	700.00	
		<hr/>	
Miscellaneous,			
Insurance, Employers Liability \$60.40			
American Bibliography	100.00		
Memorial Meeting	109.17		
Other Expenses	464.74	734.31	
		<hr/>	
Charged Income of Funds, Exhibit V		27,344.89	
Total Payments			<u>48,769.67</u>
<i>Balance on hand, March 31, 1916</i>			<u><u>\$9,688.25</u></u>

EXHIBIT III.

INCREASE OF FUNDS IN YEAR 1915-1916.

Amount of Funds, April 1, 1915		\$439,889.87
<i>Added during year:</i>		
Additions to Centenary Funds:		
Anonymous Fund	\$262.82	
J. L. Sibley Fund	3,038.14	3,300.96
		<u>3,300.96</u>
Total of Funds, March 31, 1916.		<u><u>\$443,190.83</u></u>

EXHIBIT IV.

ACCUMULATED INCOME OF FUNDS.

Balance Accumulated Income, April 1, 1915	\$47,428.73	
Income during year, Exhibit II		<u>32,040.93</u>
		\$79,469.66
Expenditures, Exhibit II		<u>27,344.89</u>
		\$52,124.77
Less additions to Centenary Funds		<u>3,300.96</u>
Balance, March 31, 1916		<u><u>\$48,823.81</u></u>

EXHIBIT V.

INCOME AND EXPENDITURES OF FUNDS FOR THE YEAR ENDING
MARCH 31, 1916.

	Balance Mar. 31, '15	Income	Expendi- tures	Balance Mar. 31, '16	Principal of Funds
Amory	\$1,914.90	\$174.10	\$145.00	\$1,944.00	\$3,000.00
Appleton	6,423.71	708.21	1,080.00	6,051.92	12,203.00
Bigelow	591.81	116.07	121.25	586.63	2,000.00
Billings	3,127.92	580.35	558.77	3,149.50	10,000.00
Brattle St.	103.15	8.20		111.35	100.00
Chamberlain	91.19	70.49	76.70	84.98	1,232.33
Dowse	4.70	580.35	585.00	.05	10,000.00
Ellis	64.12	1,837.73	1,870.05	31.80	31,666.66
Frothingham	2,707.87	174.10	175.00	2,706.97	3,000.00
General	13.65	10,228.63	8,609.95	1,632.33	54,719.38
Hunnewell	1,377.47	290.17		1,667.64	5,000.00
Lawrence	102.44	174.10		276.54	3,000.00
Lowell	397.54	174.10	175.00	396.64	3,000.00
Mass. Hist. Trust	6,243.55	580.35	411.17	6,412.73	10,000.00
Parker	21.69	47.14	45.85	22.98	1,000.00
Peabody	2,266.25	1,283.92	1,530.31	2,019.86	22,123.00
Salisbury	205.32	290.17	281.50	213.99	5,000.00
Savage	743.36	348.18	317.54	774.00	6,000.00
C. A. L. Sibley	36.25	1,306.32	1,174.53	168.04	22,509.48
J. L. Sibley	5,659.87	7,025.80	8,240.27	4,445.40	121,077.00
Slafter	164.62	58.03	57.33	165.32	1,000.00
Waterston No. 1	1,515.00	290.17	158.77	1,646.40	5,000.00
Waterston No. 2	3,977.43	580.35	470.17	4,087.61	10,000.00
Waterston No. 3	3,201.46	580.35		3,781.81	10,000.00
Waterston Library		224.88	194.71	30.17	3,875.14
R. C. Winthrop	4,844.93	580.35	613.32	4,811.96	10,000.00
T. L. Winthrop	316.46	137.19	80.00	373.65	2,364.66
Wm. Winthrop	1,312.07	290.17	372.70	1,229.54	5,000.00
<i>Balance, Mar. 31, 1915</i>	<u>\$47,428.73</u>				
General Income		\$28,739.97			
" Expenditures			\$27,344.89		
" Balance				\$48,823.81	
Sibley Centenary		3,038.14			63,800.98
Anonymous Centenary		262.82			5,519.20
Total Income, 1916		<u>\$32,040.93</u>			
Total Funds, March 31, 1916					<u>\$443,190.83</u>

The income for the year derived from the investments and credited to the several funds in proportion to the amount in which they stand on the Treasurer's books was nearly six per cent on the funds.

The real estate, which is entirely unencumbered, stands on the books at \$97,990.32, and in former reports has been carried at this sum and balanced by the items.

Building Fund	\$72,990.32
Ellis House	25,000.00

These items will not be carried hereafter in the annual Balance Sheet as the funds are not invested in securities but have been expended in the erection of the Society's building. The aggregate amount of the permanent funds including unexpended balances represented by securities at par and deposits is \$511,126.08, as per schedules of investments given above.

BOSTON, April 1, 1916.

ARTHUR LORD,
Treasurer.

REPORT OF THE AUDITING COMMITTEE.

The undersigned, a Committee appointed to examine the accounts of the Treasurer of the Massachusetts Historical Society as made up to April 1, 1916, have attended to that duty, and report that they find that the securities held by the Treasurer for the several funds correspond with the statement in his Annual Report.

They have engaged the services of Mr. Gideon M. Mansfield, a Certified Public Accountant, who reports to them that he finds the accounts correctly kept and properly vouched, that the balance of cash on hand is satisfactorily accounted for, and that the trial balance is accurately taken from the ledger.

HAROLD MURDOCK,
HENRY H. EDES,
Committee.

BOSTON, April 5, 1916.

REPORT OF THE LIBRARIAN.

The LIBRARIAN reports that during the last two years there have been added to the Library:

	1915	1916
Books	1,502	910
Pamphlets	1,056	1,436
Manuscripts, bound	43	84
Broadsides	178	54
Maps	35	10
	<hr/>	<hr/>
Total	2,814	2,494

In the collection of Manuscripts there are now 1,486 volumes.

In the Rebellion Collection there are now 3,545 volumes, 6,623 pamphlets, 510 broadsides, and 111 maps.

The Library is estimated to contain 58,586 volumes, 119,441 pamphlets, and 5440 broadsides.

SAMUEL A. GREEN,
Librarian.

REPORT OF THE CABINET-KEEPER.

The additions to the Cabinet of the Society have been reported each month at the meetings and are set forth in detail in the *Proceedings*. It seems unnecessary to repeat them here.

The Curator of coins and medals, Dr. Storer, has been active in increasing the collection in his charge, and has added during the past year 142 pieces, of which 112 pertain to Massachusetts.

The collection now numbers in all 11,018 pieces, 1,311 being Massachusetts specimens. This is the largest Massachusetts collection known.

GRENVILLE H. NORCROSS,
Cabinet-Keeper.

April 13, 1916.

REPORT OF THE COMMITTEE ON THE LIBRARY AND CABINET.

We were met at the Historical Rooms by the Cabinet-Keeper, the Curator of Coins, and the Assistant Librarian, who extended to us every opportunity to examine the building and its contents.

The Cabinet collections, which are well cared for and well catalogued, are crowded into so small a room that it is not possible to see and appreciate how many valuable and unique articles are in the possession of the Society. When the opportunity arises, they should be transferred into a large room where they can be shown to advantage. The present impression to the visitor is one of great confusion.

The collection of coins and medals, originally belonging to the Society, with the Appleton and Adams gifts, is one of the most important in the country, and is being strengthened by accessions from time to time. As regards Massachusetts, it is particularly valuable. From every point of view, this collection cannot under existing conditions be properly cared for. The articles are kept in a room with old-fashioned wooden cases wholly unsuited to proper arrangement or safety. There are no labels which will permit them to be exhibited and no proper catalogue to aid the visitor in obtaining the most superficial knowledge of the extent of the collection, though proper listing is now being done under the best auspices. Metal cases of the most approved models, for exhibition purposes and for safety against fire, should be purchased; but before doing so a careful study should be made of what has been done in other institutions such as the American Numismatic Society in New York, the State Library of Connecticut and the Essex Institute at Salem.

The present catalogue cases came from the old building. They were built from a design, peculiar to this Society, for a special size of card, which is too small to contain an adequate record of a book title or a fair calendar of a manuscript. New standard cases should be purchased at once, future entries should be made upon proper sized cards, and the old catalogue cards should be made to conform gradually with the new cases. One great advantage will result, that the printed cards issued by the Library of Congress can be purchased at small cost for such books as are found in our collections. The wooden book-cases and furniture near the catalogue case are a menace on account of fire. The initial expense of this change will be small and means lasting economy and gain in service.

For more than a century the Society accumulated books, pamphlets, manuscripts and newspapers, but did little toward

putting them into permanent form. Perhaps this is as well, for in those days the methods were bad. Books and pamphlets were ruthlessly trimmed, large numbers of pamphlets were made into volumes, irrespective of size or contents, and the leather used on books and manuscripts has proved of no permanent value. For five years the Society has had its own bindery wherein modern methods, adopted both here and abroad, have been applied in dealing with books, pamphlets, manuscripts and newspapers. The following valuable collections have been placed in perfect condition: French, 28 vols.; Lee-Cabot, 23 vols.; Wetmore, 21 vols.; Robbins-Coffin, 12 vols.; Amory-Sullivan, 10 vols.; Dwight Foster, 8 vols.; and twenty-six volumes of minor collections — in all 128 volumes, containing thousands of manuscripts. In addition 52 rare manuscripts have been separately bound and a number provided with solander cases. Among the earlier newspapers, the *Boston News-Letter* (1704-1748) has been bound in fifteen volumes; the *New England Weekly Journal* (1727-1741), in five, and the *Georgia Gazette* (1763-1770), in eight. It is only when thus bound, arranged and placed on shelves that a proper catalogue can be made. Buckram has been generally adopted, but leather has been used for the more valuable documents, though the present price of fine leather necessarily restricts its use. The bindery is now able to do on a small scale all that is necessary in the art of binding. An expenditure of six hundred dollars should be made for machines and tools to develop this work.

The basement has a room now filled with publications issued by the United States and the different States, which have no historical value, are never used and are so shelved that they could not be easily found even if required. Once a depository of United States documents, the Society long since abandoned the privilege. This well-nigh useless mass of material should be disposed of by sale or exchange, as whatever is of value has been placed on shelves. In other parts of the building books of no value should be also sold or exchanged. By doing this the congested condition would be relieved and the danger from fire in the basement would be greatly reduced.

