

NYPL RESEARCH LIBRARIES



3 3433 08238891 3

# Recollections of a Long Life

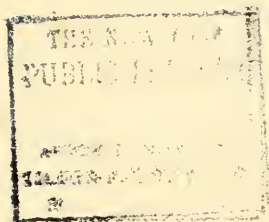
Edgar J. Sherman

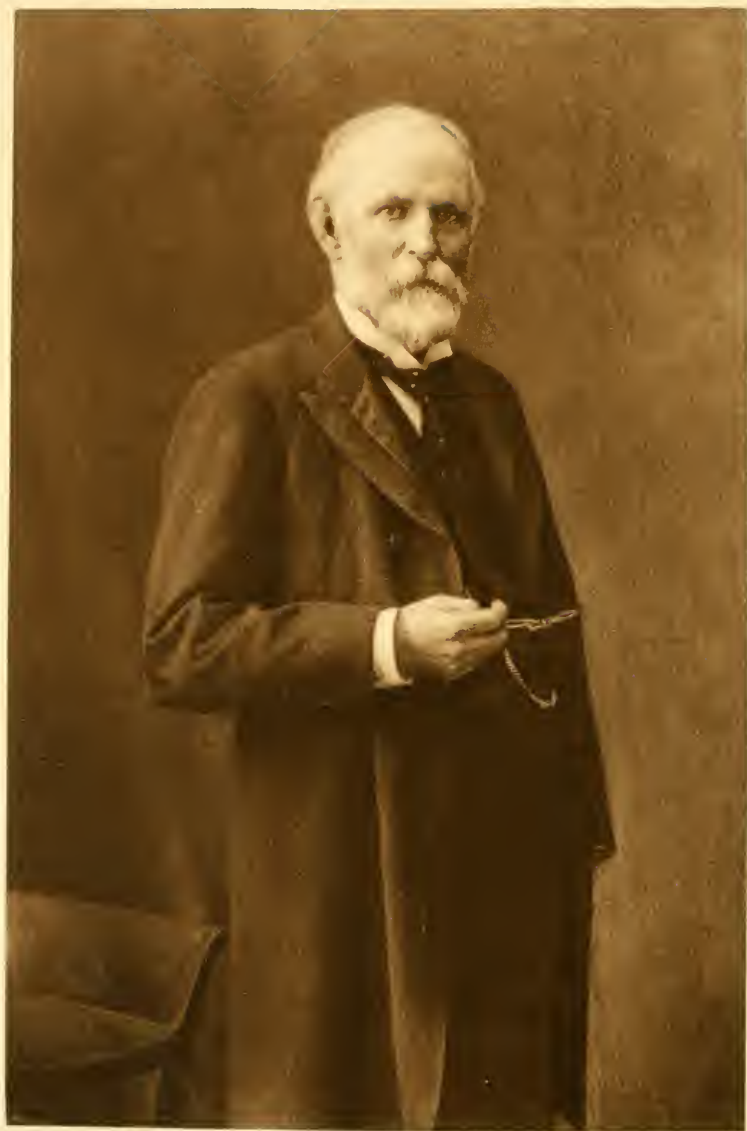
Digitized by the Internet Archive  
in 2008 with funding from  
Microsoft Corporation











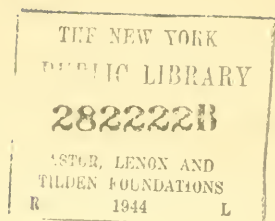
Edgar J. Sherman.

# Some Recollections of a Long Life

Edgar Jay Sherman

Boston  
Privately Printed  
1908

EV



Printed by  
Newcomb & Gauss  
Salem, Mass.

Copyrighted 1908

## PREFACE.

---

Thinking it might be interesting to my children, my grandchildren, or my great grandchildren, in some future generation to learn something concerning their ancestors "who have passed over to the great majority", and at the earnest request of my children, I am prompted to write and publish for private use, the following pages. I do this with some misgivings, however, as I recall the saying, "Oh, \*\*\* that mine adversary had written a book!" and I also know that any one writing of himself is liable to exhibit a good deal of egotism.

I subscribe myself their humble ancestor,

EDGAR J. SHERMAN.

## LIST OF ILLUSTRATIONS.

---

PORTRAIT, . . . . .	<i>Frontispiece</i>
BIRTHPLACE, Weathersfield, Vermont, . . . .	p. 9
CAPT. SHERMAN, August, '63, after a severe illness, p.	39
COL. E. J. SHERMAN, Asst. Adj. Gen. Mass. Militia, p.	72
GEN. BENJAMIN F. BUTLER, and staff, 1867, . .	p. 73
SUMMER HOME at Bass Rocks; 1877-1903, . .	p. 169
SUMMER HOME at Bass Rocks; 1877-1903, . .	p. 185
JUDGE SHERMAN'S PRESENT SUMMER HOME, .	p. 217
MRS. EDGAR J. SHERMAN, the Judge's first wife, p.	241
ASCUNEY MOUNTAIN, . . . . .	p. 265

## TABLE OF CONTENTS.

---

### CHAPTER I. *Ancestry and Youth.*

Birth and forefathers. School days. Working on the farm. Teaching at Springfield, Vermont; at Cape Cod. Experience with Sidney Ellis. A prayer in school.

### CHAPTER II. *My Start in Life.*

Assaulted by mistake. Disappointment as regards entering college. Admitted to the Essex Bar. My first case. Partnership with Honorable Daniel Saunders, of Lawrence. My mother's death; her character. Marriage. As Clerk of the Police Court. Fall of the Pemberton Mills. O. S. Fowler examines my head.

### CHAPTER III. *In the Civil War.*

I enlist as private, elected Captain in the 48th Massachusetts V. M. Departure. A burial at sea. Letter to a bereaved mother. Arrival in Louisiana. I leave hospital for Port Hudson. Assault of June 14th, 1863. Repulse and retreat. Brevetted major. Home by the Mississippi. Later service at Washington and Fort Delaware.

CHAPTER IV. *Representative and District Attorney.*

Elected as Representative. I help B. F. Butler to a Major-Generalecy. Cases at the bar. Partnership with John K. Tarbox. Ann Robbins vs. Joseph Potter. Successful practice. Elected District Attorney for Essex. Case of Leonard Choate, the "fire-bug", of Wightman. Experience with Stephen B. Ives, Jr. A culprit tangled up in cross-examination.

CHAPTER V. *Register in Bankruptcy, Assistant Adjutant General and Attorney General.*

An attempt to steal frustrated. Experience with Judge Otis P. Lord. Death of my oldest brother. Made Assistant Adjutant General. Concord muster of 1870. My election as Attorney General. Sudden illness and complete recovery.

CHAPTER VI. *Attorney Generalship,—continued.*

Case of Dr. Franklin Pierce. Lord Coleridge approves my opinion. His lordship shown T Wharf. Friendliness of B. F. Butler. Argument in the case of James Nicholson.

CHAPTER VII. *Attorney Generalship,—continued.*

I oppose B. F. Butler in the case of Henry K. Goodwin.

CHAPTER VIII. *Attorney Generalship,—continued.*

Case of Alfred T. Adams, of Marion A. Montgomery, of Samuel F. Besse, of James E. Nowlin, of Sarah J. Robinson, of Charles H. Freeman, of the Housatonic R. R. Co.



---

## CHAPTER IX. *As Judge of the Superior Court.*

My intimacy with Governor Oliver Ames. I decline a seat on the Supreme Bench, but accept a justiceship of the Superior Court. Death of Governor Ames. A bright criminal. Sentence of John C. Sanborn, a high official of the New York, New Haven, and Hartford R. R. Co. Case of McCarthy. A boy witness. Experience with Thomas Riley. Tribute to Charles P. Thompson. Extract from the Boston Globe.

## CHAPTER X. *Continued Judicial Service.*

Case of Daniel W. Getchell, of Torrey E. Wardner for contempt of court. Unpleasant experiences. Case of Jefferson. Petition for my removal. Misuse of the right of petition.

## CHAPTER XI. *Continued Judicial Service.*

Capital Trials. Case of Trefethen, of Languer, Correspondence with Attorney General A. E. Pillsbury. Case of Patrick Sullivan, etc.

## CHAPTER XII. *Continued Judicial Service.*

Case of Franciszek Umilian, of John C. Best, of Lorenzo W. Barnes, of Alfred C. Williams, of Charles L. Tucker.

### CHAPTER XIII. *Excursions and Meetings with Famous Men.*

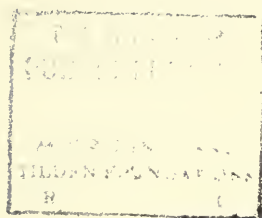
President of the Boston Vermont Association. Excursion to Vermont in 1901. Entertained at Montpelier, Burlington, Lake Champlain, etc. Illness and death of Mrs. Sherman. The Lawrence semi-centennial. Visit to Texas, to South Carolina. I meet Abraham Lincoln, U. S. Grant, Franklin Pierce, James Buchanan, W. T. Sherman, P. H. Sheridan, D. G. Farragut, the Prince of Wales, now Edward VII., Longfellow, Whittier, Holmes, Lemuel Shaw, Charles Sumner, Henry Wilson, Frederick Douglass, George S. Boutwell, Rockwood Hoar, Wendell Phillips, S. G. Howe, N. P. Banks, Theodore Roosevelt, James G. Blaine, Ben Wade. My intimacy with Robert G. Ingersoll. Second Marriage. A few stories from the Judges' Lobby.

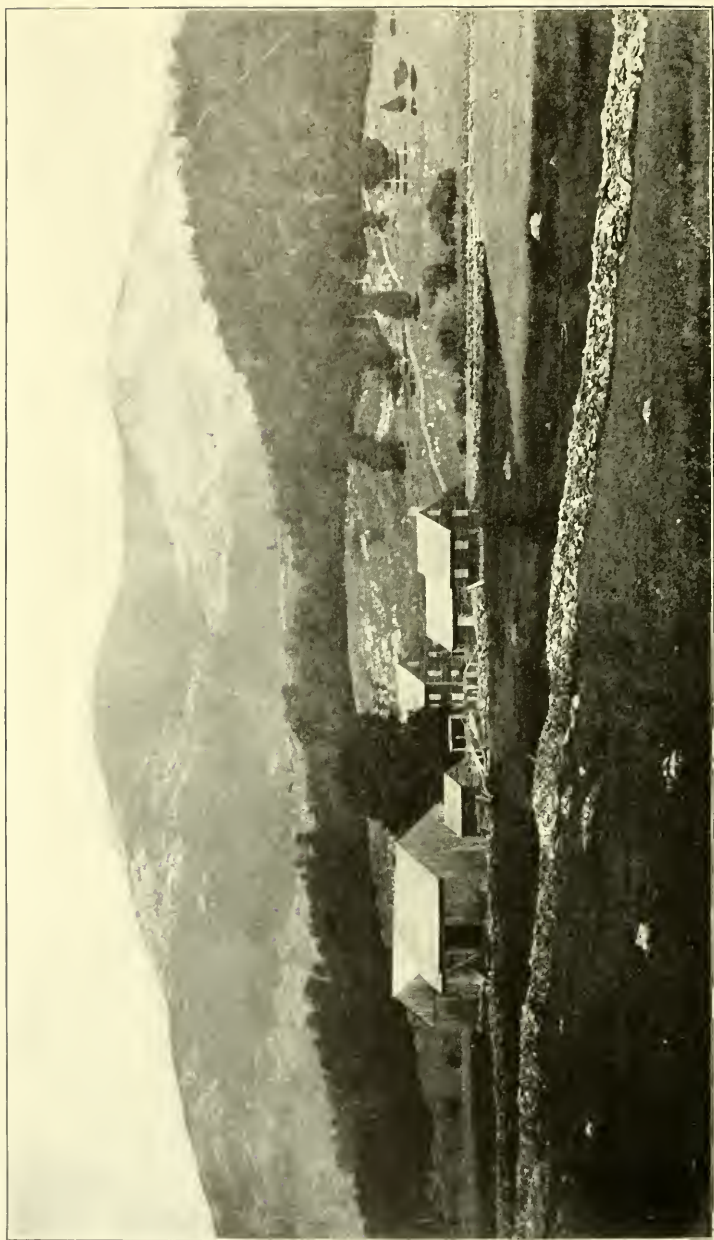
### CHAPTER XIV. *The Jubilee Banquet, March 17, 1908.*

First suggested by Messrs. Hurlburt and Jones. The Boston Herald thereon. Officers of the Essex Bar Association and guests. Speeches and letters of William H. Niles, William H. Moody, Herbert Parker, Marcus P. Knowlton, William L. Putnam, John A. Aiken, John D. Long, Dana Malone, John P. Sweeney, Daniel Saunders, Harvey N. Shepard, Samuel J. Elder, George Fred Williams, Sherman L. Whipple, Charles U. Bell and Edgar J. Sherman.

### APPENDIX.

List of Children and Grandchildren.





Birthplace of Judge Sherman at Weathersfield, Vt.

## CHAPTER I.

---

### ANCESTRY AND YOUTH.

---

#### GENEALOGICAL.

I was born in Weathersfield, Windsor County, Vermont, November 28, 1834, being the fourth child of David and Fanny (Kendall) Sherman, on the same farm owned by my father, grandfather and great grandfather.

I have always had a desire to know something of my ancestors; who they were, and where they came from to this country; but until about 1870, when I read an article written by the Rev. David Sherman in the New England Genealogical Register of January of that year, I knew nothing about them further back than my grandfather.

The first of the family of whom I have knowledge was Henry Sherman of Dedham, Essex County, England, who died in 1589. Tracing the family since, it runs; Henry (1), Henry (2), Edward (3), and Rev. John (4), who came to this country in 1633. He remained a short time at Watertown, Massachusetts, from whence he moved, in 1640, to Wethersfield, Connecticut, where he became a magistrate. Captain Daniel (5), Samuel (6), Samuel (7), David (8), David (9), and Edgar (10), myself.

The Samuel Sherman (7) last above named was my great grandfather. He was born April 8, 1740, and died June 22, 1811, at Weathersfield, Vermont. He moved

from Wethersfield, Connecticut, to Weathersfield, Vermont, between 1760 and 1780, perhaps giving the new settlement the name of the town from which he came, although it is spelled differently.

At or before his death, the farm of several hundred acres was divided between his four sons, Samuel, David, Gould and Alpheus.

The above named David was my grandfather. He was born January 24, 1772 and died December 22, 1844. I remember him very well. He was a Calvinist Baptist, very strict and devout. My father purchased the farm of grandfather and took care of him and grandmother as long as they lived.

"The Sherman Family", which is numerically strong, has included Roger Sherman, General William T. Sherman and John Sherman, among its noted members.

Little can be said of my early life different from that of most country boys, except that I was more mischievous and troublesome than the average boy.

My playmates were generally considered "the bad boys" of the neighborhood, and, I am inclined to believe, that it was not the best recommendation a boy could have to be an associate of mine. Still I do not recall any very bad things we ever did.

I remember, to my sorrow, and great disadvantage to this day, that I was so full of mischief, I neglected my studies in school and spent my time in provoking fun and sport for the scholars. When called to account by the teacher I would look like injured innocence that I should be even suspected! Often I succeeded, after a long argument, to the delight of the children, convincing the teacher of my innocence.

I remember one winter, after the teacher's patience had been tried by the scholars coming in late at the noon

recess, he declared he would punish any and every scholar who should thereafter be late.

The next noon another boy and I suggested to the girls and boys that we all go sliding and skating; that we would watch for the teacher's return and notify them in season so that they would not be punished for being late.

The afternoon session began at one o'clock. At that time there were only a few scholars in attendance.

About half-past one, we (the other boy and I) mounted a high wall back of the school house, and there screamed at the top of our voices, "School has begun. Come quick, run! hurry, hurry," and then ran into the school house, taking our seats, looking anxious and innocent. Soon, in came the other scholars, one after another, all out of breath, and coughing, and keeping the school in an uproar for some time.

After a while the teacher, ferule in hand, came in front of my desk and told me to hold out my hand. Such a look of surprise came over my face as almost to deter him. Then an argument began between teacher and pupil on the merits of punishment, after the scholars had taken such pains to prevent disobeying the rule,—placing two boys to watch for the teacher's coming to school at the end of the noon recess, and as to how it could have happened that the said two boys did not observe the teacher, etc., etc. At last the teacher relented and laid aside his ferule. Imagine the discipline of the school after that date! If the teacher had taken the "said two boys" well in hand at that time it would have been for the benefit of the school and to the great advantage of the said boys.



## EXPERIENCE ON THE FARM.

Almost every year my father used to make a trip to Boston. This was before the day of railroads in Vermont.

He would kill the poultry, butcher his hogs, and load his team with farm produce and drive to Boston. There he would make the exchange for flour, sugar, coffee, etc., articles that were needed on the farm, and drive home, the trip lasting nearly a week.

My father used also to team flour across the State from Whitehall to Weathersfield. I remember going with him in 1843, when I was a small boy, and driving one of the four-horse teams along behind my father's team.

I remember the date particularly, because it was during the Miller excitement. Miller had prophesied that the "world was to burn up", and the date was fixed. Father pointed out to me the house where Miller lived. I remember asking father, if it was true. He replied, no, that most of the people did not believe in Miller, although he had a great many followers, who did believe in him, and did believe that the world was to come to an end by burning.

When the day arrived, sometime in October (I think) 1843, a new date had to be stated. "The Millerites", as they were called, were greatly disappointed.

## EXPERIENCES AS A PEDAGOGUE.

In the winter of 1848-9, being quite large for a boy of my age and feeling ashamed of my ignorance, I began to study and improve my time.

In the autumn of 1851, encouraged by my good mother, I attended for three months the Wesleyan Seminary at Springfield, Vermont, going to the district school in the



winter, returning to the Seminary for the spring term, and laboring on the farm during the summer. Thus I continued for several years.

Encouraged by F. O. Blair, the principal of the Seminary, I engaged to teach school (in fact he engaged the school for me) in the winter of 1852-3 in the town of Springfield, at a district called "Hard Scrabble".

I was examined, granted a certificate and commenced teaching. I taught a twelve weeks term in six weeks!

A son and daughter of a wealthy and influential family in the district had attended school at the Seminary with me, and, as I learned afterwards, were opposed to my teaching their school. They attended school, conducted themselves with propriety, but kept up a "lively talk" outside. An honest farmer, who was the inefficient committee man, waited upon me and asked "How be ye gettin' on?" I replied that I thought "well". "You're not gettin' on at all well", said the committee man. "How do you know? You have never honored us with your company!" said I. "Oh, I have heard the talk", said he.

He paid me what was due and I was obliged to leave.

I was terribly mortified. I had undertaken to teach school and had failed!

I went home and explained the matter to my father and mother. My father was evidently discouraged, and said "Well, now I guess you'd better go to work and remain on the farm"!

My mother, with more faith and better judgment, said "I understand it all; it was not your fault. You can teach. Go back to the Seminary, and next winter try it again. I know that you will succeed".

I would that everybody could know the different effect the language of my father and mother had upon me. My whole future course was at stake. I was almost dis-

couraged. It was a critical time in my life. I went back to the Seminary and continued my studies. I do not blame my father. He lacked the courage and confidence of my mother.

My room mate at the Seminary was George O. Atkinson, since a clergyman in the West. He told me that there were good opportunities for teachers on Cape Cod, Massachusetts.

In the spring of 1853 my father sold his farm in Weathersfield and moved to Lawrence, Massachusetts.

I was determined to teach again.

The last of November of that year I went to Lawrence, visited my family, and then started for Harwich, Barnstable County, Cape Cod, Massachusetts.

I was not acquainted with a person there; I had heard the name of only one man,—Sidney Brooks, the principal of a small seminary there.

I went to Boston (where I had never been before), then to Sandwich by cars; there I took the stage, and after a long ride arrived at Harwich late at night.

The next morning I called upon Mr. Brooks, but did not, as I could not, present any recommendations as a teacher.

He received me kindly, but informed me that all the good schools in town had been engaged, leaving only three, one a small school which was usually taught by a woman, and two others which were so bad that they were troubled to find teachers to undertake to teach in them.

My friend and schoolmate, since a merchant in Kansas, Lyman Field, and my brother, Henry L. Sherman, requested me to engage schools for them. Here were schools enough for all of us, but a dubious sight for me, in view of my past experience.

Armed with a line from Mr. Brooks, who was chair-

man of the town examining board, I started for the prudential committee men of the three districts.

I engaged the small school for Mr. Field, and then went to Bassettsville, so-called, and found a Captain Bassett, an old sea captain, who was the committee man. I remember him as having a very red face, with a half hand of tobacco inside his cheek, the juice running from the corners of his mouth. I made known my business. "Why", said he, "you can have the school, but the boys will carry you out the first day; there are a dozen of 'em larger and older than you are, and we have one scholar who is over twenty years old and weighs over two hundred. The boys seem to make a business of carrying out teachers as fast as we can hire 'em; but if you are a fighter and can stay in the schoolhouse, I'll hire you. If you don't kill more than two or three of them I'll back you and find no fault".

I found the other school at Deerfield, so called, a large one and a hard one, but not so bad as the one at Bassettsville.

Here were opportunities for teachers, sure enough, but I had failed once. What should I do. Here I was; to return would be a failure.

#### TEACHING AT CAPE COD.

I engaged all the schools and sent for Mr. Field and my brother. They came, and we were examined and given certificates as qualified to teach.

Then it must be decided which school I should take. I was only nineteen years old and weighed about one hundred and thirty pounds.

My brother insisted that I should take the "fighting

school", as we called the one at Bassettsville, saying that I had had more experience in wrestling and boxing than he. This was true. At the seminary, these were among the sports of the scholars, and I enjoyed athletic sports of all kinds. I could pass a better examination in these sports than in my studies. It was finally decided that I should go to Bassettsville.

At the beginning the school was small. Soon the larger boys came, and finally Sidney Ellis, weighing over two hundred. My heart sank within me. He was the leader in all mischief. He was ignorant, scarcely able to read or write his own name, but he was the hero and idol of the unruly.

These boys were not bad boys. They only wanted to keep up their reputation of carrying out the teacher. I tried to make friends with them, but while they acted kindly out of school, they were not behaving well in school. Sidney was their leader.

I talked with Mr. Bassett. He said if Sidney did not behave to send him out of school. At the close of school, one day, after I had spoken to him several times on account of misbehavior, I told him what the committee man had authorized me to do, and said "You cannot come to school any more without his or my consent". He replied, "I'll see about that".

It was soon noised about that the boys were to carry the teacher out of doors the next morning.

That evening the parents of many of the scholars came to see me. They praised the teacher; told how well their children had succeeded in their studies; expressed great sympathy for the teacher, and condemned the conduct of the bad boys. Their call seemed a little like a funeral. They felt sure I was to be carried out and they came to take leave of me.

The committee man, Captain Bassett, came to see me. He had learned that I was to be carried out of school the next morning; but he came to assure me that it would not be done. I asked him why he felt so sure. "Because I shall be there", replied the Captain.

I remonstrated with him. "Of course they would not act while you were there, and you cannot be there all the time. They will say I am a coward. No, no, Captain, I must manage this affair alone. If they carry me out, I must leave the school".

My brother and Mr. Field had heard of the news in the adjoining districts and came over later in the evening, looking serious and anxious, making suggestions and offering their sympathy. After all my friends had left me, I retired. What a lovely night the teacher had! If I left that school it would be failure number two! I resolved on a desperate struggle; that there should be no boys' play. It seemed clear to me that in a difficulty of this kind the boys must not be allowed to get hold of me; that I must press the fight at the first signal and finish it before it had fairly begun.

I was at the schoolhouse early; saw that the fire in the stove was all right, and that the old iron shovel was handy for all proper uses.

One thing was noticeable; generally the larger boys were not at school when it begun its session, but were straggling in all the forenoon. This morning they were all "present and accounted for", with Sidney among them.

Promptly at nine o'clock the school was called to order. they all had the benefit of the morning exercises, the reading of scriptures, excepting Ellis.

After this I walked, as calmly and coolly as the circumstances would permit, to the front of the desk where Ellis was sitting and said, "Sidney, I told you last night not

to come to school again without permission". "Yes", he replied, "I believe you did", at the same moment winking to his confederates and starting to rise. I sprang forward and dealt him a blow in the side of the head with my fist, with all the force and power I possessed. He fell partially forward and down. I seized him, with one hand hold of the long hair on the back of his head and neck, and with the other hand had hold of his chin whiskers, and, with great difficulty, dragged him across the floor to the door, where he tried to get hold of my legs and the door. I then let go my hold, and kicked him in the side of the head. The blood flew, but it ended the struggle. He was easily tumbled out and the door locked.

Not one of his friends moved from his seat; they looked frightened, and many of the children were crying.

As soon as I could compose myself, I made a few remarks, quieting the little ones, and assuring the larger ones that hereafter order was to be preserved in the school.

That forenoon I punished three of the large boys for abusing a half-witted boy at recess.

A few days thereafter I received my first letter from a lawyer:

"BREWSTER, January 21, 1854.

MR. E. J. SHERMAN,

*Sir*:—Mr. Nathan Ellis has left with me for collection or prosecution, a demand against you for assaulting and putting out of school his son.

Your immediate attention to the same will prevent further costs.

Yours, etc.,

GEORGE COPÉLAND".



My reply was:

"HARWICH, January 21, 1854.

GEORGE COPELAND, Esq.,

*Sir:* Yours of today I have. In reply, will say, should Mr. Nathan Ellis wish you to proceed with the prosecution you speak of, you can do so, as I shall be very happy to stand trial.

Yours in haste,

E. J. SHERMAN".

My reputation as a teacher became much "puffed up" on account of this affair. Captain Bassett also became somewhat inflated. "At last he had found a teacher who could stay in the Bassettsville schoolhouse; could knock down and drag out Sid Ellis", etc., etc.

My reputation was not only established with the parents, but the heretofore unruly boys became my friends. They liked a teacher who could wrestle, box, and fight, if necessary; and what was best with them, could handle their ideal hero, Sidney Ellis. All these boys turned over a new leaf; began to study and to learn.

Ellis was sick for a while. A doctor was called to take a few stitches in his head. As he begun to improve, his comrades called on him and were full of their praises of the teacher. Ellis said he thought more of the teacher than he should if he had allowed "us boys to carry him out of the school; he certainly was no coward, but a very good fighter".

After Ellis was well enough to be out, he met me one day in the highway. I spoke to him pleasantly and he replied in the same spirit. I was glad that he was not seriously injured; that I had been anxious about him, and

although I felt justified in doing what I did, yet I should have felt very badly had I inflicted upon him serious and permanent injury. He replied that I did just right; that he had no one to blame but himself.

As we were about to separate, he asked, "Can I come to school again"? I said, "Do you want to"? "Certainly I do", was his quick reply. "You can come by making an apology", said I. "I cannot do that; I should make a botch of it if I tried", said he. "You can come back", said I "if you allow me to state before the scholars that you come back with my permission, and that you are truly sorry for the trouble you have made".

The next Monday he came, and the statement was made.

He made good progress in his studies and we became quite good friends.

No teacher was ever treated with more consideration than I was the remainder of the winter by Ellis and his companions.

I had a very successful school, and at its close we had quite a creditable "exhibition", for a country school.

I was offered extra pay to come back the next winter.

I taught the next winter in another part of the same town, receiving higher wages, and had pupils more advanced in their studies.

Ellis afterwards became a sea captain and a respected citizen. He was lost at sea in a great storm off the Massachusetts coast in the winter of 1874-5, his body being washed ashore.

The subsequent year I taught at the Chatham Seminary in the adjoining town of Chatham, with my cousin, Mary E. Sherman, as an assistant.

The winter that brother Henry and I taught school in Harwich, he played a good joke upon me. He was rather a serious minded man, not much given to joking. He was



required to offer prayer each morning at the opening of his school. I said to him, that I was coming to his school some Saturday when mine did not keep, to hear him pray. "All right, you will hear a good prayer", said he. Soon after, I went. He gave me a seat in the desk. After the scholars had read in the Testament, he turned, and in a loud voice, asked me to offer prayer, which I felt compelled to do, rather than decline.

## CHAPTER II.

---

### MY START IN LIFE.

---

#### KNOW NOTHINGISM,—A VICTIM OF ITS ENEMIES.

During the Know Nothing excitement, I was living in Lawrence, and although not old enough to vote, and having nothing to do with the organization, I fell a victim of its enemies.

One dark evening, while coming from my brother's to my father's house, I was set upon by three Irishmen, knocked down with a club and badly kicked and beaten.

When I recovered from the effects of the blow upon my head, I found myself lying on the ground bleeding. I sprang to my feet and commenced to defend myself as best I could, and called for help.

I knocked one of the men down, then ran to my brother's house, a short distance away. He came back to the spot, but the men had disappeared. I was quite badly injured.

Very soon an exaggerated account of the affair appeared in the newspapers. It was a big story in print.

I have no doubt the assault was intended for another member of the family, a brother, who was a member of the "American party", as it was called.

The mayor and aldermen, hearing of the incident, subsequently appointed me a police officer, which was considered by some of my young friends as a great honor.

## DARTMOUTH COLLEGE.

I was born within thirty miles of Dartmouth College, and it was the dearest wish of my young life to enter and graduate at that institution. I was given some little encouragement by my parents, provided it did not cost too much.

I went to Hanover, was examined sufficiently to determine my qualifications to enter, selected a room, and ascertained the probable expense. I returned home in high spirits, but upon stating the cost, the amount of ready money required, my father said at once that he could not afford the expense; that it would not be fair and just to the other children, and that I could not go. Imagine my disappointment! My mother and I cried over it. I determined that later I would go; that I would keep up my studies, work summers, teach school winters, until I saved money enough to pay my own expenses. And I never gave up the idea until I was admitted to the bar. I was then in debt about one thousand dollars and it seemed a great load to carry.

In 1884, when I was Attorney General, the trustees of Dartmouth, learning of the above circumstances, conferred upon me the honorary degree of Master of Arts.

I should have preferred to have earned the degree within the College, but it was some satisfaction to know that others believed I had earned it outside.

## ADMISSION TO THE BAR.

In the month of March, 1855, I entered the law office of George W. Benson, Esq., on Essex Street, Lawrence, and remained there, except when away teaching, until I was admitted to the Essex Bar, in March, 1858.

The Weekly American of August 9, 1856, contained the following:

“An ancient adage is to the import that while young men are, on account of their superior strength, agility and courage, to be preferred in an engagement of war, old men, in view of the experience, observation and wisdom, are to be chosen as counsel in all matters of moment or importance.

But although this may be safe as a general rule, there are instances when young men, possessing the tact, knowledge and ability, can render important services as counsel where an opportunity presents itself for them to show the gift that is within them.

On Tuesday of last week, learning that a young man by the name of Patrick Clarke, charged with stealing a gold watch, valued at \$100, from Mr. Samuel F. Barker of Andover, was to be tried in our Municipal Court and that our young friend, Edgar J. Sherman, student of George W. Benson, Esquire, was to act as counsel for the prisoner,—it being also his first attempt in the management of a case in Court,—I had the curiosity to be present at the trial. And I do not hesitate to say that in the opening of the case for the defence, in the examination of witnesses, in discussing the admissibility of testimony, and in the summing up of the evidence in the argument, Mr. Sherman reflected credit upon himself and his preceptor; showing not only that he has been a diligent and thorough student of law, but also has superior ability and aptness for the business and duties of the profession which he has so wisely chosen.

It is always gratifying to witness the development of genius and talent in young men who are to come forward in the activities of life, and especially in such as, in addition to natural and acquired abilities, possess those moral qualities, which alone can embellish and beautify the human character”.

In the same paper, under date of March 20, 1858, the following appeared.

“Admitted to the Bar.

At the opening of the Court of Common Pleas in this city, on Wednesday morning, March 17th, on the motion of Honorable Thomas Wright, Edgar J. Sherman, was admitted to practice in all the courts of the Commonwealth.

Mr. Sherman is a young man of much ability; has acquired a good knowledge of the law, and bids fair to win, what we hope may be his,—a goodly degree of success in his profession”.

At a subsequent day of the same term of court, among the reports of cases, in the same paper, the following appeared:

“Court of Common Pleas.

Before Chief Justice Mellen.

William D. Lamb vs. Thomas Coupe.

Plaintiff sues to recover for services rendered defendant's wife; defendant claims that his wife left his bed and board contrary to his wishes, while he was providing her with a physician, and that the plaintiff was employed without his order or consent.

Verdict for the defendant.

P. S. Chase, for plaintiff.

E. J. Sherman, for defendant.”

This was my first case tried before a jury.

#### DEATH OF MY MOTHER.

Upon being admitted to the Bar, I formed a copartnership with the Hon. Daniel Saunders, under the firm and style of “Saunders and Sherman”.

I was then in debt about \$1,000. I had borrowed money of friends to obtain an education and to qualify myself for my profession.

I have a note, now in my possession, dated July 2, 1855, signed by me and endorsed by my mother. I prize that note very much, and after paying it, have kept it.

At first I was disposed to blame my father because he did not furnish the money to help me through college. But as I look back upon the matter now, I feel that he did right.

My mother died October 30, 1858, of consumption. I was very fond of her. I think there was more than the ordinary affection between mother and son.

I went with her that summer to visit the old homestead in Weathersfield, Vermont, and her friends. She was quite feeble and suffered a great deal. It was her last visit.

After returning to Lawrence she failed very fast. She was at the home of my sister, Mrs. Malvina E. Backus. She had the constant care of my father, my sister and myself. We did all we could for her, but were compelled to see her suffer, waste away and die of that fatal disease.

I felt her loss severely.

“I felt myself alone,  
Alone on earth, with none  
to love like thee;  
A love so pure, so deathless,  
and so free”.

Whatever success in life I have attained, I feel I owe much to my good mother.

As a boy, whenever I was disposed to be in mischief and go wrong, it was her kindness and tears that did more to make me do right, than all the corporeal punishment I received from others.

## MARRIAGE.

On the twenty-fourth day of November, 1858, I was married to Abbie Louise Simmons, second daughter of Stephen P. Simmons.

My wife was quite young, eighteen the following Christmas, but she took me to her father's house and they gave us board and lodging.

## APPOINTMENT AS CLERK OF THE POLICE COURT.

On December the 14th of the same year, I was appointed by the Mayor (General Henry K. Oliver) and Aldermen, Clerk of the Police Court for a period of three years.

The statute, chapter 270 of the Acts of 1855, provided that "the clerk shall examine the witnesses in criminal prosecutions, and conduct the cause on the part of the government; and he shall receive in full compensation for all his services under this Act, an annual salary of not less than \$800, and be paid quarterly out of the city treasury". The act also provided that the clerk, as justice of the peace, shall receive and hear all complaints, and issue all warrants and processes in all criminal matters which come before said court and shall make the same returnable thereto".

The office was an important one. On February 14, 1861, I resigned the position and my brother Henry was appointed for the unexpired term. I resigned that I might devote all my time to my profession.



MY PARTNER, HON. DANIEL SAUNDERS, ELECTED MAYOR;  
FALL OF PEMBERTON MILLS.

At the City election, early in December, 1859, my partner, Hon. Daniel Saunders, was elected mayor. On the first Monday of January following (1860), he was inaugurated.

On the tenth day of the same month, just before five o'clock in the afternoon, while Mr. Saunders and I were in our law office on Essex street, we heard a loud noise, like snow sliding from the roof of a building. In a few moments afterwards, Thomas Wright rushed into the office, and said, "The Pemberton Mills have fallen to the ground!"

We hastened to the mills, a quarter of a mile away, and there witnessed a heart-rending scene.

A brick mill, five stories high, eighty-four feet wide, and two hundred and eighty feet long, containing nine hundred persons, nearly six hundred of whom were women and children, while the mill was in full operation, without notice or warning, had fallen to the ground. The cries of the wounded and dying were terrible. They came from all sides; from the unfortunate victims, coming out, with limbs broken, from others confined and crushed by fallen timbers and machinery, from mothers looking for their children, and children calling for their mothers, the wife for her husband and the husband for his wife.

Brave and resolute men went immediately to work to relieve those confined in the ruins.

Later, a lantern was broken and a fire broke out, and many perished by the flames. Eighty-three people were killed; one hundred and nineteen severely injured; one hundred and fifty-nine slightly injured and five hundred and fifty-seven escaped uninjured.



Hon. Charles S. Storrow, treasurer of the committee of relief of the sufferers of the calamity, in his report, says:

“Other features there were in the drama which struck no less forcibly those who were brought, as we were, into close contact with the sad events, and must not be forgotten. Deeds of heroism on that awful night; charity melting most selfish; sympathy aroused in the coldest hearts; strength nerving the feeblest arm; patient endurance on the part of the wounded; quiet resignation in the hearts of the mourners; all these were as extraordinary as the occasion which called them forth. ‘Save Nash first’, was the cry of Lizzie Flint, a bright young girl of sixteen, an only daughter, who had brought from her home in the interior of Maine the character that belongs to the rural homes of New England. Poor Nash, who lay severely injured, was indeed saved. The poor girl did not survive; but who shall say she was not saved also? ‘Give this to father; I shan’t see him, but you will’, said little Mary Ann Brennan, an Irish child of ten years, to the girl near her, as she gave the pay roll certificate which she had received that day. The girl escaped, and the partly burnt paper was given to the father. Mary Ann was never seen again”.

The spirit of charity was felt at once. Money came immediately from all parts of New England and from other States. It came so fast and in such large amounts, that on January 23rd, the Mayor and Committee issued a circular letter saying that they had received all that would be needed,—more than \$66,000.

A coroner’s jury examined into the cause of the calamity, which was reported to be the use of too weak pillars.

## HEAD EXAMINED BY PROFESSOR O. S. FOWLER.

In April, 1860, Professor Fowler, of New York, was in Lawrence delivering lectures on Phrenology and making phrenological examinations. I knew but little concerning the subject, but was anxious to learn.

John Milliken (since deceased), at that time a student at law, was a young man of ability, an excellent scholar, and a bright man, but not prepossessing in appearance, in fact he looked almost idiotic. I agreed with Milliken, if he would go with men to Fowler's room, without speaking a word himself, and be examined, I would pay the expense. We went together. I told Professor Fowler, my subject was not to speak, and he did not; but Fowler told Milliken's characteristics perfectly.

I felt so much confidence in that examination that I sat down and had my own head examined. Professor Fowler's report was as follows:

*"Phrenological Character of Edgar J. Sherman, given by  
Professor O. S. Fowler, April 26, 1860.*

(Taken by a stenographer and afterwards written out.)

"You are just as certain to rise in the world as to live, and quite certain to live unless you really abuse the health laws, for your natural life pluck hold is certainly strong. Your mental temperament predominates; should live by mind, not muscle; should get a liberal education; should be a public speaker; can make a good writer; excel in composition and are far best adapted to the study of law. Your forte is argument; you excel in putting this and that together and drawing inferences; yours is a logical, analytical mind, always have been a thinker, a reasoner; are a natural investigator of both facts and law. You illustrate, compare, well; argue well by ridicule; have a first-rate memory of facts, and it is improving; have a

wretchedly poor memory of names and dates, but a good one for faces, facts and places, and know hundreds by sight and all about them, but their names. Are good in giving counsel. Are endowed with excellent taste. Have a glowing imagination . . . feel the utmost confidence in your own powers, as if you were a commander; are most indomitably persevering; will carry your point; . . . are signally wanting in belief and a real Doubting Thomas; are doing your own thinking and all of it for yourself; the minister does none of it for you. Have that versatility of talent to attend to a variety of things in short order. Are fond of approbation; do best when approved most. Are good in making money and tolerably good in keeping it, at least becoming better. Are extremely cautious and run no risks, but make everything perfectly safe. Are a good linguist, but cannot talk against time; must talk ideas or say nothing. Adapted to success in life, and especially at the bar; if not a lawyer, turn today and begin the study of that profession and are calculated to rise and stand high in that profession”.

## CHAPTER III.

---

### IN THE CIVIL WAR.

---

#### ENLISTMENT AND DEPARTURE.

In 1861 the War of the Rebellion came upon us. The march of the old Sixth Regiment from Lawrence through Baltimore to the Capitol at Washington is read and known by all.

Needham Encampment, Post 39, Grand Army of the Republic, situate in Lawrence, was named in honor of Sumner H. Needham, one of the victims of that march.

By a rule of the Post each member was required to give a reminiscence of the war. In June, 1871, I read a paper as follows:

Mr. Commander, Comrades, Ladies and Gentlemen: All good soldiers, conscripts, raw recruits and veterans are supposed to obey orders; on account of that I stand here tonight.

I find myself greatly embarrassed in talking about the war, as what I say must necessarily be of a personal character, and by attempting to tell what I have seen and heard with my limited service, especially in the presence of many veterans of the war, will seem common-place indeed.

When I was first appointed to speak on this occasion, I concluded from what I had heard from some others

who had preceded me in this hall, that it would do to stretch the truth a little in order to make a good story and interest the audience.

This feeling was but momentary, as I recalled the story of the hatchet and cherry tree in connection with the boy, George Washington, and I at once resolved not to tell a lie. Therefore whatever I say can be placed on the shelf with the hatchet and the cherry tree.

I desire to state, to begin with, that I do not claim that my company, regiment, brigade, division or corps, was the best in the service, or that I marched through Baltimore with the Old Sixth, or that I enlisted at the beginning of the war and served to its close, or that I was wounded at Gettysburg or in the Wilderness. These are honors which I am not entitled to.

But I do claim to have done something towards saving my country; to have been one in that great army of patriots, who helped to stay, beat back, and conquer, the greatest rebellion the world ever saw.

To be enrolled as one of the humblest in such an army, in such a cause is honor enough for any man.

At the first drum beat I determined to enlist, but I had a better-half, and some little halves, and when I made known my purpose at home, I experienced "trying to be a soldier under difficulties".

Of course I cannot go into particulars. It will be sufficient for me to say that I had always been in favor of women's rights and women's suffrage. I was summarily voted down. I consoled myself with two passages of scripture, which an old lady said she admired, "Husbands obey your wives" and "grin and bear it".

Like a good husband I remained at home and tried to attend to the duties of my profession, but it was of no use.

I read the newspapers, the war news. I could read or do nothing else.

In the summer of 1862 I went west on business, and upon returning found that two companies had been enlisted from Lawrence and that many of my friends had already gone, not to the war exactly, but into camp at Wenham in this county.

I went directly to camp and enlisted as a private soldier and then came home. It was then too late to discuss the question. Later on I was elected Captain of the company.

We remained in camp a while, then went to New York and took passage on board the old sailing ship "Constellation", for nobody knew where, except the captain, but as it afterwards appeared, for New Orleans.

The day we left camp, a Mrs. Stickney, wife of one of the sergeants of my company, came to say good-by to her husband, and as she was manifesting feeling and experiencing what many a wife, mother, sister and sweetheart felt and experienced on such occasions, I tried to comfort her. "Why", said I, "Mrs. Stickney do not feel so badly, I expect to bring back your husband safe and sound"! "Yes", said she, bursting into tears again, "I should believe that, if you were going on any other business except to kill and be killed".

I came to Lawrence that day and bade my wife and friends good-by, and, I must confess, as I walked across our Common for the depot, I felt that I was leaving home under different circumstances from any I had experienced before, and the words of Mrs. Stickney were constantly ringing in my ears.

## A BURIAL AT SEA.

The first few days on shipboard, we had a rough time of it. After we had been at sea a week or more, a member of my company was suddenly taken ill.

The surgeon was immediately called and everything done for him which possibly could be with good care and attention, but it was all of no avail. He died within twenty-four hours of ship fever. Now came a solemn time for us all. Others were taken ill in the same way.

Here lay our comrade, his eyes closed in death and we must bury him with proper ceremony beneath the waves of the ocean. There must be one of those most solemn of all services,—a burial at sea.

Our chaplain had not joined us and we had no clergyman on board. An Episcopal prayer-book was found in the cabin and suitable selections were made. The hour selected for the services was at sunset.

Our comrade, who had been dressed in his military uniform, with blanket wrapped about him, with some heavy pieces of coal fastened to his feet in order to cause the body to sink, was brought on deck and placed upon a plank at the side of the rail.

The ship had stopped in its outward course, all was still, as we his comrades assembled on deck to pay our last tribute of respect to the dead.

Perhaps what was read or said on that occasion does not become the acting chaplain to speak of. This much I shall be justified in saying, that it was a sad and sacred hour. As the services were concluded, as the sun in all its brightness was sinking, as it seemed into the ocean, the body of our comrade slid from the plank feet foremost down over the side of the ship with a loud splash into the ocean, and disappeared forever.



But the saddest part was not yet over, the youthful soldier was the only child of a widowed mother, who had reluctantly consented to his enlistment, only upon the promise that I would take good care of her boy. She must be informed of his death; what could I say to comfort her in this hour of her terrible affliction.

LETTER TO A BEREAVED MOTHER.

I wrote her as follows:

*On Board the Ship Constellation,*  
IN GULF OF MEXICO.

January 24, 1863.

*My Dear Madam:*

I have sad news to communicate. Your son is no more on this earth. He was taken sick last Wednesday, and in less than twenty-four hours he was a corpse. He died at 4 o'clock, P. M. on Thursday and was buried at sunset in the Gulf Stream, off coast of Florida, in latitude 25, longitude 20 west.

Let me assure you that everything possible was done for him, by his comrades and our good surgeon, Dr. Hurd, to save him from the ravages of ship fever, but all our efforts were in vain. The light of his youthful countenance has gone out forever.

What can I say to you, his good mother, who gave her only son an offering upon the altar of our common country?

A fond mother will desire the sad details, his last acts and words. An hour before he died, I told him the doctor feared that he could not live. He seemed to be fully aware of his condition, and turning his head toward me he said, tell mother I should rather have died fighting the battles of my country, but God's will be done. I die happy. Very



soon he drew his blanket over him, and calmly sank into the arms of death, like one drawing the drapery of his couch about him and lying down to pleasant dreams. His last thoughts were of his mother, and he died lamenting only his inability to do more for his country. He was a mere boy in age and looks, but he had the judgment of an older patriot.

There are many creeds, which will tell you, that your son has not gone to happiness or heaven. He lived an honest life, but died, according to those creeds unconverted.

“The upright, honest-hearted man,  
Who strives to do the best he can,  
Need never fear the church’s ban  
Or Hell’s damnation;  
For God will need no special plan  
For his salvation”.

He died full of faith and hope, with a belief that he had performed his whole duty to his country and his God, and I believe in the language of the Mayor of one goodly city:

“He was a soldier in a good cause, and at the command of the Supreme Governor he had laid down his arms and gone up higher. Watchworn and weary, he has lain his armor off and rests in Heaven. The everlasting gates of Fame have lifted up their heads and he has passed through to imperishable renown: The portals of History have been thrown wide open and he has marched in a hero”.

Think then of your darling boy, not dead, but as having gone over to the majority in Heaven.

Permit me, my dear madam, to mingle my tears in sympathy with yours in this hour of your great affliction.

May God bless and comfort you.

I am sincerely and affectionately yours,

EDGAR J. SHERMAN, *Captain.*

After returning home, I was met by the clergyman who officiated at the funeral of the young soldier, who said, "Captain, I read your letter at the funeral and I do not think there was a dry eye in the audience." "But", said I, "did you not regard the poetry as heretical"? "You are fully justified", said the clergyman, "in writing anything you could to comfort that poor heart-broken mother. But who knows that he died unconverted? Were not his last words, 'God's will be done' "?

### ARRIVAL IN LOUISIANA.

On our way to New Orleans we passed Forts Jackson and St. Phillip situated on either side of the Mississippi river, seventy miles below the city, which had been recently silenced and captured, with the whole confederate Navy Iron Clads, Rams, etc., by that brave old Admiral, David G. Farragut. The forts are low, dirty looking things, down in the mud. They do not stand boldly out like our northern forts.

At last we reached the famous city that Farragut had captured and General Butler had subdued and conquered into obedience.

Whatever may be thought and said of General Butler, he was certainly the man to control that turbulent city.

I found that all loyal men in New Orleans liked him and all disloyal men hated him. Admiral Farragut and General Butler acted harmoniously together.

Our regiment was stationed for a while at Baton Rouge, the capital of Louisiana.

I was taken sick of malarial fever and sent to the hospital. During that time our troop moved on Port Hudson.

If there is anything which lies close to a soldier's heart

THE ONE  
SPECIAL LIBRARY  
FOR THE HOME AND  
TELEVISION SITUATIONS  
# L



CAPTAIN SHERMAN

After a severe illness at New Orleans, August, '63

it is the reputation of his own regiment for good conduct in the hour of battle. If that is affected injuriously his pride is touched.

Very soon news came of a fight near Port Hudson, of our temporary success, but with it sad news concerning my regiment.

The regiment had been surprised and fired into by a rebel brigade which lay in ambush, and the report was that my regiment had not behaved well.

My feeling can be better imagined than described. I determined to leave the hospital at once and join the regiment, but the surgeon forbade it, saying that I was crazy, and I am inclined now to think I was partially.

The fever had left me, but I was extremely thin and weak, having lost about thirty pounds in weight.\*

But I could remain no longer with such news! The next morning I left the hospital without the knowledge and without obtaining leave of the surgeon and took the early steamboat for Springfield Landing, five miles below Port Hudson.

If ever a man had trouble in reaching his regiment I did. I was like the Dutchman's pies, really a good deal better than I looked. One of the surgeons at the landing ordered me back to the hospital, saying that a "Walking Ghost" would be of no use there. I pleaded that I was not going on duty, but only to visit the surgeon of my regiment.

### THE BATTLE OF JUNE 14th, 1863.

Upon reaching Port Hudson, I found that my regiment had fully redeemed itself. In an assault upon the Fort

\*See photograph on opposite page.

they had volunteered to lead the forlorn hope, in which the Lieutenant-Colonel and many officers and men had been killed and many wounded.

On Saturday, June 13, I became satisfied that on the next day there was to be another assault on the enemy's works, I had not yet been on duty. I had had work pleading with our surgeon and my superior officers to allow me to join in this assault. Dr. Hurd said to me, if you go you will probably be most of the time to-night marching to your position, and then if you go through the assault tomorrow, if you are not killed, your fever will return, and I fear you will leave your bones in Louisiana. In fact, I never obtained consent to go into that assault, I went without it. We did march a good part of the night, getting from our positions in front of the works, down on the left below the fort near the river, where at three o'clock in the morning we tried to get a little rest and sleep. I never could have reached that point had it not been for the help I received from the men of my company, some of the time having one on each side helping me along in the darkness. Soon after four o'clock, Sunday, June 14, we were ordered into position, preparatory to a charge. We were in close column of division, two companies together, and my division had the colors. While we waited the skirmishers advanced, and soon after the first Brigade went forward upon the double quick. From our position we could look onto the field and see how hot a place it was.

Oh, that awful suspense! No coffee, no breakfast, after a night's march, a tough time for an invalid from the hospital. Still the men stand in position and wait. I felt so badly I could not stand. I lay down with my head a little raised, so I could see what was going on. After a little I felt faint and so bad that I tried to get

up, but I could not do it. Then I began to think what an awful thing for me it would be to have the troop charge without me, and that I would have shown more sense by remaining in the hospital.

It was a beautiful Sabbath morning; the sun was just shining forth upon the field over which we were to charge, as a staff officer rode forward to Colonel Benedict, who was in command of our Brigade, and said, "The General desires you to move your brigade forward". I came to my feet, took my position, feeling perfectly well.

Now we move forward, what a magnificent sight, the bayonets glisten in the sun-light, the roar of our own cannon and those of the enemy, with the bursting shells, fill the air with loud thunder and lightning.

Almost at the start our adjutant is severely wounded, almost by my side; on we go up the hill. Captain Todd in command of the division in front of mine now falls and we go over his body. The enemy are now using grape and canister, a cross fire, and our men are falling as we go, still on we go close to the ditch in front of the enemy's earthworks, but we cannot scale the ditch as the men are not there with the fascines with which to fill the ditch. Oh, what a disappointment! We have failed to enter the works.

We are ordered to fall back and protect ourselves behind logs, stumps, and bushes. We do so but many are wounded in the attempt.

The sharp-shooters keep guessing where we are and fire as they guess, and they guess pretty well. The hot June sun is pouring its rays down upon us.