The Society possesses the largest collections of Massachusetts colonial newspapers on file in any one place, and has received in the past many valuable volumes of early newspapers

printed in other States. During the past year it was suggested to some other institutions that a movement be begun to consolidate, with our collections, the many scattered numbers of these Massachusetts newspapers, so that our Society should be the custodian of the most perfect files obtainable. Our Society offered to give a full reproduction by photostat to any library willing to do this, and to abandon entirely by exchange or gift its broken files of "foreign" newspapers. The proposition was met by objections, such as the confusion arising from changing a "known location" of a given volume, and the strong feeling that each library should retain the originals. These objections do not appear sound. The advantage to be gained by a redistribution of such material is unquestioned, and must appeal in time to those interested in specialized collections. The only question is how the exchange can be made with justice to all concerned.

In view of the many valuable collections belonging to or deposited with the Society, there can be no doubt that the entire building should be made fireproof. This would mean the rebuilding of the interior, which, owing to expense, does not seem possible at present. As soon as a proper fireproof stack for books, pamphlets, etc., can be built upon our vacant lot, the congestion of the present building would be relieved, the opportunities for exhibiting our priceless pictures and historical collections would be increased and the danger from fire lessened. The work of fireproofing is being gradually done satisfactorily.

WILLIAM C. ENDICOTT,
LINCOLN W. KINNICUTT,
HENRY G. PEARSON.

Mr. WINTHROP, for the Committee to nominate officers for the ensuing year, made a report, upon which a ballot was taken. The officers are as follows:

President.

HENRY CABOT LODGE.

Vice-Presidents.

JAMES FORD RHODES.

WINSLOW WARREN.

Recording Secretary.

EDWARD STANWOOD.

Corresponding Secretary.

WILLIAM ROSCOE THAYER.

Treasurer.

ARTHUR LORD.

Librarian.

SAMUEL ABBOTT GREEN.

Cabinet-Keeper.

GRENVILLE HOWLAND NORCROSS.

Editor.

WORTHINGTON CHAUNCEY FORD.

Members at Large of the Council.

JOHN COLLINS WARREN.

CHARLES GRENFILL WASHBURN.

SAMUEL WALKER McCALL.

BARRETT WENDELL.

JOSEPH GRAFTON MINOT.

Mr. BIGELOW read the following paper on

THE OLD JURY.

[The following paper is concerned with the Old Jury only as a link in the chain of the history of evidence.]

WITH men of the Middle Age truth was unconfined. Just as the open objective world reached far "beyond the utmost purple rim" of sense and observation, so the occult, subjective world, unobservable to modern men, had unbounded extent, throughout and everywhere, as real as things within physical observation. Lines which we draw they indeed drew, but only as marking off one realm of reality from another. To most men of the Middle Age the methods and purposes of modern science would have been meaningless; they could not have lived our life any more than we could live theirs. The first Bacon was "unheard" in his day; no one understood him.

Nor is this to be set down altogether to the disadvantage of our ancestors. In the sphere of government, certainly not one of the least of things, Anglo-Saxon and Anglo-Norman were perhaps as successful as we moderns are. Guilt hardly dared to play with the old law; open guilt not backed by power could not delay the feet of justice, and secret guilt on trial felt and feared the Unseen. Face to face with the frowns and terrors of what was held for reality, the wrongdoer, who alone knew the truth, was likely to feel an added sense of guilt, and tremble and fail in the trial of endurance. Men of old knew their psychology — knew that psychology was a good detective. They knew that a man could not get rid of himself, and they undertook to forward the crisis.¹

But the meaning of fact, together with the way of deciding it when in doubt, was peculiar to an age that did not understand methods of investigating truth. A bar lies there between all earlier times and the present, a bar which cannot be removed; but it explains much.

The Anglo-Norman jury was no exception; like the ordeal and the duel, this too was a mode of trial, not a proceeding in

¹ "It is the unknown that terrifies," says a writer in the *Manchester Guardian*. True, but guilt will give way to it more readily than integrity. That was the old theory. The social man is stronger than the anti-social man, or society could not exist.

which evidence in the modern sense played its part; so it was down to about the fifteenth century. Still trial by jury differed from other modes in that it was not a party test. The trial was by submission to the decision of (in theory) an impartial body, the common juries being sworn to speak the truth "according to their knowledge." But that should not be read as language of to-day or yesterday; the old jurors' "knowledge" was not the net result of open investigation in court, as in modern times, through the sifting of evidence offered there. This is true even of the grand assise (for trying the *right* of property in freehold lands), where the jury was sworn to speak the truth "precisely," without adding "of their own knowledge."¹

The old jury trial was not, in any case, "one-sided," as were the other modes of the time. That was gain; but the duty to speak the truth, whether of "knowledge" or "precisely," was both actual and potential gain of the highest — for that covers the whole field of evidence. Unfortunately the potential gain was not fulfilled; reform fell short in what is now regarded as of the essence of sound method,² and that too even in relation to impartiality.³ Indeed, as we have already intimated, such

¹ The psychology is lame, but the meaning is clear. To deprive a man of his freehold was a serious thing, and was not to be done upon mere beliefs. Common juries might "think" so and so; the grand assise must be positive. Y. B. 30 and 31, Edw. I. 116; Y. B. 11 and 12, Edw. III. 338; Y. B. 12 and 13, Edw. III. 4; 12 Lib. Ass. 34, 12; 23 Lib. Ass. 11 — all cited by Thayer, *Evidence*, 100, 101, of witnesses, common juries and the grand assise. The accusing jury was sworn simply to "speak the truth." Assise of Clarendon, c. 1.

² This is true, though it is also true, as Thayer, *Evidence*, 500, says, that "all the rest," after the witnesses have testified to what they have seen and heard, the ordinary jurors "themselves were to furnish, such as general knowledge, hearsay, their own private knowledge, including hearsay and inferences from it, and the reasoning and conclusions involved in comparing and digesting all that they knew or had heard from others." But it must be remembered that there was no open, public examination and searching of testimony, except in special cases. Thayer, of course, does not mean to suggest that evidence in the modern sense was had in the courts; he has pointed out the contrary more than once. "When jury trial, or rather proof of jury, as it originally was," etc. *Evidence*, 502, *ib.*, 105. Maitland, *Pleas of Crown for Gloucester* (A. D. 1221), Introd. XL., XLI. See also Brunner, Schw. 36: "Anbetracht dessen kann die ältere Civil jury nicht als Urteil Jury, sondern nur als Beweisjury bezeichnet werden." But that that was true, and true in the very face of suggestion and example pointing to modern ideas, deserves to be made clear.

³ The result in the common jury cases was from the first mainly in the hands of one man; the sheriff *selected* the jury, the parties being present, if they chose, for the purpose of challenge. See Glanvill, Lib. 13, cc. 5, 12, 14, 15. The sheriff

reform was not thought of. The old English jury had an open field, but that was a rank expanse scarcely touched by the ploughshare of investigation.

Certain facts which may appear to be opposed to this remark should be considered; some of these pertain to preliminary proceedings in jury trials, some to the trial itself.

Preliminary arrangements for civil causes related to the secta, while that was yet a required part in litigation; here the judges might, and upon challenge of the men always did, inquire into their competency, to whatever extent they chose. But this was the end of the business; either the men, or some of them, were rejected, which would require a new secta in whole or in part, or the men were accepted, and the case went on to trial. The only opportunity remaining was that of examining the jurors, upon challenge; of that presently.

Similarly in the preliminary proceedings for criminal prosecution under the Assise of Clarendon (1166),¹ that is, in making up the accusing jury or accusation by "public voice"² — the grand jury of modern times — it appears to have been the regular course for the judges to make diligent inquiry into the qualification of the jurors. Glanvill, speaking of the assise, says of such cases that the judges were required to make inquiry into the truth of the accusation, by many and various questions, considering indications and conjectures, making for or against the accused.³

thus took the place of the party in the other tests. What that might mean has been intimated, *infra*, 314*n*; it speaks plainly enough to the question of impartial investigation, and the removal of sheriffs wholesale by Henry the Second emphasizes the point. Inquest of Sheriffs, 1170; Stubbs, *Select Charters*, 147-150. In the grand assise the four knights chose the jury, the parties having the right of challenge. London jurors in the civil assises might be challenged for partiality through collusion and examined. Liber Albus, i. 447. This was no doubt only a special example.

¹ Stubbs, *Select Charters*, 140. See Ethelred, III., c. 3, *Select Charters*, 72 (978-1016). Trial under the Assise of Clarendon, *i. e.*, by indictment, was not exclusive; the ancient procedure by appeal was not affected by it. The appeal was not abolished until 1819. 59 Geo. 3, c. 46. Evidence played little part under either procedure.

² As distinguished from the "certus accusator," in appeals, Glanvill, *infra*.

³ "Per multas et varias inquisitiones et interrogationes coram iusticiis facien- das inquiretur rei veritas, et id ex verisimilibus rerum indicis et conjecturis, nunc pro eo, nunc contra eum qui accusatur facientibus." Lib. xiv. c. 1, § 2. So of the competency of the defendant himself to demand a particular form of trial. *Merchant and Friar*, 180-190.

This was the extent of the inquiry, unless the accused, by permission, put himself upon a jury; the ordeal was the prescribed mode of trial for half a century yet. That is, the trial itself by the old mode, or by one of the old modes, admitted of no examination after the medial judgment. It was in jury trials alone that investigation beyond the preliminaries was possible; and jury trial in the cases in question was yet very exceptional.

How did the case now stand? Here, in the preliminaries, was a plain suggestion, fortified, as will be seen, by the French inquest, which must have been familiar to the English judges; did the judges see and care? Much was to turn upon that question. Let us look into the subject.

In certain cases where the parties or the King called for inquiry out of the ordinary, great pains were taken to "inform" the jury. How this was done has been told in detail by Thayer.¹ Two or three typical examples may be given here:

1. The jurors themselves were usually community witnesses, summoned for their knowledge of what had taken place in the vicinage. In aid of them, in special cases, other sworn persons (often called jurors) were added to tell the jury, not what they "knew," but what they had seen and heard; jurors of the hundred or of some particular ward of London or other town — a separate body, at least from the fourteenth century, from the trial jurors whom they were to help. An offence is secretly committed in X; the offender flees to Y, where he is arrested; he lives in Z. Juries from all these places, and perhaps from other places, are summoned and brought in aid of the trial jury — combined it may be with the original jury — to furnish any information they had.

2. Next suppose that a deed of feoffment, or a will, for example, of one of the Humphreys de Bohun, or any other witnessed instrument, had been pleaded and put in issue. The witnesses now are the transaction witnesses of the time, named for the very purpose of giving testimony in court in regard to the subject in question, of which the instrument was to be the proof. These witnesses by the ancient law might, like an ordinary jury, decide the case; they were expected to do so. Or, as in modern

¹ *Evidence*, 90-94.

times, they might act merely as witnesses before a trial jury — this where the parties had put themselves, not on the witnesses to the instrument, but on a jury; in which case they merely “informed” the jury. Or again, the two bodies might be combined into one, according to the pleading and the judgment of the court. The names of the witnesses to the instrument were usually signed by the notary who drew it up, often without their knowledge and though they knew little or nothing at all of the transaction, or of the statements of the instrument; a fact which might or might not be brought out, according to whether or not the witnesses were challenged.

3. Another case may be mentioned. Parties were entitled to have the names of the trial jurors given them before the term set for the trial, so that, at least in property cases, they might inform the jury of their right and title.¹

All this looks at first like evidence, but evidence it was not. Evidence means much more than the production of testimony, however strong; the term includes in its import, or rather evidence itself *is*, the rational mode of removing doubt. It accordingly imports (*a*) the production of testimony of facts, under (*b*) reasonable precautions and safeguards, and (*c*) a critical examination of such facts (1) in regard to their truth or probability, and (2) their bearing upon the issue; all of this based upon (*d*) clear and sound experience. This is the test by which to try the question of the employment of evidence in the courts under the old jury — a test in which the jury must have failed, especially in regard to second-hand testimony, which, it may be added, is often of first-rate value and often followed. But knowledge whether by sense-perception or through other rational evidence was not necessary to qualify a juror. The juror’s “knowledge” might fall far short of this. Except in so

¹ The sheriff too had a hand in the business; as we have already said, he *selected* the jurors. In Palgrave’s fiction of *The Merchant and Friar* (Marco Polo and Roger Bacon) the sheriff, answering the court (“Sheriff! is your inquest in Court?”), tells how faithful he has been in finding an excellent jury for the *crown*. “I have myself,” he says, “picked and chosen every man on the panel. . . . The least informed of them,” he goes on to say, “have taken great pains to go up and down in every hole and corner of Westminster — they and their wives — and to learn all they could hear concerning his [the culprit’s] past and present life and conversation.” *Merchant and Friar*, 184-190. See also Thayer, *Evidence*, 90, 91, note.

far as the term had acquired a technical meaning,¹ it meant nothing different from the "knowledge" of other men; and how vague and uncertain that is even at this day—how far from the persuasiveness of evidence—a moment's reflection will show. Men in general will readily declare they "know," when a question or two will show that they have no knowledge either directly acquired by the senses or indirectly apprehended by sound reasoning.² Uncritical knowledge was enough for a verdict by the old jury; special circumstances like those above stated only added somewhat to the trustworthy character of the verdict—it did not essentially change it. And it must be remembered always that we are dealing with an age of credulity in which divination, magic and mathematics, supposed to belong to the same category, all alike flourished, all equally credible. The jury of the time was better than other modes of trial, but like them it was even at its highest no more than trial by men to whom the occult was fact equally with objects of sense.

But enforcement of the jury was exceptional, as one may readily see by looking into the records of the time, for instance, the *Rotuli Curiae Regis*.³ Enforcement is always particularly referred to as out of course. Usually there was a simple jury, witnesses being brought forward by the parties as in modern times—for what the jury cared to consider them worth. The jury could disregard the sworn information even of the impartial transaction and community witnesses. Whether there were witnesses or not was immaterial for the verdict; the jury "knew" what to say regardless of others. In ordinary cases, that is, unless there was special reason for inquiry by the court, no inquiry concerning the knowledge of the jurors was made. The judges merely looked on after delivering the charge; it was now no affair of theirs. It was the jury's business; to hear or refuse to hear witnesses—not merely to disbelieve their testimony—was their right. On the other hand, they were not permitted to take unsealed writings out into the jury room, because such writings were not authenticated; though they

¹ See note 2, 323, *infra*.

² "Hearsay" is another thing and may be and often is serious evidence. See *infra*.

³ These are the earliest official records of litigation in England; they are of the years 1194-1199.

might look at them before going out. That indeed was scrutiny, as far as it went.

Across the English Channel, whence came the jury, a different state of things was coming to pass as early as the thirteenth century. There the jury, under the name of Inquest, had flourished for centuries before it was carried to England, and there it was to find a place in the history of judicial evidence which it did not have at the time, and never had, in England. What was exceptional and extraordinary in England was in ordinary course south of the channel. There we find the courts dealing with questions of fact regularly¹ upon something like modern ideas of evidence; ideas which were to lead in a direction of their own, not to laws peculiar to legal evidence such as came to pass in England, but to evidence in the untechnical sense of modern science. The jury was finally left to England, there to work out its peculiar course touching evidence by slow and sluggish steps.

We turn now to Normandy for evidence in support of these remarks; what do the books tell us of the course of things there? The Ancient Coutume, of date between 1276 and 1280, gives us a plain answer, so far as criminal cases are concerned. In murder trials, the Costumal tells us, the accused may put himself upon an inquest of the country, *l'enqueste du pays*. The judge was then to summon all those who were presumed to know anything about the cause, or have any information about it, suddenly, without warning or suggestion, so that they might not be tampered with. Calling each one before him, in the presence of four knights of good repute, he was next to "inquire diligently" into the facts, taking down the answers in writing. Then he was to have the accused brought before those whom he had examined, and permit him to challenge any of the number. The jury should finally consist of twenty-four men at least. Similarly, in cases of theft or robbery, summons was to be made of lawful jurors, who knew the truth in regard to the facts and the life of the accused. These were now to go before

¹ The credulity of the age, however, found its way still in the courts of justice. Appeals of sorcery and enchantments occupy a chapter of a page and a half in the printed text of the *Ancien Coutumier de Bourgogne*, ch. xxxi, Marnier. "Se une feme dit à une autre: Tu has fait ces charraies (enchantments) et ie t'en proueraï. Se au provez vient, prouer le droit par loial tesmoins qui haient veu et oi, et oi recognoistre que de fit ces charraie. . . ." 13th century.

the judge, with three or four knights, in secret, to be examined diligently, one by one, in regard to their knowledge and belief concerning the life and acts of the accused. Then came the opportunity for challenge, and after this what each juror had said was to be declared before the accused by the judge, and the jurors were to confess that they had sworn accordingly. Verdict by twenty was to be conclusive.

A decision of the Norman Court of Exchequer of the year 1292 may now continue the inquiry. In an inquest or jury, upon a writ *de stabilia*,¹ the judge asks the jury, who had made their answer, of the ground for what they had declared — was it “*de scientia*”? The jury answered that they spoke “*de credulitate*” — they *believed*. The question was then raised whether such answer was sufficient; judgment that according to custom it was, in that case, and that knowledge was not required.² That is, it seems, certainty — knowledge by the senses — was not necessary before a *jury*. Here was the beginning of a procedural distinction, which was to be complete in the following century; this appears by a decision which throws light backwards and forwards. It was now held that any one who could produce evidence *de certain* — *de scientia*, knowledge by sense-perception — had the right to choose between bringing his case before a judge or putting it upon a *jury* — *enquêt*. Such a person was not to be compelled to go to a jury — that was the point decided.³ Here was a distinction which, looking backwards, shows that the judge had already acquired the power, in civil cases as well as in criminal, of deciding questions of fact; this alongside the older process of jury trial.

But the meaning of it is more significant than the mere fact; the judge acts upon facts of knowledge by the senses — sight and hearing — while the jury is now and probably has long

¹ For the protection of one's fief, possession of which had been disturbed by some powerful lord. De Gruchy, in note to his ed. of the *Ancienne Coutume de Normandie*, 154.

² *Statuta et Consuetudines of Normandy*, Warnkönig, quoted by Brunner, Schw. 451.

³ “Qui veut prouver par preuve destroite, c'est assavoir par tesmoing de certain, il ne doit pas estre contraint à prouver par enqueste; car à celui qui a à faire la prevue est à choisir ou prendre preuve destroite ou loy (lex) d'enqueste, na sa partie ne lui peult empeschier, car la plus forte loy abat la plus fieble.” Brunner, Schw., 453, quoting *Coutumue Style et Usage aux temps Échiquiers de Normandie*, Caen, 1847, ch. 28, 30.

been the proper agency for the trial of cases of less certainty, "feeble" cases. And the reason is plain; the judge would not be likely to know anything about the facts — he was not expected to be; hence he should be informed with certainty. The jury, on the other hand — the body of men of the community, *du pays* — has been chosen for the very reason of their knowledge, in either form, first hand or second; hence they might make sufficient the "feeble" facts of the party — that was regular business of the jury. In other words, one having "certain" knowledge was not to be required to put this in doubt, by putting it before a jury; while one dependent upon others, or upon reasoning more or less doubtful, was to have the aid of his neighbors, the jurors, so far as that might help his infirmity.

The jury was now exceptional process, resorted to only in cases of need — lest for want of the better evidence, one fail and lose one's right.¹

This is the light thrown backwards by the procedure. The jury is for the feebler case; the feebler case is displaced (by the decision of the Norman judge) for the stronger. We may now see the light as thrown forwards. The decision just mentioned, together with the case of 1292, is a forerunner; the road to Rome is open;² the course cannot be long. Norman and Anglo-Norman³ are to part company completely; the jury will come to be looked upon as an English notion, as a subject for the French (or German) antiquary. In the fourteenth century the "feebler" way has disappeared altogether;⁴ both kinds of fact, knowledge by the senses and knowledge less certain, have come together as evidence, and so French law has settled any doubt whether south of the channel there should grow up a congeries of laws of investigation peculiar to the administration of justice. The conception of evidence, in the sense of science, has now prevailed, whatever its relation to the canonical Inquisition of the Middle Ages. All facts which are calculated according to

¹ "Avant que le droit perisse, l'en se aide des enquestes." Brunner, *ut supra*. *Style et Usage*, ch. 28, 28.