By and by we receive orders to get off the field as best we can individually or collectively. After awhile many members of my company with my lieutenants and myself worked our way towards a ravine on the left of the field,



near some logs and bushes. There we discovered an open space of ten to twenty rods between us and the ravine. We also discovered the enemy with their guns across their breastworks ready to send their compliments should we attempt to cross that space.

It was fearfully hot, and I began to feel faint from my over-exertion. Soon the enemy commenced firing through the bushes where we were concealed from their view.

I said to the boys, "I shall die, if I stay here, and I am going to try for the ravine". I asked my first lieutenant to arrange a sergeant and ten soldiers, five feet from each other in my rear, and as I started to run have them follow in that order. I remarked that shooting a bird on the wing or a rabbit on the run took a good marksman.

As the lieutenant gave the order I ran and the others followed. It would be useless to say we ran well and fast. We surprised the enemy. They evidently thought we would not undertake such a hazardous proceeding.

A great many shots were fired, but only one soldier was seriously wounded; he was shot in the hip, but we all reached the ravine. The soldiers who came with me into the ravine, crept up to the edge, where they could have a good shot at the heads over the breastworks, and as others of our soldiers ran across the open space, our men fired at those heads. In this way a great many of our men made their way into the ravine.

After the surrender of the fort it was ascertained that our soldiers had proved excellent marksmen on this occasion.

But that Sabbath was a sad day for me. On account of my imprudence in leaving the hospital too early the fever returned, and I came near leaving my bones in Louisiana, and I have had an annual recurrence of the



disease until 1866, when I was brought so near death's door, that I almost saw the other side, and I fear I may not be free from all traces of it yet.

Notwithstanding all this, I am pleased to believe that I did my full duty by word and example and thereby encouraged others in a like direction. A large and somewhat fleshy soldier in my company, who was ill and unfit for duty on that day, and who afterwards had a serious illness, was asked by the surgeon why he did not get excused. He replied, "I did think of it, but when I looked at the captain, a mere skeleton, and then at myself, I concluded that if he was able to go into the fight, I certainly was, and said nothing".

I suppose I ought to have been court-martialed for disobedience of orders in leaving the hospital, yet at that time we needed men so much, that instead of that my superior officers all joined in recommending me, on account of my services on that day for promotion, and the President of the United States, by and with the consent of the Senate, conferred upon me the appointment of Brevet Major, for what they were pleased to call "Gallant and meritorious services".

While I am pleased that they should think me worthy of such honorable mention in the records of the War Department of the nation, yet, I am sad, when I think that there are hundreds of soldiers, a thousand times more worthy, whose names only appear on the muster rolls, and their deeds are only remembered by Him, "who notices even the sparrow fall".

Port Hudson surrendered July 8, 1863, a short time after the surrender of Vicksburg, leaving the Mississippi river open to the Gulf of Mexico, and our regiment was sent home, its term of enlistment having expired during the siege of Port Hudson. We came up the river by

Vicksburg, and upon reaching Massachusetts were "mustered out of service".

#### ANOTHER ACCOUNT.

In 1907, a history of the 48th Regiment, M. V. M., was published. The *Lawrence Telegram* contained the following:

"Albert Plummer, first sergeant of Company B, has written and published a creditable history of the Forty-Eighth Regiment, M. V. M., in the Civil War.

Captain Edgar J. Sherman (now Judge Sherman), was captain of Company F, and Charles H. Littlefield was first sergeant. The following named enlisted from this city: Austin E. Smith, Charles E. Kent, Thomas Barry, Thomas Birch, Jonathan Blythe, Edward Boland, Charles S. Brown, Patrick Burke, Daniel Caffrey, James Edgecomb, Robert Farrow, Ephraim Goodwin, Albert E. Holt, John Looby, Michael Mahoney, Patrick Noonan, Edward T. Oakes, Joseph K. Parshley, Charles J. Renno, Edward Roddy, James Smith, John Smith, Eugene Sullivan, Simon Sullivan, John Vaughan and Samuel Webb.

\* \* \* \* \*

On May 26, 1863, orders were issued from headquarters for volunteers for a 'Forlorn Hope', to charge in advance of the brigade line and storm the enemy's works on the 27th.

Austin E. Smith, Patrick Noonan, Edward T. Oakes, from Lawrence, and six others, volunteered from Company F. Patrick Noonan was killed in this charge. Lieutenant Colonel O'Brien of the Forty-Eighth Regiment, was killed; also many others killed and wounded".

Again we quote from the history:

"Captain Edgar J. Sherman (of the same family of Roger Sherman and General William T. Sherman), enlisted as a private soldier and was subsequently elected Captain of Company F.

When the regiment advanced on Port Hudson, he was in the hospital sick of malarial fever. Hearing of the affair of Plains Store, the captain, somewhat relieved of the fever, but weak and emaciated, decided to join the regiment. The surgeons tried to induce him to remain a while longer, but not succeeding in this, gave orders forbidding it. The next morning the captain put on his uniform, left the hospital, and took the early steamer for Springfield Landing. There he was met by the surgeons, who called him a 'walking ghost,' and ordered him back to Baton Rouge. The captain said he was not going on duty, but only to visit the surgeon of his regiment, and he was allowed to proceed.

He was there several days, remaining with Dr. Hurd, when he learned that there was to be a charge on the enemy's works the next day. He at once determined to go on duty. The colonel and surgeon advised against it, the doctor saying, 'Captain, if you go into this fight and are not killed, your fever will come back, and you will leave your bones in Louisiana'. Captain Sherman made the long march that night, with the aid of his soldiers, and led his two companies which carried the colors in the charge next day. When the charge did not succeed, and the order came to get off the field, the captain finally reached the ravine on the left, and was subsequently carried on a stretcher to the rear. Dr. Hurd found him exhausted, with the fever returning, and ordered him sent at once to the hospital at Baton Rouge.

Just as the captain was being put into the ambulance, he said to Dr. Hurd: 'It is too bad about poor Captain Todd; he went down right in front of me, and we went right on over his dead body'. 'Not by a d——d sight!' said the doctor. 'I took an old French bayonet, three inches long out of his mouth, and he is all right'.

Captain Sherman was seriously and dangerously ill for some time, and it was feared that the doctor's prophecy might become true,—that the captain would 'leave his bones in Louisiana'; but he recovered sufficiently to return home with the regiment.

Officers and men were so much needed at the time that

Captain Sherman's disobedience of the order 'not to leave the hospital', was condoned, and upon the recommendation of his superior officers, he was brevetted major 'for gallant and meritorious services'.

\*       \*       \*       \*       \*       \*       \*

Captain Sherman is the only man in the regiment who was promoted or brevetted for 'gallant and meritorious services'. Captain Sherman has often declared that much of the credit which his company received for its discipline and good conduct in action was due to his orderly sergeant, Charles H. Littlefield, of this city, and that most of the men from this city made excellent soldiers".

#### 'AT WASHINGTON AND FORT DELAWARE.

There was a hiatus between the expiration of the veteran regiments and the coming in of the new three years organizations, when the Government—being disturbed by General Early's raid on Washington, called for the services of regiments for one hundred days. Adjutant General Schouler telegraphed me early in July, 1864, to come to Boston. He urged me to raise a company in Lawrence for this service, and to do it at once, as the authorities at Washington were in a hurry for these regiments. The following is from Chaplain Hanson's history of the Sixth Regiment.

#### *"Company K, Lawrence.*

This company was a new one, raised mostly in Lawrence upon the governor's call for five thousand one hundred days' men. Recruiting commenced on the eleventh of July, and the company was filled on the evening of the twelfth, went into camp on the thirteenth, was mustered into service on the fourteenth, and on the fifteenth and

sixteenth were clothed, armed, and equipped throughout, and ready to move on the seventeenth,—just six days after the first movement was made.

Captain Sherman, says the *Lawrence American*, under extraordinary difficulties, has already raised one company, enlisting himself as a private, from which he was promoted to a captaincy, and as we personally know, no braver or more faithful officer has left our city; always attentive to the needs of his men, and even when weak and emaciated with sickness, as we saw him at Port Hudson (in the Forty-Eighth Massachusetts), leaving the hospital against the positive prohibition of the surgeon to lead his men in the assault”.

As we were the first company ready, under this call, we were put into the Sixth Regiment. We went to Washington and remained encamped on Arlington Heights, until the Rebels disappeared from the vicinity of Washington, when we were sent to Fort Delaware, where we guarded rebel prisoners during the remainder of our term of service, which prisoners were captured by General Sheridan in the Shenandoah Valley.

Fort Delaware is a fine fort on Pea Patch Island in the Delaware river, some forty miles below Philadelphia.

The services of the soldiers were hard, but that of the officers easy—quite different from what I had experienced in Louisiana. We had some twenty thousand prisoners.

I served on several Courts Martial.

I returned home and was mustered out of service, October 27, 1864.

## CHAPTER IV.

---

### REPRESENTATIVE AND DISTRICT ATTORNEY.

---

On the evening of November third, 1864, at a caucus of the Republicans, I was nominated as a Representative to the General Court of Massachusetts, the ballot being as follows:

Whole number of ballots, . . . . .	317
Necessary for choice, . . . . .	159
Scattering, . . . . .	2
W. F. Gile, . . . . .	18
S. S. Crocker, . . . . .	29
Zener Whittier, . . . . .	53
Edgar J. Sherman, . . . . .	215

The nomination was made unanimous.

The next morning Mr. Whittier called all the candidates into his store, and said, "Last night as I was going home, I met Sam Allison (who was regarded as something of a wag), and said to him, come up to the caucus to-night. "What's up"? said he. "To nominate a representative to the Legislature", said I. "Who's up"? said he, "Gile, Crocker, Sherman and myself", said I. "My God", said Allison, "has it got down as low as that"?



I was elected, and on January following (1865), took my seat in the House. Hon. Alexander H. Bullock (since Governor) was the Speaker. I served on the Judiciary Committee.

### THE GENERAL COURT.

I was re-nominated and re-elected the next year (1866). The Hon. James M. Stone was speaker, and I served as Chairman on the committee on Military Claims and Federal Relations, and I also served as a member of the Committee on Cape Cod Railroad Extension.

The legislature during the session of 1866 was called upon to elect a Major General of the Militia.

General Benjamin F. Butler was elected in the Senate without opposition, but when the matter came before the House, a week or ten days later, there developed a lively opposition which united upon General W. F. Bartlett of Pittsfield.

The first ballot showed General Butler in the lead with General Bartlett, General E. W. Hinks and Colonel Clark of Amherst, in the field, with no choice.

Then Moses Kimball of Boston, the leader of the House, made a strong speech for General Bartlett, putting especial emphasis on his bravery at Port Hudson, etc., and just as he was finishing a point of order was raised, that debate was not in order after a motion to proceed to ballot, which the speaker sustained. Colonel Newell A. Thompson of Boston, a friend of General Butler, tried to speak, but the speaker ruled that he was out of order.

I thereupon moved that the member from Boston (Thompson), be allowed to address the House, remarking that it was fair to hear both sides. My motion was carried.

After Colonel Thompson had made a speech in favor of General Butler, a member, a one-armed soldier, without objection as to order made an excellent speech for General Bartlett.

I addressed the House substantially as follows:

I know General Bartlett, having served in the same brigade with him at Port Hudson. The gentlemen from Boston (Kimball) has not commenced to do justice to General Bartlett. No braver or better officer served in the late war. If General Bartlett could or would accept the position I would vote for him; but he is in Europe with a year's leave of absence from the War Department, receiving pay of a Brigadier General, and he would not give that up and come home to accept this position, and secondly, this bill provides, that the person elected shall signify his acceptance in writing within thirty days, or the office shall become vacant. You could not get notice to him and acceptance in writing in thirty days.

This is an attempt on the part of men, who do not like General Butler to defeat him! I fear that political influence and jealousy is playing a part in this election.

I care nothing for General Butler, but he was a member of the Militia for many years before the war, and did as much as any one man, if not more, to have it in condition at the commencement to do good service.

If elected to this office I believe that he will do more than any other candidate to keep up the Militia, and for that reason, I am going to vote for him.

The House took my view and General Butler was elected by a small majority on the next ballot.

The Hon. Tappan Wentworth, who at the time was serving as a Senator, and a personal friend of the General, and who was witnessing the election in the House, went



directly to General Butler's office and said, "General you would have been defeated badly, if it had not been for the speech of that young Sherman from Lawrence".

From that time General Butler became my friend, and remained such until the day of his death. I had, he thought, prevented his receiving a blow from his enemies. He never forgot me or those enemies.

### EXPERIENCES AS A LAWYER IN THE CRIMINAL AND CIVIL COURTS.

While I was in company with Mr. Saunders, I generally prepared the cases for trial—both the law and the evidence, and in the more important cases I acted as junior.

I had tried a few cases alone. I remember one case where an Irishman in Lawrence was indicted for an assault with a loaded gun, upon a woman, shooting her face full of shot.

The young man's father had retained Mr. Saunders, paying him a large sum to defend his son; but when it came on for trial before the Superior Court at Newburyport, I was sent there to have the case postponed. Mr. Saunders being engaged in Boston. It was the first case in order for trial. I tried hard to obtain a postponement, on account of Mr. Saunders absence, and because I knew little of the case and was unable to defend it. But Mr. Justice Morton remarked that the firm of "Saunders and Sherman" appeared for the prisoner and "Sherman" was present and the trial would proceed.

I knew the only chance my client had was to try the case as little as possible. I asked very few questions—I asked if the prisoner was intoxicated. The answer was

“Yes”. I also asked if the witness thought the prisoner intended to shoot, the answer was “No”. I did not argue the case, and so the district attorney did not.

The Judge charged the jury, they went to their room and I came home. That night the father of the prisoner came into the office, and, finding that the case had been tried and that Mr. Saunders was not present, became very indignant. The next morning we all went to Newburyport. The jury came in with a sealed verdict, which upon being opened was “Not guilty”.

It was a miscarriage of justice. The jurors were new and evidently did not understand the law. I afterwards asked the foreman about the verdict, and he said, they did not think the prisoner had “malice aforethought”.

My fame as a criminal lawyer was well started.

I tried another case, a boy for maliciously setting a barn on fire in Andover and he was acquitted.

In 1864 I dissolved my copartnership with Mr. Saunders and formed a new one with Hon. John K. Tarbox (afterwards a member of Congress) under the firm and style of “Sherman and Tarbox”.

I tried one criminal case where I was not successful before the jury, but I took exceptions to the ruling of Mr. Justice Brigham (afterwards Chief Justice) and the Supreme Court set aside the verdict—(see *Commonwealth vs. Woodbury Curtis*, 97 Mass. R. 574). Soon after leaving Mr. Saunders I commenced a suit “*Ann Robbins vs. Joseph Potter*”, which became quite noted, being in court some years, before the Supreme Court twice, and reported in *Massachusetts Reports*, 11 Allen 588, and 98 Mass. R. 532.

The following was published at the time in the *Boston Journal*.

### “A CURIOUS LAW SUIT.

A case of some interest has just been tried in the Superior Court of Essex County, before Judge Putnam, *Ann Robbins vs. Joseph Potter*.

The plaintiff is the wife of James Robbins, and, prior to 1860, lived with her husband in England. The defendant persuaded her to leave her husband on account of his drunkenness and cruelty. They came to this country in 1860, went through the form of marriage and lived together in Lawrence as husband and wife until the spring of 1864 when he turned her out of his house. She then brought this suit to recover the sum of \$560, the amount paid the grocer by her at the defendant's request and upon his promise to repay it.

The defendant claims that she cannot recover because she has been living with him in adultery; that the contract was illegal and void, being founded upon an illegal consideration. The case came up for trial March, 1865, and the presiding Judge (Morton) ruled that the action could not be maintained, and ordered a verdict for the defendant. The plaintiff took exceptions to that ruling and carried the case before the Supreme Court. That Court set aside the verdict and ordered a new trial, saying, 'The claim is for money paid at his request and for debts which were due from him to third person. The payments, it is true, were made under circumstances that seem to us as scarcely to admit the conclusion that they were made lawfully. They were paid continuously, from month to month for groceries furnished to support the family. It was possible this promise was made from time to time, as she advanced the money without any agreement or understanding that the cohabitation should continue; and if the jury should find this to be the true

state of the case there would be no legal objection to the plaintiff's recovery'.

The case was tried under the above instructions, and the jury found a verdict for the plaintiff for the amount of her claim and interest.

E. J. Sherman for the plaintiff, D. Saunders for the defendant''.

I was much in doubt when the action was brought, but the more I considered it, the more I became convinced, that it was a question of fact for the jury to decide whether the contract was a lawful one, and the equities were so strong for the woman I thought she would recover. My old partner, Daniel Saunders, was for the defendant, and it being a "curious case", the court house was crowded to overflowing when it was reached March, 1865, before Mr. Justice Morton (since Chief Justice of the Supreme Court).

Soon the question was raised as to the right of the plaintiff to maintain the action. We discussed the law to the court, I arguing that the judge had no right to decide whether or not the payment of the money had anything to do with the illegal cohabitation, that that question was for the jury. The judge decided against me, and I had great respect for his opinion, but still I felt sure he was wrong. The bar was almost all against my view of the law.

The Supreme Court took my view of the law, and I won the verdict. It was taken to the Supreme Court a second time by the defendant. But that court sustained the verdict.

After my client had suffered "the law's delays" for nearly four years, the sheriff, armed with an execution, put the plaintiff into possession of the house from which

the defendant had ejected her nearly four years before, and put the defendant out.

I was learning that "Every tub must stand on its own bottom". I began to have confidence in myself, in my own view of the law, and my reputation as a lawyer was on the increase. I had beaten my old partner in a "curious case" which attracted much attention. After that, I had a good law business, and during my whole practice, never lacked a goodly number of clients. I was remarkably successful with my cases. At one term of the court I gained thirteen out of fifteen cases.

#### DISTRICT ATTORNEYSHIP.

In the fall of 1865, I ran for the office of District Attorney in the Essex district.

At the Republican Convention the first ballot was as follows:—

Alfred A. Abbott of Peabody, . . . .	47
Benjamin H. Smith of Gloucester, . . .	91
Edgar J. Sherman of Lawrence, . . . .	96

and there was no choice. On the next Abbott's friends voted for Smith and he received the nomination, and then Mr. Abbott, who had held the office for twelve years, ran as an independant candidate and was elected at the polls over Smith.

At the Republican Convention three years later,—the election was for a term of three years,—in the fall of 1868, I ran again for the office.

I was nominated by the following vote:

Alfred A. Abbott of Peabody, . . . .	27
Edgar J. Sherman of Lawrence, . . . .	182

On election day the vote was as follows:

Alfred A. Abbott of Peabody, Independent,	3305
Edwin Ireson of Lynn, Democrat, . . .	5351
Edgar J. Sherman of Lawrence,	
Republican, . . . . .	18,947

One of the leading newspapers in the county had the following article on the district attorneyship.

“The district is constituted of the entire county of Essex comprising four cities and thirty towns, with a population of 200,000, and about 40,000 legal voters. The district attorney is counsel for and represents the people; it is his duty to appear for the Commonwealth—the people—in the Supreme and Superior Courts, in all cases civil and criminal in which the Commonwealth is a party or interested.

The office in the past has been held by Chief Justice Parsons, Justice Story, Hon. John Pickering, Hon. Stephen Minot, Hon. Asahel Huntington, Hon. Stephen H. Phillips and Hon. Alfred A. Abbott.

Colonel Sherman, who has just received so hearty an election, and who, in his own city, ran highest upon the ticket, receiving more votes than were given to General Grant, is a young lawyer of decided ability,—has already won a high position at the bar, and met with marked success in his practice, and possesses qualities which peculiarly fit him for the position”.

I commenced my duties the following January, 1869.

At the October session following, Leonard Choate, commonly called “the firebug” was tried. Judge Ezra Wilkinson presided. Alfred A. Abbott and Stephen B. Ives appeared for the defence. For a period of twenty years there had been in Newburyport incendiary fires almost every week, burning all kinds of buildings, destroying a large amount of property and several lives.



The people had become alarmed, and the administration of Mayor Pierce was bound to find and punish the incendiary. The police force was doubled and private detectives were employed. Pursuing different lines of investigations the police and detectives came to the same conclusion as to the guilty person.

Leonard Choate was arrested in the state of Minnesota upon a requisition and brought back to Newburyport and charged with being the guilty party.

He was born in that city, a man in good standing and possessed of a good amount of property. He had a wife and several small children.

The case was an interesting and important one, the evidence was mostly circumstantial. All the fires had been set by means of a box with a candle inside, carefully prepared, so that the fire would take effect when the candle burned to the bottom of the box. Some of the property which would have come to Choate as an heir was burned. There seemed to be no motive for these burnings. The only thing he seemed to enjoy was to hear the fire bells ringing and great excitement in the city—the citizens so alarmed that they could not sleep—and he up in the cupola of his house, saying to himself, “Don’t they wish they knew who was doing all this”? I do not believe any of his family or friends knew that he was the “fire-bug”. He was the only possessor of the great secret.

He was indicted in many courts, in many indictments. With the assistance of the officers we prepared the case with great care. The trial lasted nine days and the public interest was very great. I was greatly relieved when I found that his counsel were not to plead insanity as a defence.

Choate was convicted and his case was carried to the Supreme Court on exception, but the exceptions were

overruled (see Commonwealth vs. Leonard Choate reported in 105 Mass. R. 451). He was subsequently sentenced to state prison for life.

At last account he was alive in the state prison. While I was Attorney General there was some talk about a pardon for Choate. I think his friends had a fear that it was not safe to have him at large; that he had a mania for setting fires.

I received a letter from the mayor of Newburyport thanking me in behalf of the people for the "splendid manner" in which I had conducted the prosecution.

One paper had an article as follows:

"The friends of the District Attorney comparatively new to the position congratulate him upon the success in this most difficult case, for some of the points ruled upon were very near the line of evidence. Cool, wary, watchful, vigilant, careful and earnest throughout, with the most powerful counsel in the country as his opponent, his conviction of Choate fairly establishes his reputation".

#### SOME INTERESTING CASES.—"WIGHTMAN".

The Town Treasurer of Georgetown, who was also a druggist, carried the money collected during the day to his dwelling house at night, putting it in a safe there.

One dark, rainy night, about 10.30, as he was going home, having the money in a paper box under his arm, he was knocked on the head by what was supposed to be a sand bag. He threw away his box and cried "Murder, Murder!" His assailants ran away. Friends came with a lantern and they found the money all safe.

Subsequently a man, who called himself Wightman, was arrested for an attempt at highway robbery. He was



one of the finest looking men I ever saw, six feet and four inches in height.

When the trial was held he defended himself, showing that he was an able lawyer and an educated man. He made one of the ablest arguments ever made by a prisoner. He was convicted, the evidence being very strong against him.

I said to him, "Wightman, I would like to know your history, and if you see fit to tell it to me, I will not give you away".

His true name was not Wightman, but he never told me his right and true name. He afterwards gave me what I am inclined to believe was a true story.

He was born in Virginia, his father being a clergyman. He graduated at one of the colleges in that state and it was the purpose of his parents that he should be a clergyman, he however, studied law and was admitted to the bar.

He insisted that he had been acting as a "confidence-man" for fifteen years; that he never before was guilty of any acts of violence like robbery or other crime; that in his real profession he committed only one kind of crime.

He would go into a large jewelry store in New York and introduce himself.

I am Mr. John Brown of Albany. We are to give our clergyman a present of a gold watch—I want the finest watch you have. He would pick out the watch at the lowest cash price. Now, as you do not know me, do up the watch and send it by ——— Express to my address, Albany, marked C. O. D.

As he was about leaving the store, he would say, By the way, can you let me write a letter? He expected they would give him a seat at the desk with one of their letter heads; and upon that he would write:

"We have just sent a watch to the address of John Brown by your express, marked C. O. D., but since doing up the package we find that Mr. Brown is entirely responsible, you may therefore deliver the package by collecting express charges.

Truly yours,  
(Jewelry firm name)"  
by ———

He would then put the letter in an envelope directed to the express company at Albany, and ask the firm to send it with the package. The next day an accomplice would appear at Albany and obtain the watch by paying the express charges.

He declared that for fifteen years he had succeeded in "playing that game" in every large city in America, realizing more than a hundred thousand dollars, and never had been caught. He said his great trouble had been in disposing of the property thus obtained, and that he had accomplices, who took the property of all kinds, which he obtained in this way, at about one-half or two-thirds of its real value.

He told me how I could find out and corroborate his story; that there was a law suit between the jeweler and the express company, in which the express company claimed that the jeweler should lose because the loss was occasioned by giving the "confidence-man" the letter heads and sending the letter along with the package.

I did confirm this story, Wightman was sentenced to seven years in the state prison. He seemed very much broken down, and declared that his health was poor, and that he should not live out his sentence.

Nearly seven years afterwards, while I was Attorney General, a man came into my office, and asked, "Do you

know me"? After a moment I replied, "Yes, you are Wightman".

He declared, that henceforth he was going to live an honest, upright life. He wanted I should give him a letter of recommendation to Jordan, Marsh and Co. I said yes, but I must tell them all I know about you, except what you told me in confidence.

He thought I looked incredulous, when he said he was going to reform, and asked, if I did not believe him. Without replying, I said, I'll tell you what to do. When you settle down and become engaged in some honest employment, write me a letter and tell me about it. I never have received that letter; but it was not a great while after that interview before I saw in the newspapers accounts that the "same game was being played" in different parts of the country.

#### STEPHEN B. IVES, JR.

Stephen B. Ives, Jr., of Salem was a very able lawyer. He was a graduate of Harvard College and the Harvard Law School. He was a great friend of Mr. Abbott, my predecessor as district attorney, and he seemed to manifest a great dislike towards me, partly, I thought, because I had ousted his friend, and also as he regarded me as not qualified for the position. Some of the Salem attorneys at that time, with some pride concerning their own city, looked askance at the Lawrence lawyers as coming from a manufacturing city. Mr. Ives and I tried a great many cases on opposite sides. He was far my superior in knowledge of the law and in general ability, but he had an unfortunate disposition, and a bad temper, which he could not always control, and especially when I was his opponent.

I fear I took advantage of this weakness. Mr. Ives also justly prided himself upon his literary attainments.