² The Roman judge or prætor was before the mind. "Hors jugement en aulcun lieu hors du *pretoire*" — court-room. *Stille de proceder*, Normandy; Brunner, Schw. 455.

³ "Anglo-Norman" is belated for the 13th century, but it is better than "English" when applied to the courts.

⁴ "Die germanische Scheidung zwischen Richter und Urteifindern war verschwunden." Brunner, Schw. 456.

experience to influence or throw light upon conduct, second-hand as well as first-hand facts, are to take their place, in the findings of the judge, according to their worth. The function of the jury has been absorbed in that of the judge.¹

So in France. What was going on in England? The distinction between the two kinds of fact brought about another result there. Facts furnished by witnesses were to be of the senses, *de visu et auditu*. Evidence by sight was a clear case; I see by my own eyes, not by the eyes of another. But hearing has a double import. I may hear a sound myself, or may hear another tell of it, and that other may have heard it from someone else. The English law, after its earlier doubts,² put aside second-hand evidence; a course that has made it necessary, more and more down to the present day to heap exception upon exception, until confusion is enough to baffle all but the persistent few who can follow the attenuating thread of history back to its obscure and distant beginnings. The administration of law could not fail to be embarrassed when so much of life was shut out of hearing in the halls of justice; or rather, when by reason of trial by jury questions of fact not within one's own observation must not be permitted to go to the accredited judges, jurors or not, and when something called the "best evidence" is considered alone to be admissible — to the exclusion, that is to say, of what does not fall within the meaning of that doubtful and discredited term.³

The difference thus shown between methods on the opposite sides of the channel — between Normans (and English) on the one side and Normans on the other — is striking.⁴ The Anglo-

¹ This had come to pass completely by the latter part of the 14th century. See *Le Grand Coutumier de France*, lib. 4, c. 1, on the office of Judge, Paris, 1868.

The judge or some deputy examines the witnesses with modern thoroughness.

So far as any express language is concerned it is true, as Brunner, *Schw.* 457, says, that there is no trace in France of opposition to the jury; but the abandonment of the jury speaks for itself.

² As in the case of the champion; he at first was a witness, swearing either upon what he himself knew or what his father had told him. Other witnesses and jurors had sworn in the same formula.

³ See Thayer, *Evidence*, chapter XI., where the history of the "best evidence" is set out. It should be said that much of this runs back to times before the English jury, as Thayer has shown; but it is still pure English, its devious course everywhere affected by the jury.

⁴ The difference, which is the subject largely of this paper, has been noticed by others as needing explanation. "When all has been said, the almost total

Norman judge saw in the jury only a particular organ for expressing habits of mind long before formed; habits in which the judge was but a moderator, presiding over justice as a sort of contest, to see that the old rules were observed. Judges who could approve the introduction of trial by battle could naturally see nothing in the jury but a new form of old processes of trial, with twelve witnesses in the one case to one in the other.¹ The idea of evidence, except as partially employed in the qualification of witnesses and jurors, did not enter the mind or at any rate found no expression. Exception was to remain exception, generation after generation, without suggesting that it was only part of a general rule.

The Norman judge was a different man; he saw a light in the jury and began to play, in however small a rôle, the part of the coming modern man. He appears to have realized that the only way to decide disputed facts was by evidence, and evidence was now introduced into his court for the first time since the fall of Rome. What he saw was not so much the jury as the suggestion it brought, that questions of fact could and should be decided by evidence; and for that purpose a jury was no more needed in France than it had been in Rome, or than it is now in England or America. And so the jury was put away.²

It is hardly necessary here to say that no argument is being made in favor of the later canonical inquest of continental Europe — better known as the Inquisition. That was an unnecessary outcome of a legitimate antecedent. England very likely did, as Maitland has pointed out,³ have a narrow escape from that danger; but it was not the jury that saved the day.⁴

disappearance in France of the old *enquête du pays* in favor of the *enquête* of the canon law at the very time when the *inquisitio patriae* is carrying all before it in England is one of the grand problems in the comparative history of the two nations." Pollock and Maitland, *History of English Law*, II. 602.

¹ See Glanvill, Lib. 2, c. 7, *infra*.

² The jury of the neighborhood — *du pays* — was particularly adapted to its original purpose of ascertaining fiscal or crown and ducal rights of property, scattered throughout the country and denied as they were; much more so than the many other facts to which it was and is directed; the trial jury was later than the fiscal jury.

³ *English Law and the Renaissance* (Rede Lecture). See also Maitland's *Roman Canon Law and the Church of England*.

⁴ The contrary must run thus: France, which had the jury, gave it up, and the canonical inquest followed; England which had the jury, kept it; and the canonical inquest did not follow. Ergo England was saved by the jury. Praise

That, however, is beside the present point. All that these remarks are intended to show is that the jury stood in the way of evidence and put off the day of sound inquiry for generations — until indeed the Court of Chancery was brought into being to put an end to the embarrassment. It matters not that trial by jury at last found the way, so far as that is the case, for it found the way only through special rules for excluding evidence.

The explanation of the difference between the Anglo-Norman and the Norman judge may perhaps be found by looking at the subject from the point of view (already intimated in "habit") of psychology. With the Anglo-Norman judge the cognitive and the conative (or willing) functions of the mind had by long, unbroken usage become settled ("rigid"), and the relation between them was accordingly imperfect. The difference between men is the difference of mental preparation, whether by heredity or environment, or both. The mind responds to the stimulus for which it has been well prepared, and in ordinary circumstances to that only. Stimulus must be powerful and usually long-continued to break up habit finally. With the Norman judge the cognitive and conative functions appear to have remained, or to have become, mobile ("plastic"); the relation between them accordingly was sensitive to the special stimulus, and cognition was the means of arousing the will to action. In a word, the reaction of the Anglo-Norman judge to the introduction of the jury was reflexive; that of the Norman judge was reflective.

If this is the right way to put it, it was not so much a preference for the old ways, in the case of the Anglo-Norman judge, as it was a fixed habit of mind which really governed his conduct. Why the Norman in England fell short of the Norman in Normandy was perhaps because the feeling of the English, many of whom were retained in office after the Conquest, was strong enough to stifle any direct effect of the stimulus. How else can the fact be accounted for, that the Norman mind, quickened into legal life in Normandy, was repressed, to find an outlet only in minor ways, in England?¹

of the English jury in contrast with the development of the continental inquest almost leads to that — it easily suggests it.

¹ Anglo-Norman judges — and the king-duke, from the Conqueror to John — took part in the administration of justice on both sides of the channel. Foreigners in high places were the scandal of Henry Third.

Three centuries after the Norman Conquest must indeed pass before there was to be any serious stirring in England of the stagnant pool; for the reforms of Henry the Second touching the jury still left the jury a form of trial. Not until the latter part of the fourteenth century were the need and efficacy of evidence for determining questions of fact driven home, although throughout this long period the judges were daily being brought face to face with the most momentous questions that ever could affect society — questions of life, property and well-being. Such was the power of a custom. Discredited, as some of it was, even in its day¹ — for the primitive stage with the governing class was passing away² — it could confine the human mind within a prison-house whose doors needed but a touch to open them, and there was no one to lift the latch. But what we call custom is social habit — a secondary form of mental disposition which thus becomes part of the structure of the mind of all men within its operation. It was not the judges alone who could treat custom as positive law,³ as if it were statute; lords and commons alike — the commons were wedded to their idols — were affected. Kings too could come and go, leaving a great name for achievement in the affairs of State, while showing at best only a negligible interest in the value of judicial processes of evidence for the discovery of truth. It was an age in which observation set no bounds to truth. The jury was indeed in favor, but not as a body appointed and devoted to the investigation of facts.⁴ There is no indication even of a desire for better

¹ Rufus said of trial by ordeal that men need not appeal to God, he himself would decide. But his bold word was void. See Thayer, *Evidence*, 38; Eadmer, *Historia Novorum*, 102 (Rolls series); Pollock and Maitland, II. 597; Brunner, Schw. 182. Fifty men who had been complained of for taking the King's deer cleared themselves by the ordeal of hot iron. Bigelow, *Placita A. N.*, 72. Such a number may have something to say about the ordeal, it is thought. No doubt ordeals could be manipulated, but so could and can the jury.

² The 4th Lateran Council, 1215, found the time ripe for striking a blow at the ordeal. Change of ways of thinking and acting comes with increase of knowledge. "When I was a child, I thought as a child," etc. But the thinking and acting of the child are normal and healthful.

³ "Since waging law has always been practiced, and no other way" for many cases, "this proves in a way that it is *un positive ley*." Ashton, J., Y. B. 33 Hen. VI. 7, 23, quoted by Thayer, *Evidence*, 29.

⁴ Even Glanvill, the Chief Justiciar and panegyrist of the jury, could pit that body against trial by battle as a case of twelve witnesses against one. Lib. 2, c. 7.

things until the Court of Chancery broke down the ancient barriers. It was for that new energy to point and lead the way, however faintly, to the discovery of truth, and to supply the power for making good the truth when discovered.¹ The Court of Chancery introduced, not indeed technical rules of evidence — it was for the jury to do that — but the modern era of sound judicial inquiry into questions of fact.² That court dispensed with any intermediary needing both instruction and control; it required parties to testify; it had the King instead of a sheriff to guard its work. It did not hold seeds which were to sprout into a volume of judicial rules for excluding evidence; rules too often whose meaning only some hardy explorer of legal history could in our day discover — rules which were to vex the courts long after the jury had for most civil purposes gone the way of all things which have lost their skill to win favor in the practical affairs of life.³

This part of the inquiry may close with some remarks on the defects and the advantages of the old mode of jury trial.

The defects may be summed up in the statement that no sound method of examining fact was in use. There was no critical examination at the critical moment — at the time when the jury came before the court to give the verdict. The jurors

¹ The only man before this time, who was capable of greater things, was in his own day, as he himself tells us, unheard, forgotten, buried. Rôger Bacon, *Opus Major*, 1267.