He defended a good many cases in the criminal court, soon after I became the District Attorney. At one criminal term of the court before Judge Putnam, Mr. Ives saved many exceptions to the rulings of the court. In arguing a case to the jury, Mr. Ives said, "The District Attorney is disposed to compliment me. 'Damn with faint praise, assent with civil leer, and, without sneering, teach the rest to sneer', as Shakespeare says".

The District Attorney. "Mr. Ives, your quotation is right, but your author is wrong. Pope is the author". "No, he is not; that is from Shakespeare", said Mr. Ives; "anyway, I will refer it to the judge". "No, no", said Judge Putnam, "I am afraid you would save an exception". A pretty strong intimation that he would have to decide against Mr. Ives. The story soon appeared in the newspapers, and the bar, and especially Mr. Ives' friend, "worried the life out of him" over being corrected on such a matter by a gentleman who made no pretensions to literary ability.

Mr. Ives died at the age of 54. Much too soon, as he was a man of high character and standing and had a great career of usefulness before him, lamented by the bench and bar.

While District Attorney and trying a physician for procuring an abortion, his defence being that he never had anything to do with the woman in any way, he took the stand in his own defence, and so testified.

There had been evidence in the case showing the size of the fœtus in this case. In cross-examination, I asked him, "Doctor, how large is a fœtus at four months"? He answered, forgetting his defence, "Usually it is about

(measuring with his hands) so long, but *this one* was so long”.

I had no idea of catching him; my question was an innocent one, but his answer nearly took my breath away, and I looked at his counsel, Henry P. Moulton and William H. Niles, and the answer had seemed to affect them more than it did me. I said to the witness, “That is all Doctor”, and he left the witness stand, not realizing that he had given ~~his~~ case away.

It was one of those rare instances, which sometimes happens in Court, where a defendant is trying to avoid the consequences of his crime by denying the truth, that for the moment he forgets and speaks the truth.

In my argument to the jury, I remember saying, “Gentlemen, when the defendant forgot his defence and told the truth on the witness stand, you must have observed that one of his counsel, who has a red face, turned white; and the other who has a very white face, turned red”.

## CHAPTER V.

---

### REGISTER IN BANKRUPTCY AND ASSISTANT ADJUTANT GENERAL AND ATTORNEY GENERAL.

---

March 2, 1867, Congress passed an act to establish a uniform system of Bankruptcy throughout the United States. The appointment of Registers was to be made by the nomination of the Chief Justice of the Supreme Court and confirmed by the Judges of the District Courts.

I was recommended by Hon. Marcus Morton, Justice of the Superior Court, Hon. George F. Choate, Judge of Probate, Hon. George B. Loring, Hon. Nathaniel P. Banks, member of Congress and many others, and received the appointment.

After I was elected to the office of district attorney, I felt that perhaps it would seem unreasonable to hold both offices, although there was nothing in the law to prevent. I wrote a letter to the Chief Justice, saying that I would resign the office of Register as soon as I closed up the cases before me, and recommending that another register be appointed to take the new cases.

Hon. Charles J. Noyes, afterwards Speaker of the House of Representatives, was nominated by the Chief Justice, but opposition to his appointment was made by the people of Haverhill, where he then lived, before Judge Lowell,

the district judge. After discussion of his fitness was made before the Court, his nomination was withdrawn. No other nomination was made, and I continued to hold the office until the law was repealed.

### A STEAL FRUSTRATED.

I had a case before me, where the account of the assignees showed \$19,000 worth of assets, and it was proposed to declare a dividend for the creditors of about \$4,000. I looked over the account and asked if any one objected to it. No one did object. I saw that the two assignees had charged for services \$4,000 each, Edward Avery, who had acted as their attorney, had charged \$3,200; other attorneys, who had been allowed to come in and prosecute some claims for the estate, had charged \$1,000; and so on, making the amounts count up to nearly \$15,000.

I remarked in the open meeting, "This looks like a steal, I cannot allow such an account without evidence". "Very well" they said, "They could satisfy me that it was all right". I commenced to hear evidence,—the more evidence I heard the worse the account appeared. After we had gone on for fifteen minutes, I said, "I will allow the assignees \$400 each, I will not allow Mr. Avery anything, as I do not think he has acted in the interest of the creditors; I will allow the other attorneys their charge for \$1,000, as they have earned it, etc., etc., making the amount of my allowance about \$4,000 (so that there would be about \$15,000 for a dividend), or you may go directly to Judge Lowell without my passing upon the account". Well they said they would go to the Judge.

Two weeks later, I was holding a meeting in the upper



court room, and Judge Lowell sent for me. As I entered his court room, the above case and accounts were being heard before him. The Judge said, "Mr. Register it has appeared in this hearing that you partially heard and considered this account"? "Yes", I replied, "I only heard it for about fifteen minutes". "I want you to state just what occurred, what you said and what others said", remarked the judge. So I stated literally what had happened before me. "That will do", said the judge, and I walked back to my duties.

The next week, I found that he had adopted my figures in making his decision. The following week, I was called into his lobby and highly complimented upon the stand I had taken. He said that if all the courts and registers would administer the law as he and I were trying to administer it, it would be for the real benefit of creditors and that lawyers and assignees would not be allowed to steal the estates.

After that, I found I was a favorite with Judge Lowell, and if there was any case where he suspected an attempt to steal, it was referred to me.

### JUDGE OTIS P. LORD.

The friends of Alfred A. Abbott were a good deal disturbed on account of my election to the office of district attorney over him, ousting him from an office which he had held for twelve or more years. Jealousy played its accustomed part.

Abbott was a protege of Otis P. Lord, then a judge of the Superior Court, living in Salem and he frequently held court in Essex County. He was a great lawyer and able man, but so thorough a partisan that it greatly in-



terfered with his usefulness as a judge. His friends now generally believe that had he remained at the bar, he would have become one of the greatest lawyers of his time.

The Judge made things very uncomfortable for me, both in the criminal and civil courts, not quite so bad in the civil, as there I had the right of exception.

In arguing a case in the criminal court, he interrupted me, so I took my seat fifteen times, and when he finished what he had to say I proceeded.

The interruptions were something like this:—

Judge Lord. “Mr. Attorney, I do not propose to allow you to misrepresent the evidence”.

The District Attorney. “But I am not misrepresenting the evidence, I am stating it exactly as the witness gave it on the stand”.

Judge Lord. “No you are not”.

District Attorney. “I am willing to leave that question to the jury, and your honor will have to tell them that it is for them to decide”.

Judge Lord. “Proceed with your argument”.

A few minutes later: Judge Lord. “Mr. Attorney, you may recall the witness, and see what he says about this evidence”.

District Attorney. “I have no occasion to recall the witness, I am satisfied with his evidence”.

After many more interruptions, suggesting and almost ordering the Attorney to recall the witness, the Attorney firmly but respectfully declined to do so, stating that he had no objection to the Judge recalling him. Finally the Judge recalled and examined the witness, who stated the evidence exactly as claimed by the Attorney.

Judge Lord. “You may proceed with your argument Mr. Attorney”.

For nearly seven years the Judge and District Attorney did not recognize or speak to each other, except in court when they were compelled to.

During all this time, I was always respectful to the Court, but I stood my ground for the rights of my clients. Finally, I felt that "forbearance had ceased to be a virtue", and I with others drew up and signed the following:

*"To the County Commissioners of the County of Essex:*

By the Statutes of the Commonwealth the property of the County is committed to your care, and it is your duty to see to it, that the public buildings are appropriated only to legitimate public uses. No other or different use of the public property should be allowed, except by common and unanimous consent.

Upon the question of what is a legitimate use of public property, minorities even have rights which should be respected and protected. A letter has been in circulation for signatures among the members of the bar of this county, addressed to, and requesting Judge Otis P. Lord, of the Superior Court, to sit for his portrait, that it may be hung upon the walls of the County Court House at Salem.

As this letter may result in official action on the part of your board, we respectfully remonstrate against the carrying out of the purpose of the request, and assign some of the reasons that constrain us in so doing.

In the first place, it is not customary to erect monuments to the living. When the final scene has closed a worthy life, an appreciative people may well set up monuments; only the most prominent and exceptional services to the public can change such a well-established propriety. While all the members of the bar and the public generally concede to Judge Lord great qualifications as a lawyer and advocate, yet we believe it is as well acknowledged that these qualifications are not such as peculiarly fit him for the office of judge. And if any member of the bar was

called upon to select from the bench the judge in reference to whose conduct officially, complaint was most general, he would be compelled to name Judge Lord.

The letter referred to, which has been quite generally signed by the members of the bar in this county, is not, in our opinion, evidence of any general feeling favoring such marked recognition of magisterial excellence; and we submit that the request to sign such a letter from the personal and intimate friends of Judge Lord, to the members of the bar, who, to a greater or less extent are engaged in trying cases before him, is not only a matter of questionable propriety,—especially so when the peculiar characteristics of Judge Lord are so well known, and he so often holds court in this county—but the letter itself, obtained under such circumstances, is of but little value as tending to show any professional, much less any public sentiment in favor of a project which should only be carried out upon the most manifest and voluntary expression of such sentiment.

Again we submit, it would neither be wise nor considerate, to select one judge from his bretheren upon the bench, and, previous to his retirement from active duty, to distinguish him from the other judges of the Supreme and Superior Courts, who each have occasion to hold court in the same room where it is proposed to hang the portrait of Judge Lord. “Comparisons are odious”, and this would be the most odious and unjust of all comparisons.

While the above are by no means all the reasons that could be assigned, yet they are, in our opinion sufficient to justify you, as servants of the public, in refusing the use of the court house for the purpose indicated.

EDGAR J. SHERMAN,  
WM. S. KNOX,  
ELBRIDGE T. BAILEY,  
CHARLES U. BELL,  
and fifteen others.

January 1, 1875”.

The letter was presented to the County Commissioners and a public hearing asked for.

The friends of Judge Lord said they would not ask to have the portrait hung in the court house while there was so much opposition.

Subsequently, Governor Gaston nominated Judge Lord to the Supreme Court. Many of the lawyers, who had signed the petition to put Judge Lord's portrait in the court, came to us who had signed the remonstrance, and asked us to help defeat his confirmation before the Republican Council.

I, for myself, replied no, that he could not do so much injustice there, as on the Superior Court, as he had six Associates there to prevent injustice.

Subsequently at an Essex Bar dinner, Judge Lord came more than half way, extended his hand and I took it. From that time he always treated me kindly and fairly. It was fortunate that this was so, as after his death, I, as Attorney General, was required to present, March 22, 1884, the Resolutions of the Bar upon the death of Judge Lord, to the Supreme Court (see 137 Mass. Report, 591).

My remarks were in part as follows:—

*May it please your honors:*

A distinguished citizen of the Commonwealth has died; an upright judge, who devoted more than twenty-three years to the administration of justice has gone; a lawyer of remarkable ability, a leader of the bar, has passed over to the majority; and a stately form and figure, and a familiar face, indicative of great intellectual strength, crowned with the silver of more than three score years and ten, will be seen among us no more. It is appropriate, on an occasion like this, to pause and consider his character, the lessons he has left us, and take note of his departure.

The opinions which Judge Lord has written, in behalf of this court, are contained in the reports, and will be preserved for our future use and benefit. He was a good writer, but a better speaker; he was an orator, and will be most appreciated and best remembered by us, who had the opportunity to see and hear him as a lawyer, arguing an important cause to the court or jury, with a power and eloquence rarely excelled, or, as a judge charging the jury in a capital trial, with a clearness of diction, terseness of expression, and comprehensiveness of statement, unsurpassed”.

#### DEATH OF MY OLDEST BROTHER.

My oldest brother, Henry Luther Sherman, an attorney, had suffered more or less from ill health, and he commenced early in the year 1868, to show signs of paralysis. His wife died of consumption in March. He came to my house and stayed until sometime in June, and then under the physician's advice he went with a nurse to Springfield, Vermont, to the home of our sister, Mrs. Malvina E. Backus. There he continued to suffer until September, when he died. He left two children, Henry Leslie Sherman, now cashier of the Lawrence National Bank, and Mrs. Alice Sherman Taylor, now living in Methuen, Massachusetts.

My brother when hobbling around on crutches, before going to Vermont, met Samuel Allison, before referred to in this volume, who was inclined to be somewhat profane and a good deal of a wag, who was also on crutches, having suffered much from inflammatory rheumatism. They talked together of their troubles and misfortunes. Finally they parted, bidding each other good-day. Soon my

brother heard Mr. Allison shouting to him, and he hobbled back to the corner of the street where they met again. "Well", said Mr. Allison, "Mr. Sherman you must remember that whom the Lord loveth he chasteneth".

#### ASSISTANT ADJUTANT GENERAL.

On the 21st of August, 1867, I was commissioned by Governor Bullock as Assistant Adjutant General and as Chief of Staff, in the Division of the Militia, with the rank of colonel.

Major General Benjamin F. Butler commanded the division. The staff was as follows:

Colonel Edgar J. Sherman, Assistant Adjutant General, Chief of Staff; Colonel York G. Hurd, Medical Director; Lieutenant Colonel George J. Carney, Assistant Quartermaster General; Lieutenant Colonel William H. Lawrence, Assistant Inspector General; Major Roland G. Usher, Aid-de-camp; Major Edward J. Jones, Aid-de-camp; Major Edward L. Barney, Judge Advocate; Major John W. Kimball, Engineer.

General Butler was then a member of Congress.

An order was issued requiring all communications to the headquarters of the division to be addressed to the Assistant Adjutant General at Lawrence. From that time until 1876, when the division was abolished, I practically managed the division, except at muster each year, when General Butler was present. The general was away and did not desire to be troubled with the details, so he requested me to attend to the duties, expressing confidence in my ability to do so.



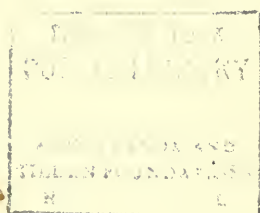


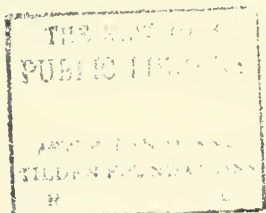
Very truly,  
Edgar J. Sherman,

COLONEL EDGAR J. SHERMAN

Assistant Adjutant General, Massachusetts Militia, 1867









Gen. Benjamin F. Butler, Commander of Division, Massachusetts Militia, 1867  
 Lt. Col. Wm. H. Lawrence  
 Lt. Col. R. G. Usher  
 General Butler  
 Col. E. J. Sherman

The duties of the office required more or less time, but I was interested in the militia and enjoyed the service.

In September in the year 1870 there was an encampment of all the militia of the Commonwealth at Concord. It was the first muster of all the militia since the war. The Governor, William Claflin, attended the encampment and reviewed the troops, remained on the field over night, and there was a grand reception in the big tent in the evening. The militia was in good condition and the encampment was a grand success.

#### A TRIP ABROAD.

In the summer of 1875, in company with Colonel Roland G. Usher, Ephraim A. Ingalls, and Charles H. Hudson of Lynn, Andrew C. Stone (afterwards Judge of the Police Court of Lawrence) and I took a trip abroad. We sailed from New York on steamer City of Richmond, June 26th, 1875, and arrived in Queenstown on the evening of July 4th.

We left the steamer there, visited Cork, the Lakes of Killarney and Dublin. Then visited Old Chester, Stratford-on-Avon, and from there went to London, where we remained about a week.

We went from London to Brussels, visited the battle-field of Waterloo, driving out from Brussels, going over nearly the same route which Wellington's troops took to reach that place. We went from Brussels to the Rhine, and up that river as far as Strasburg, across the country to Switzerland, visited Lucerne, and up Rigi, through Switzerland to Geneva. From there to Paris, where we remained nearly a week. About Paris we saw many marks of the war between France and Germany.

We returned to London, and after a few more days there came to Liverpool, and sailed in the City of Berlin for New York. I arrived home about September 1, in season to meet my youngest child, my daughter Maude, (now Mrs. F. H. Eaton of Lawrence), who was born September 5th, 1875.

James A. Gillis of Salem, joined our party in London.

My companions were agreeable gentlemen, good travelers, and we had a pleasant and enjoyable vacation.

They have all since, except Mr. Gillis, passed over to the great majority.

#### THE ATTORNEY GENERALSHIP.

In the fall of 1882 I was a candidate for Attorney General. The first mention of the subject, which I saw, was in the *Lynn Transcript*, and was as follows:

"There are evidently to be some changes in the republican state ticket this year. Hon. George Marston of New Bedford, the attorney general, it is understood will decline a nomination for that office. The practice of promoting judges from the Superior to the Supreme Court, and district attorneys to the office of attorney general, is a wise one; such promotion of deserving officials being the best kind of civil service reform. We have, in Essex County, a district attorney who is acknowledged to be a faithful, competent and deserving officer, and who is one of the ablest and the best in the Commonwealth; while we should dislike to lose his experience and efficiency in his present office, yet he deserves to receive the honor of being elected attorney general, an office for which he is particularly well fitted, and which he would fill to the entire satisfaction of the public and with great credit and honor to the state. We sincerely hope that for this office the coming republican state convention will nominate Colonel Edgar J. Sherman of Lawrence".

It was followed by articles in the "Dedham Transcript", the "Haverhill Daily Bulletin", "Lowell Courier", "Bristol County Republican", "Essex Eagle", "Springfield Union", "Lowell Mail", "Salem Gazette", "Lynn Union", "Malden City Press", "Boston Herald", "Taunton Daily Gazette", "Boston Traveller", "Newburyport Herald", "Lawrence American", and many other newspapers.

At the Republican convention at Worcester, September, 1882, the informal ballot was as follows:

Edgar J. Sherman of Lawrence, had . . .	400
James M. Barker of Pittsfield, had . . .	322
Edward P. Brown of Boston, had . . .	95
W. S. B. Hopkins of Worcester, had . . .	98
Scattering, . . . . .	10

and there was no choice. It was moved to nominate me by acclamation. After speeches by General William Cogswell of Salem, Major George S. Merrill of Lawrence, in favor of the motion, and General Morris Schaff against, the motion was carried, and I was nominated.

On election day the vote was as follows for Attorney General:

Edgar J. Sherman of Lawrence, . . .	137,008
George F. Very of Worcester, . . .	114,453
Elmer A. Snow of Athol, . . . . .	4,265
Samuel M. Fairfield of Malden, . . .	2,098

It was the year that General Butler was elected Governor and Oliver Ames, Lieutenant Governor.

On the last of December, I resigned the office of district attorney, which I had held for fourteen years, having been elected five times, for a term of three years each term and having a year more to serve. Governor Long appointed Henry P. Moulton of Salem to fill the vacancy.

The office has since been held by Henry F. Hurlburt of Lynn, and William H. Moody of Haverhill, now Justice of the Supreme Court of the United States.

I was renominated and elected to the office of attorney general for the four succeeding years. James M. Barker, who was the leading candidate for attorney general against me, in the republican convention, was in December of that year, appointed a justice of the Superior Court. In 1891 he was appointed a justice of the Supreme Judicial Court, which position he held until his death in 1905. There was no jealousy in Judge Barker's make-up and we became firm friends.

#### SUDDEN ILLNESS.

I had been working very hard for several years prior to my election as attorney general.

On August seventh, while talking with the Governor in the executive chamber, I remarked to the Governor, "There is something the matter with me. I am losing my memory".

Governor. You look all right. You know me, don't you?

Sherman. Yes; you are Governor Butler.

Governor. You know that portrait on the wall, don't you?

Sherman. Yes; that is Governor Everett.

Governor. Where did you come from this morning, Gloucester or Lawrence?

Sherman. I do not know.

It was ascertained that I had lost my memory for the past, although I knew and appreciated the present perfectly well.



Dr. Ayer, who lived near the State House, was sent for, and he took me to his house and sent for Dr. George F. Jelly. I was put to bed and given medicine. Six hours afterwards, I awoke from a sleep and found myself in a strange house. I could not then recall any of the transactions of that day. Up to that time, the day was a blank to me.

In the meantime, the Governor had sent for Mrs. Sherman, and I overheard her talking with the doctors in an adjoining room, in which the physicians were evidently trying to find a cause for such an attack. She stood up for me well, denying that I had any bad habits.

The next morning, I cross-examined the doctors as to their opinion of my future. Must I give up my professional work entirely? Should I have more attacks of unconsciousness, and finally die in one? I insisted upon being told "the truth, the whole truth, and nothing but the truth".

They said I had had a sudden and violent attack, which had caused unconsciousness for several hours, but that I had come out of it with a clear mind, and that there had been no paralysis, which was encouraging. They were of the opinion, with absolute rest for a month or more, I would gradually come out all right. They could find no cause for the attack, except overwork.

I did as I was advised; I did no work; did not read the newspapers or write a letter for over a month. The life insurance agents had been to see me several times, trying to induce me to take policies on my life. Soon after my return to the office, they came again. I welcomed them cordially, told them I would take all the insurance I could obtain; but, I said, before you take my application, you had better see Drs. Ayer and Jelly, and if you do, I do not believe you will see me again for at least a year.

I guessed right. In about thirteen months they came again. They told me that the doctors said that if I did not have another attack or any unfavorable symptoms for a year, I might be a fair risk.

I made an application to one of the old line companies, and, after a most thorough physical examination, they gave me a ten years' endowment policy. I took policies in the assessment and fraternal companies. At the end of the ten years I was paid the amount of the old line endowment policy. I have outlived all the assessment companies, and all the fraternal, except one, and I must die soon, or I shall outlive that one.

## CHAPTER VI.

---

### ATTORNEY GENERALSHIP,—*Continued.*

---

#### DR. FRANKLIN PIERCE.

While I was Attorney General, one, Dr. Franklin Pierce, a practising physician in Worcester, killed a woman, Mary A. Bemis, sick of fever, by soaking her in kerosene oil. It seemed to be a clear case of killing by the malpractice of a quack.

It had been decided by our Supreme Court in 1809 in case of *Commonwealth vs. Thompson*, 6 Mass. R. 134, that a physician killing a person under such circumstances was not liable for murder or manslaughter. Most of the other states of the Union had followed that decision. The English decisions were the other way, holding that a physician killing a patient by criminal negligence was guilty of manslaughter.

I advised the District Attorney to instruct the Grand Jury to find an indictment against Pierce for manslaughter, provided they found him guilty of criminal negligence, foolhardy presumption, etc. Pierce was indicted, and subsequently tried before Justice Pitman, and convicted.

His case was taken to the Supreme Court where it was fully argued by Mr. Goulding, a leading attorney, for the defendant, and by me in behalf of the Commonwealth. I

was very much interested in the case and felt the indictment should be sustained. I spent considerable time in preparing my brief, citing all the cases in this country and in England. The case was ably argued by Mr. Goulding in behalf of the defendant. The court took my opinion of the law and held that the conviction was right. (See *Commonwealth vs. Franklin Pierce*, 165 Mass. R.)

During that summer, 1884, Lord Coleridge, Chief Justice of England, visited this country, and while in Massachusetts, I, as attorney general, helped to entertain him. He was a very agreeable and entertaining gentleman. I dined with him several times and became an admirer of his.

After he returned to England I sent him a copy of my printed brief, not anticipating an acknowledgement even. I received the following autograph letter:

“Heath’s Court  
Ottery S. Macy  
Devon  
October 17th, 1884.

*Dear Sir:*

I thank you sincerely for the copy of your argument in *Commonwealth vs. Pierce* which you have been so good to send to me. The argument is, if I may say so, remarkably clear and able, and I hope that the doctrine of Lord Hale as explained by Lord Lyndhurst may be established with you as it is with us.

Anything which reminds me of the kindness and generosity which I experienced in America, is I assure you, at all times especially grateful to me.

Believe me to be, Dear Mr. Attorney General,

Your obliged and grateful servant,

COLERIDGE.

The Attorney General of Massachusetts”.

I received many other letters from distinguished Judges, among them the following from Judge Edmund H. Bennett, Dean of Boston University Law School.

“Boston, Nov. 29, 1884.

*My Dear Sir:*

I have been delighted with your brief in the Pierce case in Worcester, which I have just read. I have no doubt your view is correct. There cannot be one rule of criminal responsibility for ordinary persons, and another and lower one for physicians. If anything it should be higher. I am glad that you have removed an anomaly from our criminal jurisprudence.

Very respectfully yours,

EDMUND H. BENNETT.

Hon. E. J. Sherman, Attorney General”.

Governor Butler asked one of his aides-de-camp, Col. John P. Sweeney, to accompany the Attorney General to Newburyport to meet the Lord Chief Justice as he came into the Commonwealth and to entertain him for the day, the Governor himself being out of the state. After luncheon at the hotel, we suggested to his Lordship a drive about the city and suburbs.

When seated in the carriage, we asked, “Where shall we go first”? The Chief Justice said, “Suppose we look at the place where we had the trouble about the tea”. The driver was directed to take us to T Wharf. Here the Chief Justice took a look at the water and seemed to be just as well satisfied, as if told that he could not see the exact spot as it had been filled and built over.

Later when Col. Sweeney and I reported to Governor Butler about the tea episode he laughed heartily, but did not “give us away” to the Chief Justice.

Governor Butler sent to Mrs. Sherman a silver cup and saucer with the following note, which is self-explanatory.

State House, Boston.

November 24, 1883.

*My Dear Madam:*

On this 25th return of your marriage day (may the future be as happy as the past) accept this little token of my love and esteem for yourself and husband—the ripened fruit of many years of kindly regard from both. The intrinsic value of this silver cup and saucer is nought, yet I care for it as a faithful servant which during my several campaigns during the late war, always came to the “front” when “black coffee” was called. I trust it may be valued by you for the sake of the giver, as a remembrance, as it has been useful to him.

Most truly Your Friend,

BENJAMIN F. BUTLER.

Mrs. Edgar J. Sherman.

#### CASE OF JAMES NICHOLSON.

I appointed Harvey N. Shepard, Esq., the assistant attorney general, and Henry A. Wyman the law clerk.

The cases in which the Commonwealth was a party or interested, and argued by Mr. Shepard or myself, are reported in the Massachusetts Reports, from 134 to 145, inclusive.

While serving as district attorney for a period of fourteen years I assisted the attorney general in trial of the murder or capital cases, which occurred in the Eastern Criminal law district.

While attorney general, with the assistance of the district attorneys in the several districts, I tried in behalf of the Commonwealth all the capital cases. One of these cases tried in Suffolk was Commonwealth vs. James Nicholson.