² Even if evidence in the true sense had been employed in the courts of England during the period in question, it would not have been English, as it was destined to become — pure English. If it had come into use in Norman times, it would probably have followed the French inquest; that is, there would have been no laws of legal evidence. All the later writers on evidence point out the fact that the English courts alone have a law of evidence peculiar to the trial of causes. See e. g. Thayer, *Evidence*, at the beginning of his Introduction. The jury, and nothing else, is responsible. The peculiarity seems to have begun as early as the first half of the 14th century, perhaps earlier. See a case of the year 1340, Y. B., 14 Edw. III. 25-34, quoted by Thayer, pp. 108, 109, to the effect that jurors could not “know” the existence of legal records not produced before them, however strong the reasons given by them to show the fact. But perhaps the judges as well could not “know” such things; if so, the case would be one of substantive law and not of excluding evidence. In either case knowledge was already a technical term, limiting inquiry accordingly.

³ It is not altogether a matter of the exclusion of evidence that could not safely be left to a jury; the trouble is that rules of substantive law and procedure have been confused with evidence. But that is equally due to the jury. Thayer has made this plain in his preliminary Treatise on *Evidence*, so often cited in these pages.

were witnesses as well as judges of fact, and as witnesses the occasional and irregular examination (dependent mostly upon challenges, which might not be made) in making up the panel could not take the place of a searching examination when the witness-jury came forward, in open court, to give answer on the issue. The parties were now ready and prepared, according to modern ideas, to sift the evidence and clear up the doubts. Party witnesses indeed were of little value and were not examined at all; and such examination of the juror witnesses as took place was out of the ordinary course, much as it was in making up the panel. It was occasional and exceptional, employed only as grounds of suspicion of the jury arose; and when it did take place, it was not of the critical, exhaustive nature which would satisfy modern ideas. Cross-examination was unknown; the judge conducted such examination as was made, and such as he chose; precautions and safeguards, especially touching "knowledge" acquired out of court, were insufficient. The witness-juror judged of the value of his own ideas and information!

What advantages were there in the old jury trial, for discovering truth? These were equally noteworthy. As witnesses themselves, the jurors were left without restriction in regard to what, as men of good sense — freemen and true¹ — they deemed relevant and proper. They would and did act upon belief and thoughts;² they could and did act upon what their fathers told them to be true, and generally upon hearsay, which men in our day speak of somewhat contemptuously — as if half the affairs of life were not founded upon hearsay. They could act upon whatever appeared to them trustworthy³ — upon anything which they thought likely to throw light upon the question at issue. Here was in principle all that the subject-matter of evidence requires. The defect was in dealing with it. The age was uncritical; no one knew, or at any rate cared, how

¹ "Summone . . . duodecim liberos et legales homines" is the usual language. Glanvill, lib. XIII.

² The *Mirror* (13th century) calls this one of the "abuses"; but that shows the fact, and only a private objection.

³ The jurors swore to decide "per proprium visum et auditum . . . vel per verba patrum suorum et per talia quibus fidem teneantur habere ut propriis." Glanvill, lib. 2, c. 17. This was in the grand assise, made to accord perhaps with the champion's oath, in trial by battle in Glanvill's time. But other juries swore in the same way.

to make a proper use of the means of investigation. Nothing was excluded; but wisdom failed.

It would not do to stop with noting the advantage of a clear field. Witnesses of the parties were sworn to state only what they had seen and heard; and this would have led, and, when the modern jury came into operation, did finally lead to the exclusion of evidence, for the modern witness still testifies ordinarily to the evidence of his senses. But the old jurors swore, as we have seen, to what they knew, which led further than might at first be supposed. It led juries to take account of states of mind, as in the ordinary course of things; in this respect following the more ancient modes of trial. There was no more common process in the thirteenth century — and for centuries before in other forms of procedure — than jury trial under the writ *de odio et atia*, to determine whether a person in prison had been put there by actual hatred or malice.¹ And there was also the proceeding of the writ of conspiracy, for a malicious prosecution, which with some changes has come down to our day. The old jury was never restricted to finding acts and omissions.

In modern times — in very recent times — much question has been made with regard to evidence of states of mind (apart from cases of alleged insanity). The modern jury is made up of men who are ignorant of the facts to be proved; the jury must learn everything from witnesses, but, apart from expert witnesses, these speak mainly of matters of knowledge acquired by the senses. Can a jury then — or a judge, for the judge has become a jurymen — find mental facts, as ground of liability? That has been a subject of considerable discussion, which of course I cannot enter into here.² But I suppose that there has been no real departure from the old position; the mind, though indirectly, as well as the act, is the subject of inquiry.³ But

¹ This afterwards gave way to the writ of habeas corpus, a proceeding tried by the judge without a jury. Many jury cases may be found in the *Rotuli Curiae Regis* (1194–1200). See e. g. Vol. II., 30–31, 97, 120, 230, 278. I have noticed only one case in the last five years of Richard's reign. Vol. I., p. 52. And this case looks untechnical. Perhaps the writ was adopted in the first year of John, from the practice in the lower courts, popular and franchise.

² The English Utilitarians and Holmes on the Common Law, make external standards the test of liability, and make little of states of mind. See especially J. S. Mill's *Essay on Utilitarianism*.

³ Legally speaking (apart from statute) acts and omissions, though resulting in damages, are nothing in themselves; wrongfulness must be added — a mental quality is necessary.

we have to break somewhat with the idea of the modern jury, as a body to be informed by witnesses speaking only to the senses, to reach that result; otherwise why should not witnesses speak directly to states of mind? Why not ask a witness what he thinks? What I say that I think is evidence, according to its importance and my means of information, everywhere except in the courts of justice, and would be there but for the modern jury. We have defects as well as advantages in our jury. The change in the function of the jurymen has been not merely in the fact that from being a witness as well as judge, he has become a judge only, dependent upon others for facts: modern courts have learned the method of evidence. They have, that is to say, learned how to deal with the evidence to which the jury system has limited them. Much of the supply of facts which the old jury had to draw upon has been put out of court, and confusion has been added to much that has been kept. It comes to this: The old jury had a complete supply of material not properly prepared; the modern jury has an incomplete supply of material properly prepared. Who would go to our courts for instruction may with confidence study an incomparable method, while looking with mingled feelings upon a process devoted to truth, which begins by turning away half the stream of evidence, and then sets to grinding out grist of rules for turning dribblings of the waste back to old, forgotten uses.¹

The history of the Court of Chancery lies beyond the field of this paper; but it is only right to say that while that court set out with the promise of gain without loss, it fell into the mistake, in its later history, of treating hearsay as a matter of substantive law, which of course would bind the chancellor as well as the common law judge. The modern jury has affected the entire course of justice the world around. But the Court of Chancery was a true light; the Old Era was at an end; in course of time a Chancellor produced the *Novum Organum*.²

¹ See e. g. the "best evidence" rule, Thayer, chap. xi. The only noteworthy change that took place in the function of the old jury was that, on the advent of professional lawyers as judges (*temp.* Edw. I.), the jury, or "laymen," as they were significantly called, were now required to confine themselves to questions of fact. They must not pass on matters of law. Before that time, when the judges themselves were mostly laymen, this obviously could not be done.

² As for Harvey's gibe at Bacon, that "the Lord Chancellor wrote on science like a lord chancellor," it would have been easy, and equally vain, to reply, that when Harvey said that he did *not* speak like a man of science.

If then the history of evidence may be treated as calling for a consideration of the ancient period of trials, the old jury may be regarded as the last link of the earlier part of the chain; while the Court of Chancery is the first link in the modern mode of investigating truth.¹

TWO GRANT LETTERS.

Professor BASSETT contributed copies of two holograph letters from General Grant to S. L. Hamlen, dentist, preserved by his daughter, Miss Elinor Hamlen, of Northampton, and by her presented to the Smith College Library, March 16, 1916.

NEAR VICKSBURG, Feb. 11th, 1863.

DEAR SIR: I met with a serious loss this morning through the carelessness of a servant. On going to bed last night I left my teeth in the washbowl with just water enough to cover them over. This morning the servant who takes care of my state room emptied the basin into the river teeth and all leaving me in rather a bad fix away as I am from where damages can be repaired.

If you are coming this way can you not bring the material for taking an impression so that a set can be made for me and forwarded. Respectfully, &c.,

U. S. GRANT,
Maj. Gen.

HEAD QUARTERS, MILITARY DIV. OF THE MISS.
CHATTANOOGA, TEN., Dec. 7th, 1863.

S. L. Hamlen, Dentist, is authorized to practise his profession at any point within this military command. Permits will be issued for Dr. Hamlen, by Provost Marshals, to pass, with such material

¹ It is not intended to intimate that the Court of Chancery at once anticipated the modern methods of science in the investigation of truth; all that is meant is that it lighted a torch, however dim, for such investigation, so far as the administration of justice is concerned. If the field was narrow, the aim was modern: 1. The old modes of trial were left aside. 2. Cases were not one-sided, party affairs; the *court* dealt with the complaint. 3. The defendant, who knew the facts, was required to testify. 4. Examination of facts was not confined to preliminaries of competency — it was extended to the merits as being the ground of interference. 5. The King's direct power was added, the chancellor being the King's right arm, in a sense not true of the ordinary judges. The truth must be found and must prevail. All this has a forward look, though, in fact, it was the civil (Roman) law on English soil.

as may be required in the practice of his profession, from Cincinnati to the point where he may desire to locate.

U. S. GRANT,
Maj. Gen.

CERTIFICATE BY CHARLES CHAUNCY.¹

3 (9) 1665

Thes are to testify to the Lords people, as occasion required that Benjamin Eliot,² Bachelor of arts, hath for the space of foure yeares lived with us, being diligent in his studyes and in constant repairing unto the worship of God, so that of later times he hath given my selfe good evidence, that the Lords call of him to the fellowship of Christ hath bene effectuall unto him, so that he hath the root of the matter in him; so that I hope that he will, by Gods grace be a profitable instrument in the church of Christ as God shall be pleased further to call him and choose him to beare his name. This I testify as well acquainted with his ways and willing to encourage such beginnings in the Lord.