Nicholson was an ex-police officer, had married a wife from the north end, had a little girl two years old, and Mrs. Nicholson was pregnant, and owing to some trouble with her husband, who was out of work and drinking more or less of intoxicating liquor, had left him and gone to live with her mother.

He went there on the morning of the murder, fired two shots and killed her.

COMMONWEALTH OF MASSACHUSETTS.

Supreme Judicial Court.

Suffolk, ss.

December 17, 1884.

COMMONWEALTH VS. JAMES NICHOLSON.

Charged by Indictment with the Wilful Murder of his wife, Ellen.

Third day of the trial before Devens and Holmes, Justices.

Edgar J. Sherman, Attorney General, Oliver Stevens, District Attorney, for the government.

Stillman B. Allen, Owen A. Galvin, for the prisoner.

AN ABSTRACT OF THE ARGUMENT OF

EDGAR J. SHERMAN, ATTORNEY GENERAL

In behalf of the government.

*May it please your Honors, and you, Mr. Foreman, and gentlemen of the jury:—*

I congratulate you, gentlemen, that we are so near the end of this painfully interesting and important trial.

When the newspapers, on the afternoon of April 22 last, announced that James Nicholson had murdered his wife, and had made his escape, the whole community of the city of Boston and the people of the Commonwealth



received a shock. After reading the particulars of what then seemed a cold-blooded murder, they remembered that for many years the city had been spared the horror of a similar tragedy, and they marvelled that such a crime could be committed in mid-day, in broad daylight, and the murderer escape.

As days and weeks passed the people became impatient. They complained of what seemed to them inactivity on the part of the officers of the law; they asked: "Have we really a police force"? they murmured, because the murderer was not detected and arrested, at the inefficiency of the officers of the city and state.

But while this natural impatience was manifesting itself in the newspapers, the officers of the law, who cannot publish to the world the information they receive, as thereby they impart to the absconding criminal the progress of their search, were quietly, noiselessly and zealously prosecuting their plans for the capture of the fugitive.

Not until June 10th did the telegraph inform us that the prisoner had been arrested in Montreal. A few days later, he was brought back to Boston by Sergeant Symonds of the Boston Police force, and lodged in jail, to await arraignment and trial upon an indictment presented by the grand jury of Suffolk county, charging him with the wilful murder of his wife. When it was ascertained that Nicholson had been arrested, brought back to Boston and committed to jail, the excitement subsided. In the interim the murdered wife had been buried, and the shocking tragedy, which deprived her of life in early womanhood, had been partially forgotten. Our attention is now attracted to the living. His friends rally to his defence, speak of his good deeds, good character and kindly disposition. Our sympathy begins to turn from the dead wife to the living, suffering and weeping husband.

This is usual and natural. We sympathize with present trouble and suffering.

My friend, Mr. Allen, counsel of the prisoner, tells you, while making a sympathetic appeal to you in behalf of his client, to harden your hearts against the argument of the Attorney General; that he will give you "cold logic", without tenderness or sympathy.

Does Brother Allen imagine himself the only person in the court room possessed of a heart?

I trust I pity the prisoner as much as counsel does. We all sympathize with a man in sore trouble. I cannot see a man like the prisoner, weeping upon the witness stand, as though he were beginning to realize the terrible crime he had committed and to feel the great peril he is in, without pity. Neither am I unmindful of your tears and manifest sympathy for him, nor do I complain thereof. Our hearts, our sympathies, are the best part of our natures.

Before proceeding to a discussion of the evidence, I desire to call your attention to two statements of the counsel for the prisoner.

First, he makes an appeal to you to save this prisoner from the gallows and from imprisonment for life, because he hails from the same county and state,—York County, Maine,—that counsel does; he says it would be a gratification, and he would consider it a personal favor and compliment to be allowed to take the prisoner home to his father and mother in Maine.

Has it come to this? Are you in a court of justice? Are we engaged in the solemnity of a capital trial? Away with such childlike and puerile suggestions! They have no proper place here. The second suggestion is, that I shall beg, appeal and implore you to convict the prisoner.

Gentlemen, I shall do nothing of the kind. This is an

important trial. I have a duty to perform, and so have you. If I do my duty fully and faithfully, it is of little personal consequence to me how you perform and discharge yours. You have more responsibility in the verdict which shall be rendered than I. You are citizens of Boston; your names have been given to the public, as the "good men and true", who have sworn that you have no such prejudices against capital punishment as would prevent you from rendering a true verdict, and that you will try the case according to the law and the evidence given you. You are to decide whether a man can commit a deliberate murder with premeditation and malice, and escape the consequences. You are to determine whether life is sacred and under the protection of law in Boston. I am not a resident of the city. You have more at stake than I have. Your verdict on the morrow will show to the world your appreciation of a human life, and the protection you would furnish it. Mrs. Nicholson's life was as valuable to her, and as much under the protection of the law, on Cross street, as any life on Beacon street.

There are three possible verdicts which may be rendered upon this indictment. Murder in the first degree, murder in the second degree, and not guilty by reason of insanity. You have no right to return a verdict of manslaughter under the evidence.

The government must prove its case beyond a reasonable doubt. The adjective *reasonable* is significant and important to remember. There is nothing in this life absolutely certain and sure. Impossibilities are not required. We are not to prove a case beyond a *possible* doubt. We are to satisfy your reason. There is no mystery about a court of justice. You take with you into the jury box your common sense, your intelligence, your ex-

perience, and all the ability God has given you. You act there as you act outside upon important questions.

Drunkenness and insanity have been imported into this cause. Neither have any right or place in it. The prisoner was sober, not intoxicated, on the twenty-second day of April, when he committed this great crime. The case has been discussed as if it were proven that Nicholson was drunk on that day. I repeat, there is not a scintilla of evidence from any source to prove it, as I shall show by and by.

We start, then, on that morning, with a sober, rational and responsible being; a man who had had a quarrel with his wife, a separation from her on two occasions, and who is now living separate and apart from her on that account. Two persons only know the extent of that quarrel, and the cause of it. The lips of one are sealed by death, and the other, the prisoner, dare not and will not tell you. The jealousies and quarrels between husbands and wives are not proclaimed upon the housetops and are generally known only to the parties. It appears, however, that the prisoner had aided in the support of his bastard child, born of another woman, prior to his marriage to Mrs. Nicholson, and that she knew the fact, and also knew that the mother of that child continued to reside in the vicinity of her husband's residence. If Mrs. Nicholson was not jealous, under such circumstances, she was a remarkable woman.

Mrs. Nicholson persisted in living at this lodging-house, "this cheap lodging-house", where, as counsel says, "they took lodgers at fifteen cents a head",—against her husband's wishes and protest. She had also, against his will, and while he was away, taken all his household goods, of every kind and description, from his residence and moved them to and placed them in this same "cheap lodging-

house"! The quarrel between them was greatly aggravated on this account. He had not seen her for five weeks, except once, when he was sent for to come and see the sick baby. His remarks then about keeping the baby in "*such a place*"! showed still his feeling.

But, gentlemen, I cannot show you the extent of this quarrel, his jealousy of her or hers of him, because the dead cannot speak; I do, however, establish beyond controversy the fact that there was a quarrel, and that it commenced in January, existed afterwards, deepening and widening, during all which time the prisoner had pondered over it, brooded over it, becoming moody, and seeking relief in the old way, by the use of the cup that intoxicates. By reading now the history of his life since January, you see him gradually drifting into the condition of jealousy and exasperation in which he contemplates the deed; and then he uses liquor, as it is used by almost all criminals, to give courage and to steady his nerves.

He had been drinking heavily for several days, and was more or less intoxicated on several occasions. He is now prepared for the deed of blood! He walks calmly to the house, plays with the baby until the wife comes in.

"Hallo, Jim, you are quite a stranger", says the wife. He talks again about going to New York. Finding him calm and sober, she takes their baby and invites him into the other room. She knew him better than anybody else. Do you, gentlemen, believe for a moment that she would have invited him into that front room alone, unless he was perfectly sober, or if he was then insane, having a fit of delirium tremens?

They have been in the other room but a short time, a few minutes, when loud words are heard. He is heard to say, "*Take that*"! and the discharge of a pistol follows. The witnesses rush in; the prisoner is standing in the mid-

dle of the room, pistol in hand; the wife is lying back in the rocking chair; the dress sleeve on her left arm is on fire from the powder of the pistol. She exclaims, "He has killed me at last"!—the ball had hit her left arm and glanced into her body. Her brother, putting out the fire on her sleeve says, "No, you are not dead; he has not killed you". There is more talk; the brother tries to reassure her. According to the evidence of the boy, Conway, who ran down stairs and to Salem street and gave the alarm, a minute and a half elapsed between the first and second shot. Nicholson says, "If I haven't killed you, I will"! and then puts a bullet directly through her heart. He waits to see her die, then exclaims, "I am a murderer, and I meant it"! passes slowly down stairs, lights his cigar, calmly walks down the street, and makes his escape. If that is not murder with deliberately premeditated malice aforethought, I do not know what is.

Gentlemen of the jury, the language of Mrs. Nicholson throws a flood of light on the case; it is like her dying declaration. He was sober; she did not suspect him. She must have feared him. He says, "Take that"! and fires. She who had been threatened, frightened, and who had feared death at his hands, while she believes she is dying, exclaims, "He has killed me *at last*"! There is a whole volume of secret history revealed in these six words. They lift the curtain and enable us to observe his deliberation and premeditation. As we hear them, we see the jealousy, madness and malice which cause him to murder. They are the key which unlocks the door to his motive and deliberate purpose to kill.

After those significant words are uttered by her and reveal to him her previous fear, dread and expectation of death at his hands, his exclamation and acts confirm hers, and give clear interpretation of his purpose and motive



in firing the first shot. "If I have not killed you, I will". Now he waits until death receives his victim, and then he interprets her declaration and all his previous acts with language as impressive and vitally conclusive as though written in letters of fire upon the heavens above him. "I am a murderer, and I meant it"!

Then, gentlemen, as if to emphasize it all, and to convince the most skeptical of his determined and deliberate purpose at all hazard to murder his wife, while in the possession of all his faculties, he moves moderately down stairs, stops, strikes a match, lights his cigar, walks calmly along the street, and makes his escape.

Most men under the excitement of shooting under such circumstances, would shoot badly; but Nicholson, who had planned it, prepared himself and his nerves for it; with a steadiness born only of premeditation and deliberate calmness, aims accurately, and pierces the heart of his intended victim.

Now how does he act? Like an insane man, like a drunken man, or like a man who has planned and committed a deliberate murder.

Within twenty minutes the whole police force of Boston, over eight hundred men, is searching and looking for Nicholson. An accurate description is sent out, and soon all the officers in the Commonwealth, and in New England, are on the watch for him. Notwithstanding this, he is so bright and capable, and his plans are so well laid, that he is enabled to elude all the vigilance and skill of the best officers and detectives, and make his escape to Canada. This fact alone laughs at this defence of insanity! The fact that he could commit a murder at noon-time and secrete himself, or escape within twenty-four hours from the city of Boston, eluding the great vigilance



and thorough search of the police, causes us to smile at this defence of drunkenness.

What is the answer of the prisoner to this state of facts?

1. Pity and sympathy for him.
2. Abuse of the government witnesses.
3. Drunkenness.
4. Insanity.

There is no element of the golden rule in this pathetic appeal for sympathy. Did Nicholson show mercy to her whom he had promised to love and cherish, and whom he was under every obligation of manhood and honor to protect and defend?

While she was suffering from the cruel wound of a bullet in the body, and in terrible agony from the burning of her arm, and her dying, pitiful voice uttered, "*He has killed me at last!*"—*did he show pity then?* On the contrary, no word of sympathy and no act of tenderness came from him. But with cold, harsh and vindictive words, he exclaimed, "*If I have not killed you, I will!*"

As her body falls heavily upon the floor, and as her little child falls also, crying with fright and clinging to the body of the dead mother,—a scene which would seem to melt a heart of stone,—did he manifest sympathy then? No. Coldly waiting until death takes his victim, he exclaims, with the satisfaction of malicious hatred, "*I am a murderer, and I meant it!*"

Do tears flow from his eyes as he leaves for the last time the house where he had wooed and won her? No, he takes a smoke, in satisfaction at the accomplishment of his purpose.

And this is not all, gentlemen. Six weeks afterwards, having had time for reflection and repentance, upon meeting that faithful officer, Sergeant Symonds, in Montreal, Nicholson greets him with, "*I killed her; I am not dead*

yet, and I am not afraid to die". No regrets then, and no sympathy for the dead. And, gentlemen although that cruel murder was committed nearly eight months ago and you have the declarations of the prisoner, at the time, immediately after, in Montreal in June, and on the witness stand, yet I call your attention to the fact that, during all this time, his lips never have uttered a word of sympathy for that poor wife, of regret for the murder, nor remorse or repentance for the great crime!

Can anything be more conclusive to show a premeditated purpose and plan, the deliberate execution of the same, and entire and malicious satisfaction as its accomplishment?

And, Mr. Foreman and Gentlemen of the Jury, with this evidence before you, counsel in his behalf pleads sympathetically with you, to save such a cruel father and cold-blooded murderer, so that he may be spared to bring up, train and educate his motherless child. Well, gentlemen, I have heard the story of a young man, who murdered his father and mother to obtain their property, and then pleaded for mercy and leniency upon the ground that he was a *poor orphan*. That story has been told in jest. Counsel makes his appeal apparently in all seriousness.

I desire to consider briefly the witnesses for the Commonwealth. We were in duty bound to produce every witness who was present when the murder was committed. If we had left one, you would have heard loud calls for such absent one.

When, under such circumstances, we call witnesses, we expect you to hear them, and credit them so far as they appear to be truthful and worthy of credit. We should not be inclined to give every witness a certificate of good moral character. We do not select the persons who hap-

pen to be witnesses to crime. If we did we should select the best. The first witness called is Edward Allman, upon whom counsel makes a severe attack. Why? Because Allman happens to be an important witness against the prisoner. Let us be just to him whom they called "Uncle Allman". Is it anything against an honest old Irishman, who is poor in health and purse, that he boards at a lodging house on Cross street, at fifteen cents a night, instead of at Young's or Parker's? Has he any motive to tell an untruth? He was there, and saw and heard what he says he did; and, in fact, is corroborated in every thing he says except one. After Nicholson committed the murder, he said, "I am a murderer". Allman heard it; so did George McLaughlin; and Allman says Nicholson added, "and I meant it". He is the only witness who heard that. George has forgotten it, or never heard it. That often happens. No two men seeing a fight in the street will describe it precisely alike. But you know that Nicholson was a murderer, and you also know perfectly well that he intended and meant to murder, and whether or not he added, "I meant it", you may think of little consequence. I think, however, you will give full credit to the testimony of Edward Allman, whose honest face, clear and disinterested manner will convince you of his accuracy and truthfulness.

George McLaughlin, the brother of Mrs. Nicholson, has also been handled very roughly by the other side.

George was corroborated by the other witnesses. But he was not a willing nor a swift witness for the Commonwealth. On the contrary, he was disposed to help the prisoner all he could. He had been appealed to by the father of Nicholson not to "go hard" against the prisoner, and he has been constantly treated to liquor by the friends of the prisoner, at the North End, since his arrest; and I agree with counsel, that he had been drinking intoxicating

liquor prior to coming on to the witness stand. I would not give George McLaughlin a certificate of good character; yet he is obliged against his will, to tell what he knows about the case. He does it reluctantly, but he tells it, and he is corroborated.

We come to the one bright spot in this case, the testimony of little, sweet-faced, innocent Annie Quigley, the girl of seventeen. Notwithstanding her humble birth, her poverty, and her unfavorable surroundings for a life of chastity, yet she comes into this court with the innocence of childhood, with a sweet, intelligent countenance, and she carries conviction that every word she utters is the absolute truth. What has saved that girl, gentlemen, whom you believe to be as pure as the driven snow? Justice to whom justice is due. Say what you may, I believe *the church* is entitled to great credit in that regard. And after Annie has told you the story of that terrible day,—a scene which was photographed upon her memory, and its imprint will remain there forever,—you are satisfied; you are convinced. You no longer have a *reasonable* doubt. She was frightened and ran away, and did not hear and see everything; but she heard enough,—enough to satisfy and convince the most doubting.

But you have, although you do not need him, that bright boy, Conway. You believe him; he gives the time between the shots. On hearing the first he ran down stairs, gave the alarm, hurried a few feet to Salem street, when he heard the second shot,—about a minute and a half between them,—and while Conway was looking for a policeman, he saw the prisoner calmly walk away, smoking his cigar.

But why do I dwell upon this evidence? There is no dispute about or contradiction of it. The prisoner, who

has been a witness, does not deny it. It stands undisputed, and is, in fact, admitted.

The government has then proven, beyond a reasonable doubt, that the prisoner, with deliberately premeditated malice aforethought, murdered Ellen Nicholson.

What is the defence? Insanity; drunkenness!

Although there is evidence that the prisoner had been drinking for three months prior to April 22, and excessively for several days before the homicide, yet I say, and call upon you to listen while I review the evidence, that he was not intoxicated on that day. On the contrary, the evidence conclusively shows that he was sober. Drunkenness, as has been said, does not excuse crime. Where *intent* is essential to crime, and the crime cannot be committed without proof of such intent, like assaults with intent to rob or murder, the question of drunkenness may have an important bearing on the issue.

So, in determining the degrees of murder, under our statute, the question of the intoxication of the murderer at the time,—the condition of his mind and will,—may be significant and decisive.

There is a vast difference, however, between a man who takes a single glass of liquor and one who is beastly intoxicated. A great many men in the Commonwealth, perhaps one-third of our people, use intoxicating liquors moderately; some drink several times in the course of the day, but seldom, if ever, become intoxicated. Others become beastly intoxicated, staggering drunk, so that they can neither walk nor talk straight. Although there is evidence that he was under the influence of intoxicants on Friday, Saturday and Sunday, and perhaps on Monday, yet on Tuesday, the day of the murder he was sober. Up to the hour of the murder he had taken four drinks only. Two whisky cocktails and two glasses of beer. The cock-

tails and one glass of beer had been taken in the forenoon, the other glass of beer was furnished at the house by George McLaughlin. You know something of the effect of liquor upon men by observation. A man in the habit of using liquor every day, like the prisoner, will be steadied by a few glasses, while the man unaccustomed to its use may be somewhat disturbed by the same or a smaller quantity. Common observation detects drunkenness at a glance. We all know when a man is guilty of the crime of drunkenness. Evidence of it is constantly produced in courts of justice, and police officers testify that the man exhibited it by staggering, or by talking wildly and incoherently, or by screaming, or by lying in the gutter unable to move or talk, or by being in the condition of a crazy man,—“crazy drunk”, as it is called. Now, then, there is no evidence that Nicholson was intoxicated on that day; but, on the contrary, all the evidence, his appearance, looks and acts, show him to be sober and in the full possession of all his senses and faculties. He went to his work as usual, as foreman of the shop, and worked steadily until towards noon. One man from that shop has been called as a witness in the prisoner’s behalf; he does not say that Nicholson was intoxicated. If he had been, every man in the shop would have been here and so testified. The man who sold him the liquor that forenoon was a witness for the prisoner, and he does not pretend that Nicholson was drunk. Everybody who saw him before, at the time, and after the murder, describe him as sober and calm. But, gentlemen, the fact that he was able to escape, when eight hundred policemen were immediately after him shows him in the possession of all his faculties. A drunken man would have staggered into the hands of the police. Nicholson is not without friends, who have shown a willingness to help him when they could by their evi-



dence. Many of them must have seen him that day; they raised \$100 to enable him to escape, but not one comes to swear that he was intoxicated.

This defence failing, we come to consider the defence of insanity. That is now the defence in all cases where the crime is clearly proven and all other defences fail; insanity; transitory mania; transitory frenzy; delirium tremens; mania-a-potu, and rum insanity. The physicians who think and write on this subject are apt to become partially insane themselves. Fortunately, this kind and claim of insanity has been defined, and they say it is delirium tremens. We know, gentlemen, the common man knows, something of delirium tremens. If you have ever seen a man suffering from that disease, you will never forget it. If this man had delirium tremens for a week, from the Friday before to the Friday after the homicide, then I admit, gentlemen, your verdict should be not guilty by reason of insanity. But, gentlemen, I deny that he had any such disease; it is all a sham and pretence. Nobody saw him have delirium tremens. The persons who saw him on five or six occasions intoxicated, do not even claim he was suffering from that disease. The men who sold him liquor are acquainted with the signs of delirium tremens, but not a witness swears he had them. Think, gentlemen, of a man as foreman of a shop, directing its business, and not a person therein even dreaming that he was working under an insane man! The law presumes every man sane. He talks and acts like a sane man; and, after committing the murder, he escapes like a sane man. But my friend (Mr. Allen) says, the physicians find him to be insane—suffering from delirium tremens. The experts on insanity, the doctors, find no such thing. They were asked hypothetical questions. They were asked, if Nicholson imagined certain things which were



not real, and did not exist, on occasions when he was drunk, if that would not be evidence that he had hallucinations. Of course they answered "yes". I asked if those acts were equally consistent with drunkenness, and they answered "yes". But there is no evidence that the things he puts into the question were imaginary. On the contrary, some of them are imaginary, and only exist in the mind of Mr. Allen, as I can show you. The first act to prove delirium tremens, is from the evidence of the fireman, John I. Quigley; and my brother Allen founded an argument to you upon the ground that the woman who claimed to be a mind reader, was an imaginary being, having in fact no existence. It is fortunate that we have a full report of this evidence, for I propose to prove to you from it that the "mind reader", so called, did exist; that a woman who made professions in that direction actually existed, and was out attending church when the prisoner and Mr. Quigley called. I read from the testimony of Quigley, on page 21:—

*Quigley.* "Says I (to Nicholson) 'Come along; what's the use of hangin' round like this?' says he, 'I will tell you what I will do. Come with me and see a mind reader, and I will go home with you'. Says I, 'All right', and I coaxed him to come home. I started then, with a friend of mine, with Mr. Nicholson, where he said he was going, to see the mind reader. I didn't care where it was, as long as I got him away, so he would be all right, and get him towards home. He got down to Mrs. Grimes' house on Salem street, a little below Parmenter, and this friend of mine and Mr. Nicholson and myself went in there, in the front room; and when he got in the front room there, he asked some strange lady, I don't think he was very well acquainted with her at the time, where a certain woman was,—a certain mind reader,—and called her by name.

She says, 'She has gone out to church'. That was all there was to it".

So you see, gentlemen, my brother Allen imagines something, and bases an argument upon a state of facts which does not exist.

Take the next case, where, while Nicholson was partially intoxicated, he fires his pistol, pointing to the floor in the saloon; also, on another occasion, he fires in the air. Counsel assumes that, in each case, he was firing at some imaginary object, like rats or bats. On the contrary, there is no evidence of that; but the witness, Mr. Wills, who describes it, says he thought nothing strange of it,—he considered it only as a freak of a drunken man. There is also evidence from Quigley, that Nicholson, on the same evening when they were in search of the mind reader, went upstairs and discharged his revolver; that when called to an account for it, he excused himself and said he was firing at a cat. That story may have been true. Nicholson was partially intoxicated, and would it be surprising that under such circumstances he gave a false excuse?

Then we have the astonishing circumstance of a man going to bed badly intoxicated, and in the morning he thinks he heard noises in the next room, as if people were there, when in fact they were not. What a remarkable circumstance, that a drunken man hears or sees double!

Then there is the testimony of the prisoner on this subject of insanity! Formerly, a party who had any interest in a civil case, even, could not be allowed to give evidence in a court of justice. Later, however, the legislature relaxed the rule, and now allows all parties to testify, even a prisoner in a capital case; but, at the same time, a jury is to remember the great inducement and the strong motive he has to swear falsely. It is well illustrated in this case.

Think of it, gentlemen. The prisoner swears that he did not abscond from the Commonwealth; that he does not know why he went away; that upon arriving at Lowell and seeing his name published in the newspaper as a murderer, he did not examine the article nor read it; that he had no curiosity to see what was said about him or the murder; that at White River Junction, where he stopped at the hotel over night, he does not know under what name he registered, or whether or not he gave a false name; that he does not know why he gave the name of Murphy in Montreal, instead of Nicholson; and that he does not know why he was remaining in Montreal when arrested. I am not going to call hard names, nor say an unkind thing concerning this evidence of the prisoner. But you know it is not true, and cannot possibly be true; and that the prisoner knows it is not true.

And then he gives you the star-in-the-forehead, imaginary-men-on-the-ground-in-the-woods story!

One is as reasonable and probable as the other. Does he give you credit for intelligence, when he gives you such stuff? And still, in order to give this insanity theory a moment's respectful reflection, and to have anything to base the physicians' evidence upon, you must believe his testimony.

When you find that he ran away from this state, after committing the murder; that he exhibited great ability and remarkable adroitness in making that escape; that he absconded to escape the consequences of the murder; that he gave false names and practised deception with the same end in view; then you have determined that there is too much method in his madness, and that you cannot and do not, on your consciences and upon your oaths, believe him. Then all this testimony, like a rope of sand, falls, and the evidence of the physicians, based upon it, falls with it.

No, gentlemen, in all seriousness I say again, there is no foundation for the defence of drunkenness, and the plea of rum and insanity has no right or place in this case. It has been forced and imported into it, and because of the importance of the cause you will give it fair consideration. When this has been done, your full duty towards it is performed, and you will then dismiss it from your minds.

There is one other matter to which I desire to direct your attention, which I regard as important on the question of motive, malice, premeditation and determination, as well as showing the prisoner's cunning, adroitness, ability and firmness of purpose; and that is, his conduct on the witness stand. He was compelled to admit that he received, while in Montreal, from friends here, one hundred dollars. I asked him from whom he received it. He declined to answer. After coaxing him for some time, he still refusing, the court informed him that it was a proper question, it was his duty to, and he must answer it. Although upon trial for his life, he calmly and with stubborn dignity defied the authority of the court and power of the law, and absolutely refused to answer. Does that not show the character of the man, who, when he had determined to murder his wife, would carry it out; and does not this exhibition on the witness stand confirm all the evidence of the murder; that on account of a quarrel, in January, between himself and wife, the cause and extent of which he does not disclose, they separated; that the quarrel increased in violence and fury, until he decided to murder her; that, after taking some days to bring his courage and nerves to the proper condition, on the twenty-second day of April, with the same coolness and self-possession he manifested in defying the power of the court, he carries out his purpose, fully executes his previous plan, and makes his escape?