CHARLES CHAUNCY.

CONVICTS FOR TRANSPORTATION.³

To all People to whom these presents shall come, Charles Brackenbury of Hull, in the Kingdom of Great Britain, merchant, (at present in Boston in New England) sendeth Greeting. Know ye That I the said Charles Brackenbury for and in Consideration of Four hundred and Twenty Pounds New England Currency of the old Tenor to me in hand Paid by Messrs Charles Apthorp and Thomas Hancock both of Boston aforesaid, Merchants (the receipt where of I do hereby Acknowledge) Have and by these presents Do Grant sell assign and make over unto said Apthorp and Hancock their Executors Administrators and assigns the several Persons hereafter named That is to say, John Fowler, John Jeffers, Andrew Crombey, Robert Mason, Thomas Balderson, James Williamson and Roger Ferguson, the said [James] Williamson and Roger Ferguson for Fourteen years each, and [Fowler] Jeffers, Crombey, Mason and Balderson for seven years [each *torn*] all my right and title in and to said several persons [their] times of Transportation, they being Per-

¹ From the Washburn Collection, o. o. 4. 5.

² Eliot, a son of the "Apostle," born January 29, 1646-47, graduated from Harvard College in 1665, and died October 16, 1687. He is said to have assisted his father as a preacher, but was never ordained or married.

³ From the collection of Charles P. Greenough.

sons severally Indicted and Convicted of Sundry Crimes, and were sentenced to death and some of them to Transportation. Since which his Majesty has been most graciously Pleased to Extend his Royal Mercy to those sentenced to death on Condition of Transportation to some of his Majestys Colonies and Plantations in America for the Terms aforesaid. Which Convicts and their times of Transportation were Lawfully assigned to me the said Charles Brackenbury by Mr. William Cookson of Hull in Great Britain Esq. Merchant, who was the Contractor with the Government for them.

Witness my hand and seal this eighteenth day of July Anno Dom 1747.

CHARLES BRACKENBURY. (Seal)

Sealed and delivered
in presence of us
THOS. TEMPLE
[*torn*]

Remarks were made during the meeting by Messrs. WENDELL, GRANT, and ADAMS.

MEMOIR

OF

EDWARD HENRY STROBEL.

By LINDSAY SWIFT.

EDWARD HENRY STROBEL was elected a Resident Member of this Society on January 9, 1902, in recognition, as the President, Mr. Adams, said, "of distinguished services rendered and results accomplished in the field of international law."¹ During his membership he made no communication to the Society. In the summer of the year of his election the position of General Adviser to his Siamese Majesty's Government was offered him, and from then until his departure for Bangkok, in the fall of 1903, his time was so fully occupied that his absence from the meetings of the Society was unavoidable.

Strobel was born in Charleston, South Carolina, on December 7, 1855, and died in Bangkok, Siam, on January 15, 1908. His parents were Maynard Davis and Caroline Lydia (Bullock) Strobel, and he and a younger sister, still living, were the only children. The father, who was of Flemish descent and who was cashier of the Farmers' and Exchange Bank of Charleston at the opening of the Civil War, had put all his money into Confederate bonds, and after the close of hostilities found himself without means and in no position to retrieve his fallen fortunes up to the time of his death in April, 1868. But he remained in Charleston, where his grandfather had come about 1750, while Mrs. Strobel and her children, after the burning of their house during the first year of the war, were obliged to

¹ 3 *Proceedings*, I. 319.



MHS

Edward H. Strakel.

leave the now beleaguered city and finally take refuge in Chester, South Carolina, where the family has since remained.

Entering Harvard in the autumn of 1873, Strobel found life there vivid and interesting, for he easily made friends and was not denied the pleasant social relations which make a college career doubly helpful. He was a member of the Everett Athenæum, the Signet Society, and the Phi Beta Kappa. He won a Lee prize for reading, a "detur," and a second Boylston prize for elocution. After taking second-year honors in the classics, he graduated in the Class of 1877 with honors in classics, and delivered the Latin Oration on Commencement Day, June 27, 1877. On the platform during that august but always overcrowded occasion sat President Hayes and also James Russell Lowell, who had just received the appointment of Minister to Spain. Strobel in the course of his oration referred to Lowell's approaching journey "per nebulas et undas," and the President smiled, let us hope without previous intimations, at the felicity of the bilingual play upon his own name. So, as it is pleasant to fancy, was begun Strobel's aptitude for diplomacy, for one can hardly suppose that the young Southerner's enthusiasm for the Chief Executive was at that time other than restrained.

He entered the Harvard Law School in the fall of 1877, but did not finish his course there until 1882. In 1880 and 1881 he visited Europe for the first time and at various periods tutored students with marked success.

In 1883 he was admitted to the New York Bar. After a short practice, however, he came to the conclusion that it was the part of wisdom in a man of his temperament to seek a career of achievement in broader if not richer fields, and to abandon the opportunity of making money for the reasonable hope of making a reputation. Whether or not the country lost an able lawyer by this decision, it is not safe to say. Diplomacy certainly was the gainer.

Coming to Cambridge and Boston in the summer and fall of 1884, after this renunciation of a chance to be obscurely prosperous, Strobel now set himself diligently at work to prepare a campaign document against the candidacy of Blaine, published anonymously under the title *Mr. Blaine and his Foreign Policy*. In this remarkable skit were none of the appeals familiar to the

American voter. It was cold, severe, ironical, but unfailingly courteous. I have never been able to compare it with any other partisan document, except to its advantage. In that campaign of 1884, waged so ruthlessly on both sides against the personal characters of the two candidates, Cleveland and Blaine, Strobel's pamphlet stood peculiarly alone. Financially it brought him but slim reward, but it showed in its keen analysis of Mr. Blaine's diplomatic career, an unmistakable capacity for dealing with large affairs. So at least President Cleveland seemed to think, for about a year later he commissioned the aspiring young publicist as Secretary of Legation at Madrid. "I was received very kindly here," he wrote me soon after his arrival in Spain, "by Mr. Foster, the Minister. He has sent in his resignation and leaves on September 1. I look anxiously at the newspapers in order to see whether there is anything about the appointment of a new Minister, for, as you know, on Foster's retirement, I shall be accredited to the Spanish Government as *Chargé d'Affaires ad interim*, and the salary for that period will be \$500 per month. So God grant that the interregnum may be a long one, notwithstanding the responsibility, which is more or less great. It is a satisfaction to know that even if a new minister is appointed, the cholera will probably frighten him away for some time."

His wishes were in a large measure gratified. Dr. Jabez Lamar Monroe Curry, the Minister named by President Cleveland for Spain, was away, largely by reason of ill-health, a considerable portion of his term, and Strobel ably filled the position of *Chargé*, thus gaining a much larger experience in the exercise of responsibility than he could possibly have had as a Secretary of Legation. During his five years' stay in Spain (1885-1890) Strobel acted as *Chargé* about one third of the time. Although he was assured by Secretary Bayard that he had accomplished more in a single year than his predecessors in twenty years, Minister Curry found the climate of Madrid so detrimental to his precarious health, that he was obliged, on August 6, 1888, to tender his resignation. During these three years a heavy burden of work and responsibility rested on the shoulders of the young Secretary of Legation.

Having no memoranda at my command, I dare not venture

my recollections of some of the eventful experiences through which Strobel passed while in Spain. There was one vivid story of his brave attempts to convince certain ardent and speculative Americans that they were entering on a futile task in attempting to raise some sunken treasure ship from depths into which it had probably never fallen. I wish that I could accurately recall his graphic account of a notorious adventurer calling himself the Duke of Arizona, who claimed vast domains in the far Southwest on the strength of old and veracious-looking Spanish deeds. The noble Duke was at last caught, while trying to insert forged *cédulas* of apparently great antiquity into the archives at Seville. Strobel was ever ready to assist any one in a serious endeavor, and I think that he was sorry to learn that the Duke of Arizona proved to be such a graceless scoundrel. Among other official experiences in Spain—the death of the King, the marriage of the Infanta Eulalia, the birth of the present king, the hatting of a cardinal—perhaps the most important to Strobel was his representing the United States at the funeral of King Alfonso XII.

In 1889 the Republican party came back into power, with Mr. Blaine as Secretary of State. Never a man of small revenges, the Secretary retained in office for a year his vigorous but polite assailant. Differences had arisen between the Moroccan government and the American Consulate, and to straighten them out Strobel had been sent to Tangier in February, 1888. The following year he travelled nearly two hundred miles into the interior on horseback in order to have audience with the Sultan of Fez. On this occasion Strobel, to whom something out of the common was always happening, found himself far from the possibility of friendly succor, at serious odds with his interpreter and with a little army—a mere handful of hirelings—that he had scraped together for the embassy. Things looked dark for American diplomacy in northern Africa at that moment, when there appeared a *deus ex machina*, a Jew who had formerly kept a tobacco shop in the Hotel Pelham in Boston, where Strobel used often to buy cigarettes. What American straightforwardness failed to accomplish was quickly set right by Hebraic persuasiveness, and the mimic army soon moved forward to its destination.

Strobel tendered his resignation as Secretary of Legation at

Madrid on June 17, 1889, but it was not accepted by Mr. Blaine until February 13, 1890. In June of 1891 he wrote me from Pau, Basses Pyrénées:

Since my leaving the Legation, I have led a life of quiet and virtuous tranquillity. I was about to return to America last autumn when I received a very advantageous offer to spend the winter at this place with a youth who was not going to college, but whose family wished him to have as much of a dab at the humanities as I could give him in a short time. If Mr. Cleveland should be the next President, I should like to go back into the Diplomatic service, if I am offered a good appointment; if not, I think that I shall go out and settle in Butler's town (Superior, Wisconsin), where I have a few hundreds invested that appear to have increased in value.

On April 13, 1893, President Cleveland commissioned Strobel Third Assistant Secretary of State. The appointment was not unwelcome, but Strobel had strong hopes that it was only a stepping stone to something higher, and such proved to be the case, for in April, 1894, he became our Envoy Extraordinary and Minister Plenipotentiary to Ecuador; his retirement from the Department of State occurred on the sixteenth of that month.