Why did he refuse to answer? I told him I wanted the question answered in order to test his truthfulness. He knew perfectly well the moment he answered that question we should know who the people of the North End were who harbored him immediately after the murder, and that thereby we should be enabled to trace him every step from the murder to Montreal, and explode that star-in-the-forehead and wandering-in-the-woods story. This was the only reason he refused to answer, and not for the false one given.

You are told, gentlemen, that we have shown no motive for this crime. If by that is meant that we have shown no *adequate motive* for the great crime of wilful murder, I admit it. It is impossible to have or find an *adequate motive* for crime, and especially for a crime of this magnitude. If, on the other hand, it is claimed that we have shown no ill feeling, hatred nor quarrel, between Nicholson and his wife, then I deny it, and appeal to your recollection of the evidence, as I have before called your attention to it. But, gentlemen, there is no requirement or burden on the government to prove or show motive in this or any criminal case, and the court will so instruct you. Evidence of motive to commit crime is important when there is serious doubt whether the accused is the person who committed it. But when there is no doubt or question of the identity of the person charged with the commission of the crime, as in this case, then the question of motive, or the extent of it, becomes unimportant.

There are many things I might say, if I attempted to follow the counsel for the prisoner in his argument of three hours and a half; but I shall not. I think sometimes it should be assumed that jurors have eyes and ears; that it should be presumed that they know some things; that it should be taken for granted that you desire to serve

your country faithfully and that your honest purpose is to arrive at a just result, a true verdict.

You have been reminded many times of the consequences of your verdict, if it shall be what counsel fears it may be. He has led you along with that silent procession in the corridors of the prison many times.

Gentlemen, in this great trial, the judges on the bench, the jury in the box, the counsel for the defence or for the government, have nothing to do with consequences. We are one and all to keep sacred our oaths, and discharge and perform our duty fearlessly, faithfully, honestly.

You are simply to declare the truth as found by you; to decide an issue. You are to determine a pure and simple question of fact; and you will do it and let consequences take care of themselves. You are not the pardoning power; that is invested, under the Constitution, in another department of government. You are standing on the high plane of responsibility between the public and the prisoner. All eyes are turned towards you. You have been selected in the solemn mode provided by law for capital trials.

You have sworn that you have no such prejudice against capital punishment as would prevent you from returning a verdict of guilty in the first degree, if clearly proven.

If, while you are considering the evidence, tears of sympathy for the prisoner blind your eyes and you hesitate on the threshold of duty, listen to the small voice of that secret monitor within, as you hear the admonition, "Remember your oath", and life will be made more safe and better protected, courts of justice will be more respected, law will be vindicated; and, what is better still, you will have rendered a correct and true verdict and satisfied your own consciences, and thereby will be entitled to receive—having faithfully and honestly performed the



highest and most sacred public duty of a lifetime—the plaudit, “Well done, good and faithful servants”!

---

[Afterwards Judge Devens charged the jury. The next day they returned a verdict of guilty of murder in the first degree. December 20th, the prisoner was sentenced to be executed, March 27, 1885.]

On the first ballot the jury voted 11 to 1 for the conviction of murder in the first degree. Finally they voted unanimously for that verdict. When it was rendered in court, Mr. Allen fainted.

Subsequently an application was made to the governor and council to commute the sentence to imprisonment for life in the state prison, which they finally did. Afterwards, when the child who fell from her mother's lap, at the time of the murder, became a grown woman of twenty odd years of age, an application was made by her to the governor and council for the pardon of James Nicholson, her father, and the same was granted December 22, 1904, and father and daughter are now living in the state of Maine.



## CHAPTER VII.

---

### ATTORNEY GENERALSHIP,—*Continued.*

---

#### CASE OF HENRY K. GOODWIN.

The following trial commenced December 28, 1885, and was concluded January 5, 1886. The trial attracted considerable interest as General Butler appeared for the prisoner. It was the last criminal case which the general ever tried. The defence was insanity.

#### COMMONWEALTH OF MASSACHUSETTS.

Essex, ss.

Supreme Judicial Court.

COMMONWEALTH VS. HENRY K. GOODWIN,

Charged by Indictment with the Wilful Murder of Albert  
D. Swan.

Eighth Day of the trial before Charles Allen and William  
S. Gardner, Justices.

Edgar J. Sherman, Attorney General, Henry F. Hurlburt, District Attorney, for the government.

Benjamin F. Butler, John P. Sweeney, for the prisoner.

EXTRACT FROM THE ARGUMENT OF THE ATTORNEY  
GENERAL

In behalf of the government.

## CLOSING ARGUMENT BY THE ATTORNEY GENERAL.

*May it please Your Honors, and you, Mr. Foreman, and gentlemen of the jury:*

On the twenty-seventh day of August last, Albert D. Swan, who had lived in Lawrence from infancy, a man whom the defence admit was the soul of honor, while engaged in his own office, attending to his own business, without the opportunity to give to his wife the kiss of good-bye or a parting blessing to his little boy, was assassinated!

When a man was found with courage enough to break the terrible news to his wife, which crushed her to the earth, where do we find the prisoner? We find him sane enough to know where a man who commits such a crime belongs; sane enough to know the consequences, and to be responsible for his acts. We find him going towards the police station, giving the deadly weapons to his uncle, and saying to his cousin, "I have killed the son of a bitch". We find him surrendering himself to the police and telling the officers of the law that Swan had wronged him, cheated him; that he had made up his mind a year ago and told Swan so, that he would have his heart's blood, unless a settlement was made; that he had now satisfied his revenge, carried out his threat, that he was satisfied and prepared to take the consequence. Did he not then know, gentlemen, and had he not intelligence enough to know the consequence of his crime? There was no thought of insanity then.

It is well to look at the prisoner and his case then, before counsel had been called into the case at all. It was as well known in Lawrence then, that the prisoner and Swan were enemies, as it is that General Butler and I are friends. It went on, so swears the uncle, for two or three weeks, and everybody believed that the prisoner killed

Swan because they were enemies and because Swan had wronged and cheated him, and the only suggestion on behalf of the prisoner's friends was that the great provocation should in some measure mitigate the crime. There was no talk or thought of insanity then. There was no attempt then to show that these men were friends and that it was a *delusion* on the part of the prisoner to suppose that Swan was his enemy and had wronged him. This plain man, the uncle Joseph Stowell, who was not suffering under a delusion, this man, with a level head and hard sense, for three weeks swears he believed as did the prisoner, that Swan had wronged and cheated him, and that Goodwin killed him to satisfy his revenge.

But all is changed. Desperate cases require desperate remedies. How could the prisoner be saved from the consequences of his great crime? A cold-blooded murder had been committed in broad daylight, in the quiet manufacturing city of Lawrence; what can be done; up to that time no excuse had been offered. For three weeks no man suggests delusion, or insanity.

The great criminal lawyer, the man believed to have defended more criminals than any other lawyer in the world, a man of great ability as a lawyer and an actor, who understands the drama of the court room, how to place the footlights and the scenery, how to appeal to the sympathy and the prejudice of a jury, a man who knows how, while arguing a question of law to the Court to have an eye on the jury; a man with such great ability, that if he should attack the good old Commonwealth of Massachusetts he would make her appear as the meanest state of the Union, if he should attack one of her public and charitable institutions he would make it appear worse than Andersonville; a man believed to possess the power to make a jury believe that white is black and black white;

General Butler was sought and retained to defend the case. And for the first time we hear these magic words *delusion, insanity!* Then comes this now too common defence of insanity. This defence which is invoked when there is no other. This New York invention, this momentary insanity, this transitory frenzy, emotional insanity, this presto change, now you see it and now you don't insanity; this kind of insanity which exists during the act of killing, never existed before, and is never expected to appear again! I confess, gentlemen, I have no respect for or sympathy with such claim of insanity as an excuse for crime.

\* \* \* \* \*

As soon as the trial commences there is an attempt to prejudice you against the Commonwealth and its officers. For the first two or three days it must have appeared doubtful to you whether the prisoner or the Attorney General was on trial. It would have been supposed that my duties were hard enough, without an attempt to put me in the dock. What would you have thought of me, gentlemen, living as I do in the city where this terrible crime was committed, if I had not thoroughly prepared and tried this case.

The first attack upon me was because I tried to get upon the jury such men as the law requires, "persons of good moral character, of sound judgment, and free from legal exceptions", and men with brains. I said to the Court in your hearing that, if it was claimed or suggested that any agent of the Commonwealth had done or said an improper thing, I courted the most thorough investigation. But no, there is no charge of that kind. General Butler did me the honor to pay me a compliment; to say, he believed I would act according to my conscientious convictions of duty. I thank him. Every act of the criminal lawyer, the actor,

is brought into full play. You have seen enough during this trial, to know that this great audience is not overcrowding this court house, is not here simply to hear the Goodwin case. It is here to see General Butler, the great criminal lawyer, and actor as well, to see what wonderful power and control he has over men. Sympathy, gentlemen, is more potent with ordinary men than reason, and hence everything is done here that can be, to enlist your sympathy. It has been so arranged, accidentally or designedly, you are to judge which, that you could not "look upon the prisoner", without first observing the anxious care-worn countenance of his wife, that you could not go out of or come into the court house without beholding her anxious and pleading face. I am not going to complain of it, gentlemen. I am sorry for her, I pity her. She and the Stowells, the uncles, shed tears upon the witness stand and their tears have flowed profusely since while in court. I cannot explain. Undoubtedly they feel all they appear to; but, gentlemen, you cannot reason well with your eyes filled with tears; and there has been an attempt to keep them full all the time.

Prejudice comes next to sympathy; it also is more powerful than reason, or rather reason cannot assert itself where prejudice is enthroned. Your minds are to be kept full of prejudice. The sheriff and his officers are attacked, they with the Attorney General are wrongfully conspiring against the life of this "poor prisoner"! Why? Because it is alleged that these officers reported certain statements of the prisoner to me. Then comes another complaint. I committed, as General Butler would have you believe, the unpardonable sin, by asking three physicians, experts on insanity, to visit the prisoner and ascertain his mental condition, whether he was an insane man or not. Gentlemen, I had a perfect right to prove anything the prisoner

ever said, for a year prior to the homicide, to the close of the evidence, not only as bearing upon the question of his sanity, but declarations of a prisoner are always competent evidence to be used against him. I would have had that right, but I call it to your attention, that I have not exercised it. If I had allowed this defence of insanity to be used for the purpose of misleading you, with the intent on the part of the defence to induce you to render a false verdict, and had not called competent professional gentlemen, who had made the subject a life study, with great practical experience in treating the insane, would you not say I had failed to discharge the high trust conferred upon me by the people of the Commonwealth. You must be fully satisfied of the purpose and intent of these numerous attacks upon me; that they are suggested and made in order to create a suspicion, a prejudice in your minds, so that you will not listen to the argument which I address to your intelligence, conscience and reason. Finally, when General Butler had his say on these matters, when he had made all the insinuations against me he desired to make for your benefit, although entirely friendly to me all the time, I concluded that it was time you should know the exact facts; God knows I have nothing to keep back in this case. I want, if I can, to help you, gentlemen, discharge the most painful and important duty of your life time. And what did I do? In this court room, I went to the dock and said kindly to the prisoner, "Henry, I would like to have three doctors, whom I have here, talk with you in the court room". He expressed a preference to have them examine him in jail in the evening. He could have been examined here, but I yielded to him and they saw him in jail. General Butler wanted to make it appear, insinuated that I had deceived this poor man as to whom the experts really were, and I was obliged to



call Mr. Cronin, the deputy sheriff, who sits beside the prisoner, to show that there was no deception, and that he was treated with every consideration of kindness and humanity; although General Butler knew, and I felt you knew enough of me, gentlemen, I certainly hope you do, to believe I would in no way wrong the prisoner.

It was believed that one of your panel had been a sufferer in Andersonville, and General Butler, as I said before, knew where and how to touch a jurymen's heart, and how to reach his prejudices; and we have had Andersonville, the horrors of that terrible place, the sufferings of the prisoner while there and afterwards, before you all the time. Gentlemen, if there is a man upon your panel who was a soldier and fought to save the nation from its enemies, who was a patriot and his sense of duty was such that he was willing to give up his own life to preserve our republican government, and then suffered the agonies and horrors of Andersonville, it is to him I make my appeal; he is the citizen I can appeal to confidently; he is possessed of the highest qualities for citizenship; I can and do expect from him the same devotion to duty, the same high consideration of citizenship in the jury box where our liberties are preserved and the government in its integrity is maintained, as was exhibited on the field of battle and in prison. A man who stood like a wall between the government and its enemies will stand equally strong and faithful in the jury box. No matter that his eyes overflow with tears; you will find after the tears are wiped away his strong sense of duty and justice remain. I will trust a true soldier, a brother comrade of both of us. I am not afraid of a soldier; they are of our best citizens; I am willing he should weep with the wife and these friends of the prisoner, and I will never com-



plain of that, for back of tears I know there is a conscience and a stern sense of right and justice.

It was further shown with great delicacy by General Butler that the prisoner lost his masonic charm, that it was stolen from him. We all knew there were members of the masonic order upon this panel; our investigation of jurors had shown that. But if there was to be an attempt to drag masonry in here for improper purposes, I knew enough of that ancient and honorable order to know that such an attempt would fail. There is nothing in masonry that allows one mason to murder his brother mason, or that will prevent a mason from doing his duty to his conscience, to his country, and his God. Let not that ancient order be slandered; a true mason is always and everywhere a true and faithful citizen, and I have a right to say that every mason on this jury will discharge his conscientious duty.

We now come, gentlemen, to consider this defence of insanity, and it is an attempt, I say to you with candor, to mislead you, to make you find a false verdict, and to make you exercise the pardoning power, a power not given by the Constitution to the jury, but vested elsewhere.

\* \* \* \* \*

Perhaps right here gentlemen I ought to say to you what has not yet been stated, and what I think, with all due respect to our friends on the other side, has been purposely avoided, the law of responsibility as applied to a case of this kind. His honor, in his charge, will tell you that a man may have delusions, be partially insane, and still be responsible for his criminal acts. Society could not exist under any other rule. The judge will tell you that "although a man may be laboring under partial insanity, if he still understands the nature and character of his act and its consequences, if he has a knowledge that

it is wrong and criminal, and a mental power sufficient to apply that knowledge to his own case, and to know that if he does the act he will do wrong and receive punishment, such partial insanity is not enough to exempt him from responsibility for criminal acts". Take this law of responsibility with you through the case and you cannot go astray. Has the case of that crank, Guiteau, gone out of your minds? The world knew he was a crank, yet he was held responsible for his great crime. Take the case of the boy Pomeroy, who, when about fourteen years old, killed another boy, out of a desire to see human blood and inflict cruelties upon a playmate, he was held liable for his crime of murder. The sole question, therefore, for you to ascertain, gentlemen, is whether the prisoner had capacity and intelligence enough to know a right act from a wrong one, and to know the consequences following a wrong and criminal act. And by and by, gentlemen, you will see that he had a clear perception of his crime, when after the murder he hurried to the police station. He knew the place where a great criminal belonged,—in the lockup. He had satisfied his revenge, which, with profane lips, he had threatened, and he then expected to take the consequences and suffer the penalty provided by law. This state of the prisoner's sane mind continued, until General Butler inspired him with hope.

They say Goodwin's father, Harvey, was peculiar! Wonderful, is it not? It is said in this world that no two men are exactly alike. We are all more or less peculiar. There is no community which does not have men with peculiarities. The world is full of them. If General Butler will excuse me, and I know he will, I will say, we have had before us for eight days the most distinguished illustration of a peculiar man. There never was and never will be but one General Butler. He is a great man,

possessed of great abilities, with great brain power, and yet, his most admiring friends do not claim him to be a man of perfect balance.

I do not expect to occupy five hours in addressing you, (the time taken by General Butler), but I am confident, if you will give me your attention, I can convince you that there is no substance to this insane defence; I can satisfy your intelligence and your judgment that there is no solid foundation for it to rest on. We start, gentlemen, with the presumption that the prisoner was sane. The law presumes every man sane and responsible.

\* \* \* \* \*

The defence claim and attempt to prove, that the prisoner was *insane*; that he had a *delusion*, that Mr. Swan had wronged him, cheated him out of his patent, and otherwise misused him. We find from the description given by the witnesses on either side, that we have in Henry K. Goodwin an erratic, jealous, envious and passionate man, who did not control himself; not a bad hearted man, not a bad meaning man; but this is exactly the character of the man as you have heard it portrayed all the way through the case, eccentric, envious, jealous and at times very passionate.

Now then, gentlemen, we come to an important and decisive point in this case, the beginning and the end of it. They charge and we admit that Goodwin had said, what the evidence clearly shows, that Swan had his papers, patents, drawings, etc., and would not give them up. We also admit, as they now claim, that Swan had not wronged nor cheated him. But we deny that the prisoner was the subject of an insane delusion, because his belief was founded upon *actual business transactions* with Swan.

The evidence gentlemen, to sustain this, needs only to be stated in general propositions to enable you to see its

truth. It is the key which unlocks this case and shows the combination; it explains and makes clear as daylight the evidence of the medical experts; and it separates and distinguishes the true from the false issues involved, so that you can make no mistake.

*First.* Goodwin claimed that he had invented a switch board. This is no delusion.

*Second.* He claimed he had lost possession of it through Swan. This is no delusion; it had been assigned to Swan and others, so that Goodwin alone could not sell it nor take out, in his own name, the patent which had not actually been issued.

*Third.* He claimed that Swan had his papers, old contracts, accounts, drawings, diagrams, important evidence of his invention,—and would not give them up. There is no delusion in that, gentlemen. They are found among the dead man's papers and are produced here in court.

*Fourth.* He claimed that Swan had not done as he agreed. This is no delusion. The evidence shows conclusively that the agreement under which the corporation was to be formed and the switch board manufactured and sold had not been carried out.

About these propositions of fact, all the evidence I desire to touch upon, as showing the quarrel, loss of friendship, and final enmity growing out of these business relations, and here they may all be grouped and considered.

*First.* In February, 1884, Goodwin and Swan were working together on the switch board. Goodwin rushed to Washington; borrowing the money of Mr. Knox to pay expenses. May 3d, one patent had been issued and another was about to issue, but was not taken out. It was put into interference by Dr. Waite. And here, gentlemen, the suspicion begins, and some time in July, 1884, more than a year before the homicide, was the last time

that Goodwin ever entered the house of his former friend. And here, gentlemen, I pause, perhaps a little out of order, to call your attention to General Butler's cruelty to Mrs. Swan. He says I brought the widow here to make an exhibition of her! Do you believe, gentlemen, I would have it in my heart to practice such an artifice to the injury of this prisoner, whom I have no wish and certainly no right to wrong? I should be unworthy of the high office I hold, should I do such a thing; and General Butler does not believe it, for he has said, in your presence, that I am an honorable man, and such conduct is utterly inconsistent with honesty.

But let us consider whether the testimony of Mrs. Swan was important; if it was, then we can determine the animus and character of the remark. The defence claims that there was no disagreement or quarrel between Goodwin and Swan, but that they were intimate, personal friends on the day of the homicide, and therefore, as Goodwin killed his best friend, he must have been suffering under a delusion. We deny this position of the defence, and claim, first, that there was jealousy and suspicion on the part of Goodwin against Swan; secondly, misunderstanding and disagreement between them; and finally, an open quarrel, with loss of confidence in Goodwin by Swan, and eternal hatred and enmity on the part of Goodwin. If Mr. Swan were alive, do you think I would have any difficulty in showing these facts? And although they put in the declarations of Swan to Stowell, on one occasion, yet the moment I offered to open the lips of the dead so that he might speak on this all important subject, General Butler was loud with his objection.

But if the lips of the dead are forever sealed, the living may speak, and I summoned and called to the witness stand that modest widow, that refined and cultured lady,

who gave testimony so clear and straight-forward, that General Butler had not the courage to cross-examine her.

She says her husband and the prisoner were as intimate as men could be, up to July, 1884; that prior thereto they occupied the same room and bed when in New York; that Goodwin was at their house quite frequently, at dinner, tea and in the evening, but never after August 1st, 1884. This evidence goes with the letters, the correspondence, which ceased altogether about that time. Prior to the commencement of the trouble, it was "Dear Albert", "Friend Swan" and "Dear Friend"; after suspicion began its work, it was "Albert". Her evidence is of the highest importance; it corroborates the evidence of Messrs. Knox, Waite and Denman, and if I had not called her, I should have failed to discharge my duty to the Commonwealth.

Suppose, gentlemen, Mrs. Swan with her little boy had sat near me, during the whole trial, and whenever you went out of the court house, you had observed them walking hand in hand, you might have believed I was having her "play a part", like some of the exhibitions on the part of the defence in the "stage settings", heretofore referred to. She was here in court only one day, and only long enough to give her evidence, and then she returns to her own desolate home, and to her unobtrusive and silent grief. The prisoner, wickedly, cowardly and maliciously, took the life of her husband, and now when he cannot speak, and she comes to speak the truth in vindication of him, the prisoner's counsel, without justification, wickedly and cruelly says *she is being exhibited!* Shame on the words and the lips that utter them!

Her evidence will stand, a perpetual vindication of her.

Yes, gentlemen, we show you the commencement of this quarrel. In July, 1884, the prisoner goes hurriedly



to the house of Mr. Swan—the last time he was ever there—not finding him, he seeks him at the office, and then they both go to Mr. Knox's house, and he gave you as a reason why he did not invite them in, that his little girl was ill of scarlet fever, and he feared that Mr. Swan's little boy might take the disease, and so they talked in the yard under a tree. This interview shows that jealousy and suspicion had already commenced its work. We have then, the testimony of Mrs. Swan, Mr. Knox, and the letters, and the fact that the correspondence ceases at the time the trouble began. But General Butler, who is so profuse with his attacks and charges, insinuates that we are holding back some of Goodwin's letters! That is a cruel suggestion to make, and hard must be the defence which requires it. I beg your pardon, gentlemen, for speaking of myself, but I am compelled to. Do you believe I am so base, that I would suppress a letter that had anything to do with this case? Mr. Knox swears that he produced every letter found. But the best answer to this unkind insinuation, and the one which proves the insincerity of it, is: that they produce no letters of Swan to Goodwin after that date, which, if there were any, would be in the prisoner's possession; proving beyond doubt or controversy, that the correspondence ceased at the time and for the reason claimed by us.

*Second.* Goodwin said and claimed that he had parted with his title to the switch board. There is no delusion in that; it is an undisputed fact. We put in the very contract,—and General Butler was kind enough to read it,—in which on August 1st, 1884, he conveyed all his interest in the switch board to five persons, but dividing it into four shares, Livermore, Waite and Bartlett, Swan and Goodwin, having one-fourth each.

They say this prisoner had a delusion as to the value



of his patent, in thinking or claiming it was worth forty thousand dollars, when Knox, six months or a year afterwards, thought it of little value, and Waite, another inventor, considered it not very valuable.

All this is as plain as the nose on a man's face. Here was Goodwin, a poor boy, who had been working in a harness shop in a quiet way at small pay; he went into the telephone business, had shown considerable ability in that direction, and had suddenly and unexpectedly made over two thousand dollars. He was elated by it, as was most natural, and he was a good deal set up by it. His egotism manifested itself, and he saw in his patent, like all inventors, mountains of gold.

If every inventor, who obtained a patent and considers it of great value, is suffering under delusion, I fear there are a great many men under delusions.

There was then, an agreement that these men should form a corporation and manufacture and sell the switch board, and Goodwin is writing from Maine, August 4, 1884, in the letter which I read to you, inquiring about it. He has signed the contract, dated August 1, and writes: "Have they started to make the new telephone in the factory yet"? He is in a hurry and cannot wait.

I have shown you, that these two claims of his were entirely true, were matters of fact, about which there can be no dispute.

*Third.* Goodwin claimed that Swan had his papers, contracts, diagrams, etc.; and we find them, evidence which the bullet of the assassin cannot destroy, and they are produced here in court. General Butler says now, that these papers are not very important. Ah, that is not the question. Did Goodwin then think them important, and on that account was he demanding them? Yes.

I disagree with the eminent counsel, and am of the

opinion, as testified by Mr. Knox, that these papers were of great importance to Goodwin. They showed that Goodwin had invented and used the switch-board in 1879, prior to any other person. Priority of invention and use, is what establishes one's right to a patent; Mr. Knox, an excellent lawyer, explained that to you, although Brother Butler doubts whether you can believe him. But Mr. Knox has lived too long in this county to be snuffed out and disposed of so easily. You saw him and never observed a more candid appearing man. He is the very type of Mr. Swan; they were like as twin brothers; you see one and you have seen the other. But Mr. Knox's evidence is too important not to be attacked. It is not enough that he should lose his life-long friend, but Mr. Knox must needs be attacked because he gave such information as he had concerning the case to the Attorney General! Good heavens! Mr. Foreman, suppose your partner and dearest friend on earth had been assassinated, would you not think you owed it to his memory and the public to do all you could to have the murderer brought to justice!

There can be no doubt, these are the papers Goodwin wanted; they showed he invented and used the switch board in 1879, prior to the time Waite used it.

*Fourth.* The prisoner claimed that Swan had refused to settle, to pay him what he had advanced, to buy him out. He claims that he had demanded a settlement and been refused, that he had threatened to have Swan's heart's blood.

Well, gentlemen, was there ever a settlement? There is no evidence of it; on the contrary, it is shown that there was no settlement. Goodwin did demand one and he said, having been cheated and defrauded twice before

he swore the next time a man wronged him he would have his heart's blood.

*Fifth.* He claimed Swan had not done as he agreed. This is no delusion. The parties, Goodwin, Swan, and others, August 1, 1884, entered into a written contract to form a corporation and manufacture and sell this patent switch board. They did not do it. They never have carried out that agreement. What more was needed, gentlemen, to disappoint such a man as Goodwin? He expected great riches from the manufacture and sale of this patent. The other parties who had a controlling interest and could out vote him had done nothing; the whole thing was at a standstill. There is no delusion about that, it is exactly as Goodwin claimed. It appears from the evidence of both Waite and Knox that this corporation never manufactured a switch board. The reason why they did not do so appears, and shows there was no intent or purpose to wrong Goodwin. They wanted this patent to use and sell in connection with the Molecular Telephone but they were subsequently enjoined and prohibited by the courts from using that telephone. Goodwin had a right to complain; it was entirely reasonable that he should find fault with Swan because he failed to keep his contract; there was no *delusion* in such complaint, but it had in it real solid and common sense. Now, gentlemen, you will see that all these allegations, which Goodwin made,—and I have recited to you—five in all, were literally true, and he was right about them.

\* \* \* \* \*

All the government has to do is to satisfy you that there was an ill feeling, a quarrel, between these men,—not that there was an adequate cause for the murder, because there can be no adequate cause for crime—and when we do that, this defence is at an end and the prisoner is

proven guilty. Every doctor, every expert on insanity, even Dr. Hamilton, tells you, that if there was in fact trouble, a quarrel, between these two men, it ends this whole question of delusion, the defence fails. Mr. Knox swears before you, that he met Goodwin and Swan several times, and that Goodwin was each time making demands upon Swan; that he was present at the interview between them after Goodwin's return from Cleveland, and he gives you a full account of what took place. It is so pertinent, so completely conclusive of the case, I desire to call your attention to it, and read his evidence, because if you believe him, and as I look into your faces I know you will, as his evidence carries conviction to the conscience.

William S. Knox. "As I came in they were talking. Swan was sitting, Goodwin was standing. Goodwin was *excited* and *pale*, as I noticed. He was speaking as I came in and he said to Mr. Swan, that he never had been paid for what he had done and put out on that patent, and Swan told him that nobody had got anything out of it yet. He said if he could take out the patent in his own name and had the one he had taken out, he could sell it for something, and he wanted it. Swan said: "It is too late to talk about that now". Then Goodwin said that there were a lot of old contracts, books and papers in Swan's office which he had in Lawrence in 1879, they were not made over to those parties or to Mr. Swan, and those were his, that he wanted them. Swan said they were important upon this system or switch, if it was ever issued, and he considered that he had the same right to them as he had to the patents themselves or the papers themselves. Then Mr. Swan went on and said that if he (Goodwin) had done as he ought in Ohio, put in the system there and furnished the diagrams that they wanted, he could have

been there and the system could have been started, but he didn't, and Swan said he would do nothing about it. I left them talking".

General Butler made an argument to you that these contracts were not of value or consequence. I say to you with all due respect to him, that the claim which Goodwin made at that interview was a good one as matter of law; he had an undoubted right to those papers, they had not been made over or assigned, although Swan had possession of them. But it is only of consequence now as showing that there was a controversy, that there was an actual dispute and not a *delusion* on the part of Goodwin. Swan said these papers were important upon the subject of the switch board. That is exactly what we have claimed. They were important as showing who invented the switch board, who had the right to it. It is the priority of invention which gives a man the right and title to a patent.

Here is the prisoner walking into Swan's office, pale with excitement, and demanding these books and papers which belonged to him. Here was an actual transaction; gentlemen, "I want them" he says, "I didn't make over to you those old books and papers, which show the priority of my invention", Swan said, "they were important upon the system of switch, and he considered he had the same right to them as to the patents themselves". Goodwin demands them, and Swan tells him, finally, "*he would do nothing about it*".

This evidence opens to view a controversy about actual existing facts, shows that they had had trouble and quarreled over it, that Goodwin became *excited* and *enraged*, demanded his papers, and that Swan refused to give them up; that then Goodwin exhibited the same disposition shown elsewhere; the same shown when he thought

Waite was getting ahead of him concerning a patent,—and threatened to kill him. Goodwin's delusion seems to have run against anybody who interfered with him! He is an irritable, jealous, excitable man, and when Swan refuses to give up papers which Goodwin believed he had a right to, and which as matter of law he had a right to, then you see the state of mind he is in, and what it finally leads to. A man has no right to allow his passions to run away with him, the laws holds men responsible in such cases.

General Butler has assumed many things here concerning the prisoner and then says they are all delusions; he makes a man of straw and then demolishes him. But see how easily he is answered, even by me, and the answer probably has suggested itself to the intelligence of every man on your panel long ago. General Butler says that Goodwin had a delusion up in Canada that Swan was following him.

General Butler. Preceding him.

Attorney General. I prefer to argue the case myself.

General Butler. I am merely stating my ground to correct your mistake.

Attorney General. I prefer to argue according to my understanding of the evidence, and I do not intend to occupy over one-half of the time you did (five hours). It is claimed that Goodwin had a delusion that Swan was preventing him from getting work. Denman said Swan told him, "Don't you recommend him". Goodwin could not obtain work without such recommendation. The first question asked him was, "Where did you come from, for whom have you worked"? "I have been at work for Albert D. Swan", or, "I have been at work for Swan and Knox". "Have you a recommendation". "No".

He went to Canada and there sought work. I do not



know how long he stayed, there is no evidence on the subject; it may have been one, two, or three weeks. He says he applied for work and at first they thought they would try him; but in the interim they must have written to Swan. We have been able to prove that Swan received a letter, and he and Knox—

General Butler. I object, may it please your Honors. This is exactly what your Honor ruled out, and now if it is to be argued in, I should like to understand it.

Attorney General. I do not understand it so.

General Butler. You offered to prove something about a letter received from Canada and a reply, but you did not produce any such letters, and I said if there were any such letters you ought to produce them, and the Court ruled it out. Now, you can't argue that to the jury, sir.

Attorney General. The Court allowed me to put in the fact that a letter had been received, and an answer sent without putting in the contents of the letters, and that is all I am trying to put in now.

General Butler. Pardon me, the Court has allowed no such thing, if it please your Honors.

Attorney General. I think the report will show to the contrary.

General Butler. You offered the contents of a letter, of the fact that one was sent; then there was an objection that these letters ought to be produced, if there were any on either side; one letter would be in the hands of Swan or Knox, if they received one, and the answer to it would be in the hands of the other party,—and nothing could be proved about it, as your Honors ruled, and the matter passed away. Your Honors will remember that I said, “now perhaps I see dimly why my Canada deposition was objected to”. I ask your Honors to rule upon this point, because it is very important.



Allen, J. There was no evidence as to the contents of these letters, but the fact that a letter was received and answered was in the case and is in the case, but not the contents of the letters.

Attorney General. It is exactly as I stated it to you, gentlemen.

General Butler. Your Honors will save me an exception.

Attorney General. It appears that a letter was received from Canada, and an answer sent after consulting with Swan. Goodwin went to Canada, and what followed is plain. He applied for work and had no recommendations. They sat down and wrote for some purpose to Mr. Swan.

General Butler. Now he is arguing the contents of the letter, the purpose of the letter.

Attorney General. No, I am not. There was an answer sent back, and that fact, is all I am entitled to. But I say, gentlemen, it was not a delusion. These suggestions are a complete answer to the claim of delusion.

They say, the prisoner had a delusion concerning his trunk having been broken open and articles stolen therefrom. The only evidence on the subject comes from Goodwin. He said his trunk was broken open, and certain articles were stolen, and he thought Swan had something to do with it, or was at the bottom of it.

My brother in his argument, assumes that the trunk was not broken open at all! Upon what ground? Do they claim that Goodwin, a perfectly honest man as they say, told a lie about it? No; his trunk was broken open and his property stolen, and Goodwin told the truth about it. What is more likely, that a suspicious, jealous man, having had a quarrel with Swan, and having articles stolen which would be of value to Swan in connection with

this patent, should suppose and believe he may have had something to do with it? We are apt to believe our enemies do us more injury than they really do. It is also claimed that Goodwin had delusions, because when he saw members of the Cleveland company talking together he believed they were talking about his switch board. Undoubtedly they were talking about it; they had requested him to put it in for their company and he had refused. They were having trouble about it. What would be more likely than that the members of the company should talk about the very thing which was causing such serious trouble.

We have now considered, and I trust candidly and fairly, all the evidence offered by the defence, except that of their experts, and we will examine that by and by, and I desire to call your attention to the evidence of the government in answer to particular acts tending to show insanity.

\* \* \* \* \*

Right here let me tell you what ended the controversy between Goodwin and Dr. Waite. The doctor upon meeting Goodwin, told him to his face, looking him in the eye, that he had heard of his threat to kill, and that if he ever saw the first motion in that direction on Goodwin's part he would shoot him as quick as he would a dog. Goodwin is a natural coward! He would not fight in the war, said he enlisted as a drummer, until his lieutenant told him that if he showed the white feather he would shoot him.

This murder is one of the most cowardly ever committed! Think of a man who has been a soldier, armed with a revolving pistol containing five charges and with that dangerous stiletto, entering the office of a man who is unarmed and defenceless, and while that man is writing

at his desk, entirely off his guard and unsuspecting, creeps behind him and shoots him in the back of the head! This is not the act of an insane man, there was too much method in his madness; it is the cowardly act of a sane man! In South America even, they give an enemy a show for his life.

But, gentlemen, we do not stop by proving that this prisoner never exhibited to the public, to his acquaintances, and to his intimate friends, any evidence of delusions or insanity. We have something more potent and important. His letters and correspondence, for many years past, which have been read to you by the district attorney, his applications for patents and affidavits, prepared by himself and in his handwriting, and his diagrams and drawings, showing his great inventive genius, scientific knowledge and practical experience, are all before you, and you will have them with you in the jury room. These are convincing and conclusive proofs that the prisoner is and was a perfectly sane and responsible being; and right here in court we find the prisoner calling Messrs. Waite and Knox to the dock and suggesting how they can so shape their evidence as to help this *insane defence!* General Butler forgetting himself and his defence, you will remember, went to the dock and told the prisoner, in your hearing, not to talk to anybody. Think of saying that, to a man claimed to be insane!

I fear, gentlemen, I have wearied you, and were it not for the fearful responsibility which is upon all of us, I should hesitate to take more of your time.

\* \* \* \* \*

So, Mr. Foreman and gentlemen of the jury, it is proven and established:

1. That Goodwin and Swan commenced to have

trouble in the summer or fall of 1884; that trouble increased until Goodwin came back from Cleveland in April, 1885, when there was an open quarrel; that the quarrel increased in violence until August 27, 1885, when Goodwin took the life of Swan on account of the quarrel and to satisfy his hatred and revenge.

2. You have the testimony of a large number of witnesses, associates, companions and friends of the prisoner, for a series of years, that he exhibited no evidence of delusions or insanity.

3. His own letters, affidavits, applications for patents, diagrams and drawings, his own writing and handiwork, are conclusive evidence in the same direction.

4. We have the evidence and opinions of five of the ablest scientists in New England, Doctors Goldsmith, Hurd, Bancroft, Thompson and Jelly, who tell you, if there was a quarrel before mentioned, then there is no doubt the prisoner was sane and entirely responsible for his crime. In fact Dr. Hamilton also agrees to this, but I am unable to recommend him to you as an expert on insanity.

It having been established, we having sustained the burden which is on the Commonwealth to prove that the prisoner was responsible for his criminal act, we come now to consider what crime he committed. And I agree with the prisoner's counsel, that Goodwin is either not guilty by reason of insanity, or he committed this murder with deliberately premeditated malice aforethought. Was there ever committed a more cold-blooded, deliberately premeditated murder? Was there ever a more wicked, malicious and cowardly assassination? A murder contemplated and threatened for many months; a murder deliberately planned and calmly executed in accordance therewith. A murder for money, because Swan would not

pay what the prisoner claimed was due, or give up papers, etc., which belonged to him; the deliberate act of the highwayman, "Your money or your life"! A wicked spirit has been cultivated and encouraged for a long time, until it has taken control and mastery of the man, and been allowed with deliberation and premeditation, to break forth and satisfy its hatred and revenge. "I told him a year ago, if he did not come to a settlement with me, I would have his heart's blood, I have taken it, and I am satisfied and prepared to take the consequences". Two days before he sold his tools to Bunker, saying, "you will see what I am going to do in a day or two". Dr. George W. Sargent, the physician at the jail, a gentleman and a man of honor, says Goodwin told him Christmas day that he went to Swan's office that morning with the intention and for the purpose of killing him. Those weapons, with which he was armed, the revolver and the dagger, confirm the evidence. That young man Porter, with an honest face and a truthful story, not contradicted by Frank Stowell, who was present, tells you Goodwin said on the way to surrender himself to the police, "I have killed the son of a bitch". The calling the police by telephone, the delivery of the weapons to his uncle, the walk to the police station, his conversation and coolness there,—“You need not fear I will commit suicide”, all show a premeditation and programme and the deliberate execution of the same; and there is not a single thing which can be said in excuse, or a circumstance offered in mitigation of this cowardly assassination. All the defence attempt to say is that Goodwin really thought Swan had cheated and greatly wronged him, but they now admit that Swan had not seriously wronged him, and that was a mistake. A pretty serious mistake for Mr. Swan and his heart-broken family.

You have been selected, gentlemen, to decide this momentous issue. Your names and residences have been given to the public, and a great responsibility is upon you. The City of Lawrence, the County of Essex, the Commonwealth of Massachusetts, and all New England are anxiously waiting for your verdict. The wives of Essex do not want to be bereft of their husbands by wilful murder and have it called delusion, and the children of the county do not want to lose their parents by assassination and have it called insanity.

\* \* \* \* \*

Passing over many things which perhaps I ought to refer to, and which I shall think of as important hereafter, I choose my closing words with some care and deliberation. We cannot, gentlemen, ask your sympathy. Your verdict cannot give back the husband to the widow nor the father to the orphan. I can only appeal to you to protect society. God help us if the revolver and the stiletto of South America are to become potent in Massachusetts. God help us if the hatred of our enemies is to be called a delusion! God help us if the verdicts of juries are to go to the ablest lawyer! Gentlemen, up to the fifth day of January, in the year of our Lord eighteen hundred and eighty-six, juries in Massachusetts have stood against this claim of insanity as a defence to murder. If the barriers are now to be let down for the first time, I hope I have so discharged my duty that the responsibility will not rest on me, but it shall rest where it belongs, upon the heads of the twelve men who fail to keep their oaths, and fail to discharge their duty to their country and their God.

[Judge Allen charged the jury. They retired to consider their verdict about 6 o'clock, and returned into court between twelve and one o'clock on the morning of the 6th

of January with a verdict of *murder in the second degree.*]

April 20, 1886, Goodwin was sentenced to imprisonment for life in the state prison.

March 17, 1905, Goodwin was granted a conditional pardon by the governor and council, and is now (1907) in the Soldiers' Home in California.



## CHAPTER VIII.

---

### ATTORNEY GENERALSHIP,—*Continued.*

---

#### COMMONWEALTH VS. ALFRED J. ADAMS.

On November 5, 1875, one Dickinson was found dead in his house where he lived alone in Amherst. An axe covered with blood was by his side. He had been dead several days when discovered.

It was remembered that Dickinson had hired a tramp, who came along, to help him harvest his tobacco. A reward of \$500 was offered for the detection and conviction of the murderer. A description of the tramp was sent out by the authorities on a postal card announcing the offer of reward.

Ten years afterwards a sheriff in the mountains of Tennessee sent a letter to the postmaster of Amherst making enquiries concerning the murder and offer of reward.

The sheriff subsequently stated that he had the murderer in his possession, Alfred J. Adams, who had been convicted for forgery and sentenced to serve with a chain gang in the mines. Adams confessed that he was the murderer of Dickinson, told all the particulars, and said that he preferred to be hanged in Massachusetts than serve his sentence in the mines.

Adams was subsequently indicted and brought back here for trial. It appeared at the trial that Dickinson had sold his tobacco, receiving some \$200; that Adams

was with him at the time, and that night while Dickinson was asleep on the lounge Adams killed him with the axe, took the money and left. He had followed the vocation of tramping and stealing since.

He was not a bad looking man, being six feet tall. At the trial some very respectable ladies in Northampton sent the prisoner flowers. The defence was insanity.

The venerable Dr. Earle, in charge of the insane asylum at Northampton, who was opposed to capital punishment, testified at the trial, that Adams was sane enough for murder in the second degree!

Adams was convicted of murder in the first degree. His counsel applied to have the sentence commuted to imprisonment for life in the state prison, which the governor and council refused. Adams remarked that they would have to postpone his execution. That afternoon Adams came so near committing suicide, that the governor and council had to postpone execution.

Adams insisted that he would not have a clergyman at the execution, but the sheriff insisted that it was his, the sheriff's duty to provide one. While the clergyman was praying, Adams was swearing at him, until the rope cut off the profanity.

Adams was a low, tramp thief, with just enough intelligence to know better.

#### CASE OF MARION A. MONTGOMERY.

Marion Augustus Montgomery was tried in the Supreme Judicial Court at Northampton on the 11th, 12th, and 13th days of December, 1883, for murder of his little son, George Clarence, aged five years.

Montgomery, a man of forty years of age had married

fifteen years before and had two children, a little girl of seven and this boy of five. He went away from home one winter to work on a railroad. When he returned in the spring he found that during his absence his wife had taken a boarder.

When he went away he was a happy man and his family relations were pleasant. When he returned he discovered that his wife's feelings and relations towards him had changed, that she liked the other man better. He tried to win her back but did not and could not succeed.

Finally she left him, taking the two children, and went to live with her father. She sent her husband a letter, telling that on such a day she was going to a western state to live. Subsequently he went to that state looking for her and the children. It turned out that she did not go west, but remained living with her father.

Montgomery, after earning money enough to pay his fare back east, came home. He used to walk nine miles to her father's house, to look in at the window to see his children. He wrote and asked her, to allow him to come to the house to bring Christmas presents to the children. She wrote an answer consenting. He took a sled to the boy, a present for the girl, and a present for his wife. He was allowed to remain at her father's house over night, occupying a room by himself.

In the morning, in an interview with his wife, he asked her, "Are you ever going to live with me again"? She replied, "No". "That settles it", said Montgomery, and walked into the room where the little son was playing on the sled, shot him through the head, killing him instantly, shot the little girl through the neck, when the father-in-law grappled with Montgomery and prevented further bloodshed. I think he intended killing the children, the wife,

*the other man*, and himself, but for the interference of the father-in-law.

The defence was insanity. Hon. William A. Bassett made one of the best and most sympathetic arguments I ever heard to induce a jury to return a verdict of not guilty by reason of insanity. He would call attention of the jury to how shamefully the wife had acted, and how Montgomery had walked nine miles in the rain simply to look through the window to see the children, and then his refrain would be, "And all this he did and suffered for the love of his children".

It drew tears from all of us. I sympathized with the prisoner, but felt that he was responsible for his acts. The little girl recovered and was present at the trial.

The jury returned a verdict of guilty of murder in the second degree, and Montgomery was sentenced to state prison for life. He was pardoned by the governor and council, July 18, 1893.

#### CASE OF SAMUEL F. BESSE.

Samuel F. Besse was tried at Plymouth in May, 1886, for the murder of Richard N. Lawton, before Morton, Chief Justice and Holmes, Judge, in the Supreme Judicial Court.

Hosea Kingman and J. C. Sullivan were for the prisoner. The District Attorney assisted me in the trial.

Lawton drove about Plymouth County and purchased eggs of the farmers. While driving through the Plymouth woods he was shot and killed. Some \$30 was taken from him.

Besse, who was a man generally without money, was found to be spending money quite freely. It was found

that he had spent just about the amount taken from Lawton.

This, with other evidence was sufficient to cause his conviction of murder in the first degree. His case was taken before the full court on a question of law. (See *Commonwealth vs. Besse*, 143 Mass. R. 80.) The Court sustained the verdict and Besse was sentenced and subsequently executed at Plymouth jail.

#### CASE OF JAMES E. NOWLIN.

George R. Codman, a milkman, hired James E. Nowlin, a boy of seventeen, to assist him in his business.

January 4, 1887, it was ascertained that Codman had been murdered in the early morning, young Nowlin springing upon him unawares and nearly severing the head from the body with a large knife. Nowlin then took some \$22 from the body, cutting off the legs and arms from the trunk; took an old pung sleigh, and distributed the body in the snow in different parts of the neighborhood.

Nowlin was arrested, indicted, and tried June 21 and 22, 1887, before Field and William Allen, Justices of the Supreme Judicial Court, at East Cambridge. Henry E. Fales and Charles C. Mellen represented the prisoner, and District Attorney Stevens appeared with me for the Commonwealth. The case was clearly proven. The defence was insanity.

The boy Nowlin, only about 18 years of age, had not been well brought up; his father and mother were disreputable, and his brother was under arrest for a crime.

At the trial, Nowlin's mother testified for the son that from earliest infancy up to the time of the murder, James had shown signs of insanity; that he had proposed and

perpetrated the most unnatural acts; that he had never acted like a natural, well born child, etc., etc.

A reputable physician was sitting in the court room, whom it was reported she had consulted on the subject of her son's sanity.

In cross-examination she was asked:

Attorney General. After your son was indicted for this murder, did you not employ Dr. A. B., now sitting here in court, to examine your son, to ascertain if he was insane, and did he not examine your son at the jail?

Mrs. Nowlin. Yes.

Attorney General. And did not the doctor ask you to tell him all and every instance when you had noticed anything unusual or peculiar in him from his childhood to the present time.

Mrs. Nowlin. Yes; he did.

Attorney General. Now, Mrs. Nowlin, did you not tell him, that you had never noticed any thing unusual or peculiar in your son?

Mrs. Nowlin. Looking at the physician (supposing he had told the Attorney General the facts). Yes; I did.

Attorney General. Mrs. Nowlin, you did not then tell the physician one single one of these peculiar and unnatural acts which you have testified to here today, did you?

Mrs. Nowlin (looking at the physician), answered: No; I did not; and then fainted and had to be carried out of the court room.

Every one in the court house sympathized deeply with Mrs. Nowlin; but her answers convinced every one that her testimony concerning the peculiar and unnatural acts of her son was not true. This practically ended the defence of insanity.

It is just to the physician to say that he had not disclosed a word of what had occurred between him and Mrs. Nowlin.

Knowing that the physician was an honest man, and believing that that conversation would be likely to take place, I guessed the fact. If she had answered otherwise, the government would have called the physician to the witness stand. She believing this, answered truthfully concerning her conversation with the physician.

Nowlin was convicted of murder in the first degree, and sentenced to be executed January 20th, 1888. On account of the youth of the prisoner, and considering the poor opportunity he had had in birth and bringing up, I was in hopes that the Governor and Council would commute the sentence to imprisonment for life.

In the mean time a brother had been arrested for a burglary, and the disreputable character of the whole family had been made known.

The Governor and Council finally refused to commute the sentence and Nowlin was executed. He showed great consideration and coolness and courage before and at his execution.

He saw that the sheriff felt great sympathy for him, and would gladly avoid the carrying out of the sentence upon one so young. He said to the sheriff, Do not worry about it Mr. Sheriff, I shall give you no trouble. I am not afraid to die. Send for mother to come and see me a day or two before the execution, and after her crying is over, you will not have a whimper from me.

True to his word, he walked to the scaffold with a steady step, helped the officers in their unpleasant duties, and passed unflinchingly to the great majority.



## CASE OF SARAH J. ROBINSON.

She was indicted for the murder of her son by poison.

District Attorney Stevens and I prepared the case for trial, but I was appointed to the bench, before it was reached, and the case was tried by my successor, Attorney General Waterman, with the assistance of the District Attorney. She was convicted of murder in the first degree, and sentenced to be hung. Because she was a woman, the sentence was commuted to imprisonment for life. She died a few years since while in prison.

Mrs. Robinson was at the time of her trial a good looking and well appearing woman, of much intelligence. It was an interesting case and she a person to study. She had been married many years and had had a number of children. Her husband and several children had died before she was suspected of murder. We became satisfied that her husband and several others, including her children, some five or six persons in all, had been poisoned by her. Some to obtain life insurance, others for other causes.

She would hire a house, obtain furniture on a lease or the instalment plan, then mortgage it under different names, obtaining money on each mortgage. She was indicted jointly with a Dr. Beers and a Mr. Smith. As it appeared that they each had been much at her house, without any good cause, the grand jury believed that they were parties to the murder.

Our investigation showed that both men were much fascinated with Mrs. Robinson and were at her house often, but never at the same time. Smith appeared to be a very pious man, thinking and talking religion and trying to make converts all the time.

We, the District Attorney and myself, became fully sat-

isfied that neither Dr. Beers nor Mr. Smith had anything to do with the murder, so they were released from jail on bail.

Subsequently her counsel called upon me with an urgent request from her that I come to the jail to see her. I at first declined, thinking it would be unwise to comply with her request. But at last I consented with a distinct understanding, that during the trial nothing should be said about the interview.

Taking her lawyers, the sheriff, an officer of the court with us, we had an interview. I stated to Mrs. Robinson that she was to be free to talk, as it was agreed between her counsel and myself that nothing she said could ever be used against her, and that nothing said by any one at this interview could be used or referred to at her trial. She soon made known her purpose in asking for the interview. As we had discharged Dr. Beers and Mr. Smith because they were not guilty, she wanted to convince us that she was not guilty. So she talked and talked. We listened. She invited me to ask questions, to cross examine her, but I said "No". Finally I said, "Well, Mrs. Robinson, I will ask you one question. What were your relations with Dr. Beers"? "What do you mean"? said Mrs. Robinson. "I think you know what I mean", said I.

"Oh", said she, "they were always proper, most proper. He never said an improper word or did an improper thing to me".

"Well", said I, "it is of no consequence to the charge against you, but I asked simply as a test of your truthfulness; but I ought in frankness to tell you, I do not believe what you say. Our evidence shows that he was much infatuated with you, that he was with you for years, once or twice a week, with no business, only to be with you alone".

In a few days she sent for me again, she must see me. That it was a matter of great importance that she should see me. I saw her again in the presence of the same persons, when she said: "I told you a great lie last week. Dr. Beers seduced me when I was a girl of eighteen, and he has been intimate with me ever since, until my arrest. I sent for you to tell you the truth and not have that lie on my conscience any longer". At her trial some months later, she testified that her relations with Dr. Beers had always been proper.

I have never been able to make up my mind concerning Smith's relations with her. He seemed to be a good, Christian man, but his fascination seemed to be great.

#### CASE OF CHARLES F. FREEMAN.

Charles F. Freeman and his wife lived in Pocasset on Cape Cod. They were good citizens. They had two young daughters. Some time prior to May 1, 1879, there was a religious revival in that place. Freeman and his wife became much interested, and, as time went on, much excited. They commenced to give up one pleasure after another and to practice great self-denial.