On the eve of his departure for Quito he wrote me, on May 29, 1894: "I have a long and hard but interesting journey before me, fourteen days over the Andes from the coast. You are quite wrong about its being hot — the cold is rather to be dreaded. . . . I shall write you soon after my arrival and tell you something of the country. There is not much to be done in Ecuador and I am taking out a box of solid works for the purpose of mental improvement." This journey of one hundred and sixty miles from Guayaquil had to be taken on muleback to reach finally an altitude of 9000 feet at Quito.

At last the real career of Strobel was fairly begun, but the Quito post by no means represented the goal of his aspirations, and the tenure of it was not long, for in December of the same year (1894) he was tendered the appointment of Minister to Chile. The experience at Quito, however, was valuable, and a good preparation for the larger field in Chile. Mr. Cleveland must by this time have fully recognized the peculiar fitness that Strobel had for certain kinds of negotiations, re-

quiring an infinite good nature and tact, together with an unmistakable firmness of character. At the time of his appointment to Chile there was little love lost between that country and the United States. After the overthrow by the Junta of the formerly successful and enlightened Balmaceda, and his suicide in December, 1891, the leaders of the revolution cherished most hostile sentiments against the United States, believing that Strobel's predecessor, Patrick Egan, was misrepresenting them in his own country. In this acute state of affairs occurred the incident of the landing of the two boatloads of sailors from the U.S.S. *Baltimore*, and of the brawl on shore ending with serious and even fatal results. Redress was demanded and refused. Thereupon the *Yorktown* and the *Boston* appeared off Valparaiso. President Montt, who had succeeded Balmaceda, immediately assumed a more courteous tone, apologies were made, and indemnities paid for the men who were killed in the affray. Mr. Egan was severely criticized at home as well as in Chile, but his course was defended by President Harrison. Taking all things into account — especially the recent ill-feeling between the two countries and the sentiment against Mr. Egan — it does not appear that the new Envoy-Plenipotentiary had been dropped on a flowery bed of ease by way of diplomatic promotion. It is gratifying to recall, however, that Strobel found it possible to say many agreeable and commendatory things of Mr. Egan's conduct in Chile.

After a busy and successful experience he resigned the Chilean appointment in February, 1897, and actually retired from office in August of the same year, but not before he had performed one of the most significant acts of his career. "By a convention," I quote here from the Sixth Report of the Secretary of the Class of 1877 of Harvard College, "signed July 2, 1897, between France and Chile, Strobel was appointed arbitrator in the claim by the French citizen Charles Fréraud against the Government of Chile." Each side, so I have been informed, was to name an arbitrator, and these two men were to choose a third — three arbiters in all. It was found, however, that both parties to the negotiation had named Strobel, who was thus constituted the sole arbiter. A compromise of some sort was arrived at in this Fréraud claim, but the French govern-

ment, impressed by Strobel's ability and fairmindedness, made him an Officer of the Legion of Honor. His experience in Northern Africa and this Fréaut matter serve to show his peculiar capacity for settling a difficulty entirely on his own undivided responsibility. In 1898 he published a book on the *Spanish Revolution, 1868-1875*, on which he had been engaged for seven years.

Now twenty-one years out of college and as yet unrecognized by her, Strobel was at last to know that his Alma Mater had not forgotten him. The Bemis Professorship of International Law in Harvard University, according to the terms of the bequest, was to be held only by some one qualified, through actual diplomatic service, to teach his subject in a spirit freed by residence abroad from ordinary national or sectional prejudices. Strobel seemed to meet the requirements of the bequest, and this chair was accordingly offered him in June, 1898. Were the political structure of this country other than it always has been and still continues to be, it would have been deemed a most rash thing for a man like Strobel, still in the prime of life, to renounce a career for which he had a strong liking and in which he had already shown marked ability, in order to settle down into routine work even in so honorable a position as a professorship in Harvard University. The distinction of the offer of this chair at Harvard and the knowledge of the useful work he might be able to do appealed favorably to his judgment, and he therefore accepted the position, without allowing the temporary abandonment of a cherished calling to interfere with the sincerity of his decision and his satisfaction in being offered the position. Not only did he give in the Law School a half-course in "Admiralty" and a full course in "International Law as administered by the Courts," but in the College itself, a full course for advanced students on "International Law." His courses were popular, and his manner, naturally simple and bearing the stamp of unaffected directness characteristic of modern diplomacy of the higher sort, appealed favorably to the students, who liked and respected him. I am safe in saying that Strobel enjoyed his work at Cambridge, although he was hampered by uncertain conditions of health. Having seen a good deal of what is called high society, I think it possible that the social requirements of a University town

may have worn a little upon his spirits. Once he mildly said to me that in "some respects Cambridge after dark does not greatly resemble the night life of Madrid."

On July 25, 1902, he gave me a hint of the great change that was to take place in his career when he wrote: "You will greatly add to my obligations if you will send to me one or more books giving the fullest and most trustworthy information about Siam. I want to find out about the climate, resources, government, etc. My mind is at present a blank on the subject, and a matter has come up which necessitates my securing some information about the country." Shortly after he told me that he had been approached through the Siamese Minister, then summering on the North Shore, in regard to the possibility of his entering the service of his Majesty's Government at Bangkok, in the capacity of General Adviser. A Belgian, Gustave Rolin-Jaequemyns, had recently died, after filling this difficult post with distinction. The King, wishing to take no step which might irritate either France or England, each closely watchful of the movements of the other in regard to that debatable ground, turned for suggestions and advice to the United States, then beginning to cut a larger figure in the world politics after the Spanish-American war and the possession of the Philippines. The only answer that Strobel could make to the tentative offer, reaching him through the powerful endorsement of John Hay, was to say with entire frankness that he had assumed serious responsibilities in regard to an Arizona mine, and that he could not honorably leave the country until this matter was settled in some fashion. So the affair drifted for a time. In August he wrote me that he fancied the Siamese were looking about for other possibilities. That Siam was determined to secure him was evident, for in September he was in Paris on the "King's business." "I shall be detained here until the last of next month," he writes me on September 22. "The people who wanted me to come here have some very important matters pending in which they have asked my assistance. I could not very well refuse. I shall use this as a reason for extending the date of my departure from the United States. That matter by the way has been thoroughly settled except that the engagement is for only two years instead of three. I am quite sure that I shall have had enough of it by that time.

. . . It is advisable that my appointment should not be published yet."

Writing on October 7, from the Légation de Siam, he says, "The Convention between Siam and France was signed this morning. This ends the most important business here. I hope therefore to be able to leave soon, although there is another matter pending which may detain me some time longer. It has been very interesting and important work. I have been under considerable strain and have been kept up late at night, so that I am really very tired." Just a week later he writes from London: "You may have seen by the papers that the negotiations in Paris were concluded by the signature of a Convention of the 7th instant. This Convention, in return for some sacrifices of territory on our part, settled favorably certain questions growing out of the events of 1893, which had since that time caused a peculiar strain in the relations between the two countries."

The news of Strobel's appointment was a well-kept secret, for not until March, 1903, was the fact made public. The usual comments as to the entrance of this country into far-Oriental diplomacy were freely made, and national pride, co-extensive with a vast ignorance as to the true significance of such an appointment, gave the press a fine opportunity for rhetorical display. He was given a leave of absence from the Law School for two years, and the chair he held was left vacant with the expectation that he might soon fill it again. He did not resign this position until the autumn of 1906, after he had agreed to remain in Siam for six more years on his return from his visit home. It is interesting to recall here that although President Eliot regretted to lose so valuable a man to Harvard University, he advised Strobel to accept the Siamese offer for "national reasons."

We cannot follow in detail his fruitful service in Siam. However interesting in international history and to Strobel, the full relation belongs elsewhere.

About a month before his departure for a visit to the United States Strobel received from the King a signal mark of royal favor, by the bestowal on him of the Grand Cross of the Order of the White Elephant. It was a resplendent ornament, and Strobel thought most highly of it. The *Siam Observer's* leading

editorial of November 17, 1905, explains the occasion of this tribute as follows:

Mr. Strobel is to be greatly congratulated on the distinguished honor which His Majesty has conferred upon him; and Americans are entitled to feel some special pride in the occasion. It is the highest honor which His Majesty could bestow, and it is memorable as a mark of Royal appreciation of signal services rendered by the General Adviser since his appointment. The first of these services was that of assisting in the final adjustment and conclusion of the Franco-Siamese Convention which has amongst other effects secured to Siam a welcome period of freedom from international worries — a period turned to good account in works of domestic legislation. We need only briefly recall such recent measures as those for the abolition of licensed gambling, the Law of Navigation in Siamese Waters, the Hackney Carriage Act, and other more or less important reforms; and the minor treaties dealing with matters of jurisdiction concluded with Denmark and Italy. In many directions Mr. Strobel has unquestionably worked hard and to good purpose, and has rendered to His Majesty's Government an amount of assistance of which His Majesty has now given the highest possible token of appreciation. It will be a matter of legitimate pride to Americans that their country has furnished to Siam a diplomatist and statesman whose ripe experience has been of such great service to this State.

There now comes a dark period in my friend's career — a period of which I have been able to gather but few details. Assuming that he left Bangkok as he had planned on December 21, Strobel was ardently expected to be present at a dinner of his Harvard classmates in Boston in February or March, 1906. The Secretary of the class, Mr. John F. Tyler, however, received no word in answer to a cable sent by him to Strobel in January. The first news from our mysteriously silent friend seems to have been a cable sent to his mother, dated February 1, 1906, as follows: "The doctor assures me that I am absolutely out of danger." He had probably sent or thought that he had sent an earlier message or else took it for granted that some notice of his illness would be seen in the papers.

It seems that he arrived in Cairo on January 10, 1906, and the following morning saw the pilgrims starting for Mecca. That afternoon a slight irritation was felt on his upper lip. The next day the lip was swollen and he had a slight chill. The

swelling soon extended over the whole face, and within the next week definite blood-poisoning set in, and three operations were performed on his face, with seemingly good results. But very soon practically all parts of his body were assailed with virulence, and his sufferings were intense. He remained in Dr. Milton's hospital for about ten weeks, and before he left Cairo the disease had attacked his back. He reached Boston much changed by feebleness and long confinement, but his mind was still alert and his eyes bright with courage and determination. In Boston he felt in his own home, for it was here that he often expressed a wish to settle down when his active days were over.

With considerable difficulty, and flanked by a small cohort of faithful classmates, he was driven to Cambridge on Commencement Day to receive the degree of Doctor of Laws. When he arose, as President Eliot named him for this honor, he appeared so wan and shrunken that those who had known him in health were shocked to see him. It was this occasion, deeply appreciated by him, who had already received many worldly honors, that really brought him to Boston and Cambridge. After the services at Sanders Theatre his indomitable will enabled him to get to his classroom, two flights up in Holworthy Hall. Many of his classmates, and especially the physicians among them, realized that they were probably greeting him for the last time.

He left New York on January 2, 1907, and arrived in Siam about the first of March, to find himself plunged at once into most exacting and important matters, ending with the conclusion of an important treaty with France, which may be regarded as the crowning event of Strobel's career; in his own words he was "entirely responsible for the treaty and [I] think it finally closes all questions with France."

While the news in regard to his improving health continued to be hopeful, the news came by cable from Mr. Westengard that he had died at 6.35 in the afternoon of January 15, 1908. The direct cause was uremic poisoning, and Strobel was fully aware of the seriousness of his case, retaining as he did full consciousness until very shortly before his death. The physician who was closest to him at this time, grandson of the

eminent Mrs. Leonowens, was willing to tell me that Strobel watched the progress of his illness with a cool, impersonal interest, though it is improbable that he realized the full significance of his condition. From another it was learned that he expressed regret that he must lay down his work when there was still so much to be done for Siam. But I have no disposition to enter fully into the privacy of a friend's last hours. It is enough to say that he was deeply mourned by all who ever knew him, and by none more sincerely than the Siamese, from the King down to the humblest person who ever came in contact with him. His remains were cremated in the presence of the King, February 5, 1909.

I select a few personal tributes, which show the man rather than his public character. First I choose a portion of the words written by one who loved him well, as only a teacher can love a cherished pupil. They were written for the *Boston Daily Transcript* by our late associate, Dr. William Everett. The affection here displayed was generously returned to his loved master, who not so much taught Strobel his Latin at Harvard as studied that language with him in enthusiastic comradeship:

This notice is not meant to describe his work as a diplomat and a publicist. It was not for those that his friends loved him. A profound thoroughness in all his work, not that of the plodder but of the scholar, of the highest type of scholarship; an intellect so quick and open that he never needed to have anything explained twice and scarcely once; an imperturbable good nature under many provocations; a lively sense of humor that added a charming zest to all intercourse; gratitude, effusive, yet dignified, for the slightest kindness, all founded on an unshaken probity and sense of duty — it was for these we loved Edward Strobel. It is much, very much, that a son of America and Harvard should have won his way to be the confidential adviser of a Government separated from us by half the globe. It is no less that he left in our hearts a sweet glow of loving memory that exile could not dim, nor death extinguish.

Another member of this Society, objecting to that process of our national political life by which we continue, in our diplomacy, to get rid of a man as soon as he has proved his efficiency abroad, says: "It was a career that was in good part wasted, for he never obtained his due, and the diplomatic ex-

perience turned him out of the current in which men like — obtained more than their due.”

The late Edward Everett Hale, in writing to one of our associates at the time of Strobel's death, quotes some words of an American gentleman who has identified himself with the advance of Siam, and I venture to give here in part what was written:

I think it would be fair to say that never in the history of this country [Siam] has there been such universal sorrow at the death of a European. No man has made such lasting impression in Bangkok in such a short time. He was in Siam only four or five years at most, and no man has, to such an extent, won the regard and esteem of all classes — the King, the officials of the Siamese Government, the diplomatic corps, and the European business men. In his life and death, the King showed him most unusual honors, visiting him in person when he was ill, and conferring upon him the highest decorations ever bestowed upon a European in the service of the Siamese Government, and finally attending his funeral with his whole court. The King was, in very truth, the chief mourner. It grieved him sore to part with the man whom he loved with so much confidence.

It makes us thrill with patriotic pride to think that the foreigner of all others whom His Majesty delighted to honor was an American, and, more than this, that all classes and factions declared that he was worthy of these honors.

Mr. Strobel came to Siam to *serve* this country, not for the sake of what he could make out of the country. And this is true of nearly every American who has come here these last hundred years. Almost without exception they have come for *service* and not for *gain*. I may add that the Siamese Government has not been slow in noting this. I think it would be fair to say that America has done more for the progress of this nation than all the rest of the world put together.

Another side of his life is shown in the words of a devout Catholic, who, writing from the Via Sistina in Rome, says:

I shall be proud to remember him before the high altar in the Pantheon. What more fitting place to pray for the soul that was so pagan in its outward form and beliefs, but so profoundly Christian in its true life and expressions!

It seems wholly proper to say here that Strobel, though remaining outside of that communion, cherished a deep respect

for the authority and universal spirit of the Roman Catholic Church, and that he chafed at all intolerant remarks made against it. He felt too intensely, however, the littleness of man, in comparison with the incomprehensible vastness of the universe, to subscribe to any form of belief which undertook to solve the meaning and destiny of human existence. The few to whom he ever spoke of such matters will recall the deep humility with which he dwelt on the utter insignificance, as it seemed to him, of the dwellers on this small planet.

I add one more opinion to show him as he appeared to one — a woman — who knew him at his desk, his daily toil. “No words,” she says, “can fully describe the charm of his talk, nor say why his low laugh was so good to hear, nor explain why even a commonplace experience, shared with him, became memorable and delightful.”

Shortly after Strobel's death his classmates raised a sum amounting in all to more than \$3000 to provide for some memorial in his honor; \$2500, raised at a dinner of the class in New York a month after he died, was given to and accepted by the President and Fellows of Harvard College for the establishment of a fund for the use of the College Library and to be called the Edward Henry Strobel Fund. The income is to be used for the purchase of works relating to world politics and such kindred topics as the expansion of territory, colonization, settlement of differences between nations, and other cognate subjects, but not necessarily works on international law. Works on the Far Eastern problems and especially in Siam, where Strobel achieved his highest distinction, receive, according to the terms of the gift, the first consideration. A book-plate for volumes purchased from the fund, designed after the 1877 gate forming part of the enclosure of the College yard, was also provided out of this fund.

The provisions of the gift were drawn carefully in order that they might not conflict with another gift, presented to the College through the Hon. Jens I. Westengard, Strobel's successor as General Adviser to His Siamese Majesty's Government. This gift, amounting to about \$2000, was raised by subscription in Siam, and the income is to be devoted to the purchase of recent books on Siam. This memorial enables the

Harvard Library to perpetuate the intention expressed to the Library authorities by Strobel to see that the cost of all books relating to Siam purchased by the Library should be met by him personally. A commemorative tablet, contributed also by his college class, has been placed over the entrance of the Library reading room of Langdell Hall in the Law School of Harvard University.

It remains only to say somewhat of his personal life and characteristics. He was of moderate height, but superbly well built — full-chested, with his head finely placed upon his neck. His complexion was rather swarthy; his eyes brown and full of expression and with a pensiveness characteristic of many Southerners. A firm chin curved in rather sharply to his firm, admirably cut lips, a straight and not large nose, and dark eyes, gave him an appearance resembling in the opinion of some of his friends that of Napoleon in earlier life.

He was not a man of enthusiasms: his intellect was cold and penetrating, not easily to be diverted from the point at issue. He had, however, high conceptions of friendship and a great loyalty to any one who had ever served or even known him. Friendship was to him a most solemn obligation that he never waived. Such fidelity always finds many only too ready to avail themselves of it. He preferred to be duped rather than to turn away any one who could ever have claimed acquaintance with him. But in the larger affairs of life he was neither to be deceived nor persuaded into any action contrary to what he believed to be right. He was modest and unassuming, but also astute. Without cynicism he was somewhat distrustful of the motives which control the majority of mankind. This distrust drove him back upon his chosen friends, in whom he always seemed to place a serene confidence. He believed that they were as loyal to him as he certainly was to them, nor was he often deceived in his trust.

Very early in life he had learned the invaluable art of discarding non-essentials. He would do nothing that he could hire some one else to do better. It was his exceeding good fortune to draw about him an indescribable loyalty. Men of his own type and degree would perform for him services that they would regard as menial were they expected by any one

but Strobel. One who had waited on his numerous wants during a troublesome illness complained that he had been made a slave of. "That is nothing," said another friend; "I have been his slave ever since I first knew him many years ago." But such humble offices were most cheerfully rendered, because there was always the certainty that Strobel held himself ready and always found occasion to make large return, though not of just the same kind.

A contributing cause to his success in the higher ranges of human endeavor was his freedom not only from sectional but from national prejudices. Had he been born some years earlier, he would undoubtedly have played his honorable part in the Confederacy, and, all ambitions and hopes destroyed by the issue of events, he would in all probability have expatriated himself after the manner, for instance, of the late Judah P. Benjamin. As it happened, he was born late enough to realize, without the sense of personal defeat, the full significance of a conflict the settlement of which by force of arms the South had herself sought. He was born a Southerner and remained loyal to the traditions of his birthplace, but the way was easily opened to become national. He was, it was said at the time he entered collége, the first South Carolinian to enter Harvard after the war, and he found everything there to shape his mind in other than a sectional mould.

All this being so, it is the greater pity that the country of which he was a most loyal citizen could not have found continuous occupation for his remarkable ability in the field he was best fitted to occupy. He too was expatriated by a political method still too crude to retain the uninterrupted services of the ablest men as representatives abroad. Nor can it be fairly said that our loss was his gain, for his training all pointed toward higher achievements in diplomacy abroad in the interests of the United States.

He had elements of greatness — courage, persistence, the power of elimination of non-essentials, a ready grasp on the illuminating point. He was truthful, honest, simple. He commanded fidelity and confidence in his own ability. If he was somewhat lacking in the true radical's idealism and imaginative power, his character was buttressed by conservative upbringing and sound conclusions from ascertained fact. He

did not pretend to read the future by the stars, but found full employment in disentangling and rehabilitating some of the pressing questions of the day. His work in Siam fully shows that he was not without the instinct as well as the power of what we call greatness.