They believed that they had been selfish and that they had not made sacrifices enough to the Lord. Going home one evening from an exciting revival meeting, they saw lightning in the sky, what we sometimes call heat lightning, and this they interpreted as a sign to them to make a greater sacrifice to the Lord. They had not much in worldly goods, but they had read their Bible.

They had read the story of Abraham, who had made an offering of his only son Isaac. How he stretched forth his hand and took the knife to slay his son, when the angel

of the Lord called unto him out of Heaven, and said, "Abraham, Abraham, lay not thine hand upon the lad". Remembering all this, they thought of their two little daughters, who were very dear to them, so they discussed the matter, whether or not this sign in the Heaven, which they had seen, meant that they should make an offering of one of them. But which should it be? They loved the younger, little Edith, the better, so they must give her up, as that would be the greater sacrifice.

On reaching home, they prayed over it and went to bed, but they could not sleep. Here was a clear sign out of Heaven, a demand from God Almighty, to make an offering of this best beloved child.

The father got up, went into the next room, where the innocent children were sleeping, took the eldest daughter in his arms, without waking her, carried and put her in the bed with the mother. Then he went into the kitchen, secured the butcher knife, and returned to the bed room where little Edith was sleeping soundly.

He turned down the bed clothes and opened the night dress about and above the heart. He raised the knife high in the air, and brought it down slowly, near the child's body, hoping to hear the voice of the angel of the Lord, crying, "Hold"; but no voice came. He said to himself, "Am I unfaithful to my God; am I unwilling to obey his commands". He raised the knife again, and hearing no voice to stay his hand, he plunged the knife into the heart of his daughter, killing her instantly. She and the bed clothes were covered with blood. He at once got into the bed, took the child in his arms and remained there until morning. He then dressed himself, went to the neighbors, telling them what he had done, and inviting them to come on the morning of the third day and see his daughter rise and ascend into Heaven. The neighbors,

who had not taken the revival so seriously as he had, called a constable, and Freeman was taken to jail as a murderer, to his great surprise.

Subsequently Freeman was indicted for murder, brought before the court, and it appearing that he was still insane, it was ordered that he be committed to the Danvers Insane Hospital, until the further order of the Court.

After I became Attorney General in 1883, the superintendent of the hospital informed me that Freeman had become sane, and had reasoned himself out of his insanity; and the superintendent was of the opinion that Freeman would never be insane again.

The superintendent would introduce Freeman to an inmate who believed he was Jesus Christ. Then he would say, "Now Freeman, you know that man is not Jesus Christ. He is crazy just as you were when you killed your child". Another inmate would claim to be God, and the superintendent would say to Freeman, "That man thinks he is God, but you and I know that he is not, he is insane just as you were when you believed the Almighty had commanded you to kill your child".

After some months, Freeman became sane, and then realized for the first time his great loss in little Edith. He soured on religion. It had caused him to kill his child. He became an infidel and has remained such ever since.

Freeman was tried December 5, 1883, before the Supreme Judicial Court at Barnstable, Chief Justice Morton and Justice Field presiding. E. J. Sherman, Attorney General, and H. M. Knowlton, District Attorney, representing the Commonwealth, and A. W. Boardman and Charles A. Taber, representing the prisoner.

The government proved the killing as before stated,

then put on two expert physicians, who expressed the opinion that Freeman was insane at the time.

The defence introduced two experts who testified the same way. The attorney for the defence argued that the jury should return a verdict of not guilty by reason of insanity. In my argument I made the same claim.

The Chief Justice in behalf of his associate and himself advised the jury to return such a verdict, but it took the jury four hours to acquit, by reason of insanity.

Freeman was committed by order of the Court to the same hospital for life. Some four years afterwards, the Governor and Council, becoming satisfied that Freeman would not become insane again, ordered his discharge.

He and his wife and daughter then went west and when last heard from they were well and leading the lives of good citizens, but confirmed infidels.

#### CASE OF THE HOUSATONIC RAILROAD COMPANY.

While I was Attorney General, Hon. Thomas Russell, Chairman of the Board of Railroad Commissioners, formerly a Justice of the Superior Court, Collector of the Port of Boston, Minister to Venezuela, etc., came to me to prosecute the Housatonic Railroad Company for violation of the Acts of 1885, Chapter 338. I directed Andrew J. Waterman, District Attorney of the Western District to commence a suit in behalf of the Commonwealth against said company. It was afterwards tried in the Superior Court, and judgment rendered for the plaintiff. It was carried by exceptions to the Supreme Judicial Court. I commenced to study the case and prepare a brief for argument in that court.

The statute had been passed upon the recommendation of the Railroad Commissioners, and the bill I think was



drawn by Judge Russell, its chairman. I knew that the defence was to be that the statute was unconstitutional. After a careful examination of the decisions of the Supreme Court of the United States, I became satisfied that under those decisions the case could not be maintained. I finally told Judge Russell to what conclusion I had come. He was very much in earnest, as it was his pet statute and his pet case. We argued the case for some days with a good deal of earnestness on both sides. I finally said to Judge Russell this discussion has been and will be of great use to me in preparing my brief and arguing the case before the Supreme Court.

After some days, he came to me and said, "I have not been able to convince you, that we have a case that can be maintained in law, and I do not believe that you can argue it as well as you could if you believed in it. Do you"? I replied, "I do not know, but certainly I shall give the Court all the arguments and cite all the authorities which you have given me, and do the best I can to maintain the suit". I saw he was unhappy and dissatisfied on account of the opinion which I had expressed, to wit, that the action could not be maintained.

He said further, "This is my statute and practically my case, and if it fails, the laugh will be upon me, and it will injure my standing as a lawyer and as Chairman of the Board. Are you willing that I should see the Governor and Council and obtain permission to employ other counsel"? "Certainly", I replied. Soon after, on the same day, the Governor sent for me. He told me of Judge Russell's request, and that the Judge wanted to employ George F. Hoar. He also asked me two questions:—one, had I any objections to other counsel being employed, and two, did I think Mr. Hoar was the best man to employ. I answered the first question in the negative, and



as to the second question, I said, "George F. Hoar is an able lawyer, and if he will give sufficient time to the study of the question involved, he will ably represent the plaintiff. But what I fear is, that being a United States Senator, overcrowded with work, that he cannot and will not make himself thoroughly familiar with all the decisions of the Supreme Court of the United States bearing upon this subject".

Mr. Hoar was employed and argued the case for the plaintiff. Justice Dewey of Great Barrington, afterwards Justice of the Superior Court, argued the case for the defendant. The Supreme Court decided the case for the defendant.

(See opinion by Chief Justice Morton in Commonwealth vs. Housatonic Railroad Co., 143 Mass. Reports, 264.)

The Chief Justice subsequently told me, that Dewey made a very able argument, but that Mr. Hoar had not familiarized himself with the cases and could not answer the arguments of Mr. Dewey.

Judge Dewey afterwards told me, that he bought a full set of United States Reports, and devoted several months to the study of the cases bearing upon the subject so that he could quote them from memory. He was appointed by Governor Robinson a Justice of the Superior Court, influenced somewhat, on account of the ability shown in this case.

Judge Russell was greatly disappointed at the result, but said good naturedly to me, "I might as well have taken your opinion in the first place. I was much disturbed and aggrieved at your opinion, at the time, but it seems that both our Supreme Court and the Supreme Court of the United States have concurred in that opinion".

## CHAPTER IX.

---

### AS JUDGE OF THE SUPERIOR COURT.

---

#### GOVERNOR OLIVER AMES.

Oliver Ames was elected Lieutenant Governor in 1882 at the same time that I was elected Attorney General.

I did not know him personally before that campaign. From that time on until his death, in 1895, our relationship became more friendly and intimate.

While building his new house on the corner of Commonwealth and Massachusetts Avenues I went often, at his request, to observe its progress. After it was completed and his family commenced to occupy it, I spent many nights there. He called one of the rooms "Sherman's room". I had great regard for him,—he was a lovable man, always carrying about with him a great amount of sunshine. This feeling seemed to be reciprocated.

#### APPOINTED JUDGE.

He was elected Governor in the Fall of 1886, and inaugurated January, 1887.

September 7th, 1887, Chief Justice Morton of the Supreme Judicial Court sent for me, and handed me the resignation of Mr. Justice Gardner of that court, saying I

wish you would place this resignation in the hands of the Governor as soon as possible, and tell him that we need a new Justice as soon as he can conveniently appoint one.

The Governor and Council were at Springfield and were coming to Boston that afternoon. I went to Worcester, boarded the train which was bringing the Governor and Council to Boston, and presented the resignation with the request of the Chief Justice to the Governor.

The Governor stated that upon arriving in Boston the Governor and Council would hold a meeting and he would nominate a Justice. "Who do you think I am going to nominate"? said the Governor. "I cannot guess", was the reply. "I am going to nominate you", said the Governor. "I would not accept it", said I, "for two reasons, first, I am not qualified for the position, and secondly, I would not take it, if I was". He then asked me if he promoted Mr. Justice Knowlton (now Chief Justice Knowlton) of the Superior Court, would I accept the position vacated by his appointment? I replied that I would like to consider that question.

Mr. Justice Knowlton was nominated on that day and confirmed on the 14th. I was nominated to the vacancy on the 14th and confirmed on the 21st.

The following correspondence took place:

COMMONWEALTH OF MASSACHUSETTS.

Executive Department,  
Boston, Sept. 8, 1887.

HON. E. J. SHERMAN,  
Attorney General.

*Dear Sir:* I am a believer in civil service reform and promotion for merit. As you are aware I have nominated Mr. Justice Knowlton of the Superior Court of this Com-

monwealth to the vacancy caused by the resignation of Mr. Justice Gardner of the Supreme Judicial Court.

For five years you have served the Commonwealth faithfully and satisfactorily as Attorney General, and to you, if any one, should come promotion. I therefore tender you, if you will accept it, when the time comes, for its formal offer, a position upon the bench of the Superior Court when it shall have been vacated.

Hoping that you will find it agreeable to do this, and that in this your valuable knowledge of the law and your eminent ability as a jurist will be permanently secured for the use and benefit of your fellow citizens,

I am yours most sincerely,

OLIVER AMES.

ATTORNEY GENERAL'S DEPARTMENT,

Commonwealth Building,

Boston, Sept. 14, 1887.

To His Excellency,

OLIVER AMES,

Governor.

*Dear Sir:* I have received your letter of the 8th inst. tending me the position of Justice of the Superior Court in place of Mr. Justice Knowlton promoted.

Were I to serve out my present term as Attorney General, I should have then served the Commonwealth continuously as District Attorney and Attorney General for a period of over nineteen years.

The people have apparently approved my administration of those offices by repeated elections, and it is exceedingly gratifying to me to know that your Excellency believes me worthy of further service. I have decided to accept your proffer, and, if I receive the appointment, it will be my endeavor to serve the State to the best of my ability. Thanking Your Excellency for the kind words of your letter, I remain,

Yours most respectfully

EDGAR J. SHERMAN.

ATTORNEY GENERAL'S DEPARTMENT,  
Commonwealth Building,  
Boston, Oct. 1, 1887.

To His Excellency,  
OLIVER AMES,  
Governor.

*Dear Sir:* Having accepted your appointment as an Associate Justice of the Superior Court, I hereby resign the office of Attorney General of the Commonwealth.

Please accept my sincere thanks for your uniform kindness and courtesy.

Very respectfully,  
Your obedient servant,  
EDGAR J. SHERMAN.

COMMONWEALTH OF MASSACHUSETTS,  
Executive Department,  
Boston, Oct. 1, 1887.

HON. E. J. SHERMAN,

*My Dear Sir:* I hereby accept your resignation of the office of Attorney General, which you tender this day.

With a feeling of satisfaction that the Commonwealth is still to have the benefit of your valuable services, I am

Yours sincerely,  
OLIVER AMES.

#### DEATH OF GOVERNOR AMES.

Oliver Ames held the office of Governor, 1887-8-9. Although regarded as rich, he owed a large amount of money. The panic of 1893 was a severe trial to him, and he came out of it without serious loss, but with impaired health. At his request I wrote his will, November 4, 1889. In the winter of 1894-5 he went south, but re-

turned home in April, his health being in an alarming condition. He telegraphed to me at Lawrence on Saturday night, to come and see him at once. I asked if Monday would not do. He replied that he might not be alive at that time. I came at once. He asked me to make a codicil to his will, and I was named as one of the executors and trustees.

The Governor lived until October of that year (1895).

Since his death, I have served as one of his executors and trustees.

### JUDICIAL SERVICES.

I commenced my services as Justice of the Superior Court at the October Criminal Session in 1887, at Lawrence. It was to me an exceedingly pleasant session.

At every session which I have had since, there has been something, or some case, out of the usual run. I wish now that I had kept a diary of such cases. As it is I will refer to a few such cases as I recall them.

### A BRIGHT CRIMINAL.

While holding a criminal session of the Superior Court in Lowell, a man by the name of Moore (I think), had pleaded guilty to two counts or two indictments for stealing silver from two different houses in Somerville.

He was asked by the clerk of court, if he desired to say anything to the Court about his sentence. He replied that he had sent a letter to the Judge. Thereupon, I was handed a letter from the prisoner, which I examined. It was a well-written letter pleading for leniency of sentence.

Two words were misspelled, but I could not tell whether the poor spelling was intentional or not.

I commenced to ask him questions concerning his past life, occupations, etc. He exhibited unusual brightness and cunning. As I became interested in him, the sheriff stood up and said, "I think I ought to tell your Honor that while this prisoner was in jail at East Cambridge, he made some very fine handcuff keys out of an old case knife".

I said to Moore, "What do you say to that"? He replied, "If they found any handcuff keys in my cell, I did not make them". I said to the sheriff, "Please have your officer at the jail come here in the morning". I wanted a little time to look the prisoner over, as I suspected that he was a "professional".

The next morning, an officer from East Cambridge took the witness stand and testified that on Sunday morning, while the prisoner was in jail, he heard filing on one of the corridors. Creeping up near the cell, he saw the prisoner filing something. Upon going into the cell, he could not find any file, but he found an old case knife and the keys which were produced in court. The keys showed excellent workmanship. The prisoner cross-examined the witness, showing ability in that direction as well as familiarity with courts.

I became satisfied that the prisoner was a professional burglar, and an Englishman. If I had sentenced without finding out anything about him, I should probably have given two or three years in the house of correction; but believing him to be a "professional" and a dangerous man to be at large, I sentenced him to seven years in the state prison.

I told the sheriff, when he took the prisoner to the state prison, to present my compliments to the warden and tell



him that I did not believe he would be able to keep the prisoner a great while, as in my opinion he was a professional burglar and a fine mechanic, and would be likely to break out of prison.

When the sheriff returned, he informed me that he had delivered the warden my message, that the warden said, "Tell the judge not to worry; I think I can keep him".

The case passed from my mind until some six months afterwards, when the newspapers announced that Moore had escaped from the prison. Some time afterwards, I met the warden at the Loyal Legion. He said, smiling, "The joke is on me. Now do not laugh, but let me tell you how he got away. I put him in a cell which was in sight of the officer's position all night. He first made keys to his cell doors, to the door into the kitchen, and from the kitchen to the yard. That was a comparatively easy matter for a mechanic like Moore; but the trouble for him was to overcome the bar, which drops down over the arms which come out from the door of each cell.

The prisoners come in from the shops and are marched in single file, in charge of an officer, enter their cells on one side of the corridor, and then the cell doors are closed and locked. If they are all in, the lever, or overhead bar, is let down, fastening all the cells on that side. If one prisoner on that side of the corridor was not in, then it was the duty of the officer to remain there looking down the front of the cells, until the absent prisoner came, and then lock them all in and put down the bar.

Moore managed to have some friend late. After being locked in himself, he took his false key, unlocked the door of his cell, went out and relocked it, and as the officer walked by the end of the corridor, he went around the other end, so that when the absent prisoner came, all were locked in and secure, except Moore, who played hide and

seek with the officer. Moore being out of his cell, had all night to get away, and he improved it”.

“But”, said the warden, “I shall get him again”. I replied that I did not think so, as he was an Englishman and had gone to England.

This was ten years or more ago, and the prisoner has not yet been captured.

SENTENCE OF JOHN C. SANBORN, SUPERINTENDENT OF  
THE PLYMOUTH DIVISION OF THE N. Y., N. H. & H. R.R.

While holding court in Plymouth County, Sanborn, the superintendent and chief of the railroad police, and three section foremen, were brought before the court for sentence upon a charge of having created a riot in the town of Abington. They had all previously pleaded guilty, or rather that they would not contend with the Commonwealth.

The District Attorney moved for sentence. Their counsel, the counsel of the railroad, asked to have the case put on probation, and if this could not be done, that a fine be imposed.

The facts appeared as follows:—

An electric railroad had built its tracks up to the tracks of the New York and New Haven Railroad on either side and proposed to cross the railroad tracks at grade, having previously obtained a license so to do from the authorities.

The New York and New Haven Railroad Company had filed a bill in the Supreme Judicial Court, asking it to restrain, by injunction, the electric company from building its road across their tracks. After a hearing before Mr. Justice Knowlton of that court, that justice ruled that the electric company had a right to so cross, and

refused the injunction. Thereupon, the electric company attempted to construct their track, calling on the officers of the law to preserve order. The said superintendent and chief of the railroad police came there with 200 or more Italian laborers, armed with pickaxes and shovels, and created a riot and street fight, assaulting many persons, including the peace officers, causing the windows of the post-office to be broken, etc., etc. Many persons were injured during the riot.

Civil actions were brought against the New York and New Haven Railroad company by these persons injured. The company had paid out many thousand dollars and had settled with all persons injured, and those persons signed a petition to the court in favor of leniency towards the accused. The District Attorney stated that he felt he had performed his duty by making the Court acquainted with all the facts and moved for sentence, leaving the Court to determine what that sentence should be.

I took the case under consideration. Upon the coming in of the court, at a subsequent day, the five defendants stood at the bar to receive sentence.

The Court stated that he regarded this as an important matter to be decided as affecting the proper administration of the criminal law. Here was a clear case where the superintendent of a great railroad corporation had taken the law into his own hands and created a riot, to prevent another company from doing something which a judge of a Supreme Court had just decided it had a lawful right to do, the superintendent calling to his aid several hundred ignorant Italian laborers and directing them to go with their weapons and commit an assault on the peace officers of the Commonwealth. It is a wonder that many persons were not killed. Such a case should not be put on probation. A fine would be paid by the stockholders

of the corporation who are not guilty. The sentence of the Court was that the superintendent and chief of police be punished by imprisonment in the house of correction, four months each; that the three section foremen be punished by imprisonment in the same institution two months each.

That evening President Clark of the railroad came from Hartford in his private car to Plymouth. I had known Mr. Clark quite intimately for some time. He appealed to me to help secure the release of these men. He said they were not to blame, that they had only obeyed the order of their superior officers. I declined to aid him. He asked how he could secure their release. I told him he could apply to the Governor and Council for a pardon. He asked if I thought he could obtain a pardon for them. I replied that I did not know; a great railroad corporation could sometimes "accomplish wonders".

Finally he said, "Judge what would you do if in my place". I replied, "Well, I will tell you what I think I would do. I would go to the jail and tell these men, I have got you into trouble. You will have to serve your sentences; while you are here your pay will be doubled".

"If these men serve their sentence, sometime in the future, when you have a strike of these Italians on your road, and they create a riot and destroy your property, you will be in condition to ask the Court to punish them. But if these educated Americans are not punished, can you expect to have ignorant Italians punished for committing a like offense"? Mr. Clark's reply was, "Your advice may be good, but I cannot follow it, I must get the men out if I can".

Subsequently a petition was presented to the Governor and Council for a pardon. After a long hearing, the Council voted by a majority of one against granting it. A

new petition was presented after the sentences of the three section men had expired. There had in the meantime been a change in the Council, by one going out and one coming into office. This time the Council voted in favor of granting the petition by a majority of one. The matter was then heard by Governor Greenhalge, who refused to grant the pardon.

There has been a feeling among some of our citizens that only the small rogues or law breakers suffer punishment. This case has proved to be an object lesson. Since a superintendent of a railroad, an educated man, and the chief of the railroad police (who some years before had been an officer, the turnkey of this same house of correction), had both put on the prison uniform and served sentence, the public opinion seems to have undergone a change.

#### CASE OF MCCARTHY.

At the same session of court at Plymouth, two men were tried for breaking and entering a grocery store in Brockton and stealing therefrom.

One man's name was McCarthy and, as I looked at him, I thought I had seen him as a prisoner while I was district attorney or since I became a judge. This feeling grew upon me and I felt quite sure he belonged in Lynn. After he was convicted, when the matter came up for sentence, an honest lawyer in the old fashion style of dress (black) addressed the Court. He stated that he had been employed by McCarthy, who was a man of character and standing, never having been suspected of breaking the law before, but had met the other prisoner, who was an old offender, and all that could be said against McCarthy

was, that he had gotten into bad company; that he had only met the other prisoner on the night of the breaking into the store and was present, although taking no part in the crime. The lawyer asked that his client be put upon probation. At this point, I asked, "Does your client authorize you to make these representations"? "Yes, certainly", said the attorney, "but why does your Honor ask"? "Because McCarthy and I are old acquaintances. I think you better talk with him". The lawyer went to the dock, and after a hasty consultation with his client, again addressed the Court. "I beg your Honor's pardon. My client informs me that twenty years or more ago, while you were district attorney, he was convicted and sentenced to the reformatory".

The Court. "Is that all he tells you? I think you had better talk with him again".

The Attorney. "Yes, he says that three years afterwards, he was convicted of breaking and entering a store in Lynn, and sentenced to two years in the house of correction".

The Court. "But does he not tell you what has happened to him since I became a judge"?

The Attorney. "Yes, he says that you sentenced him for burglary to the state prison for five years".

The Court (addressing the prisoner). "Now, McCarthy, do you not think it best to tell the whole story, rather than to have the District Attorney send to Mr. Shaw, the state officer, to bring in the record of all your convictions"?

McCarthy. "Yes, your Honor. I did not think you would remember me, as it is about twelve years since you have seen me, but when you said 'we were old acquaintances', I feared it was all up. I will now tell you the whole truth". So McCarthy went on and told of the num-



ber of times he had been in prison, and it turned out that in twenty years he had been in prison the greater part of the time.

The lawyer was greatly mortified, and made his apologies to the Court, and as an excuse, said the prisoner's mother and sister had confirmed the prisoner's story of innocence. I assured the lawyer that I believed him and he seemed somewhat relieved.

The next day, the newspapers had an account of the proceeding, with glowing accounts of the Judge's great memory of the faces of prisoners, etc., etc.

As a matter of fact, I was entitled to no credit. I happened to remember McCarthy's face, and by remarking that "we were old acquaintances" thereby induced him to tell the whole story. I also felt that if McCarthy had been convicted when a young man and was now forty years old, from the nature of this crime, which showed the experience of a "professional", it was altogether probable that he had been engaged in crime since, which turned out to be the case.

### A BOY WITNESS.

A case was being tried before me against the Boston Elevated Railroad, and a little boy, perhaps seven years old, was called as a witness. The counsel for the defence objected to his being used as a witness, as he was too young to understand and appreciate an oath, and asked the court to examine him and ascertain that fact. The boy looked frightened and as if he was about to cry. He took the witness stand close beside the bench. His name was John ———. I said to him in a low voice, as if talking confidentially, "John, do you play base-ball"?



He replied, "Yes, Judge". He was a little short fellow, and I said, "I guess you play short stop". "You are right Judge", replied Johnnie.

By this time all disposition to be frightened or cry had disappeared. I then asked him about his school, etc., and he showed unusual brightness. I remarked, "This boy will do, he is all right".

He made one of the best witnesses called in the case. If I had said to him in a stern voice. "Do you understand the nature of an oath? What will happen to you if you tell a lie?" as is sometimes asked in like cases, the boy would have broken down in a crying spell.

#### THOMAS RILEY.

Thomas Riley, a lawyer of some prominence in Boston, who had made some trouble in court, had been fined for contempt of court many times, came to have an experience with me in this way. Before I was appointed a judge, I happened to be in court one day, where Mr. Riley was trying a case before Judge Thompson. Riley having a weak case knew that the Judge's charge, if fair and just, would have a tendency to show the weakness of his case.

So, as it seemed to me, Mr. Riley commenced to say and do things for the purpose of irritating the Court. Mr. Riley's conduct did irritate the Judge and he showed resentment by a just reprimand with a flushed face. Thereupon Mr. Riley smiled to the jury as if saying, "You see the Judge is on the other side of this case". So later when the Judge was charging the jury, Mr. Riley was, by looks and acts, keeping up the insinuation, that the Judge was against his client.

I felt at the time, that the Judge was unfortunate in

exhibiting temper, the very thing that Mr. Riley by his conduct had planned to produce.

Many years afterwards while I was holding the criminal session in Boston, where two prisoners were being tried upon a charge of robbery, Mr. Riley appearing for one and another attorney for the other, I thought he intended to have the same kind of trouble with me for the same purpose.

The District Attorney called the Court's attention to Mr. Riley's conduct in cross-examination of a witness and objected to it. I said in a quiet way that Mr. Riley's conduct was improper, but he repeated it.

Court adjourned in a few moments. I then called Mr. Riley to the bench, and said, "Mr. Riley your mode of cross-examination is very objectionable and it cannot be allowed, but I noticed a few moments ago after I had so stated, you kept it up". "Oh", said Mr. Riley, "it was an inadvertence".

The next day he commenced to cross-examine in the same way, looking at the Court as if he intended to say, "Help yourself if you can". To make sure that I correctly interpreted the look, I said, in a mild voice, "Mr. Riley, we talked this matter over last evening, and I thought we understood each other, but you seem to be continuing in the same way".

"Yes", said Mr. Riley, "you said something to me about it in private, but I prefer, if you have anything to say to me that you will say it publicly, in open court". I said, in the same quiet way, without raising my voice, "I think Mr. Riley we now fully understand each other, you may proceed with your cross-examination". He did proceed, but going on in the same way, except in a more objectionable way, at the same time looking defiantly at the Court. After he had gone on long enough to make

sure that he intended to disregard my order and defy me, I said, "Mr. Sheriff, we will take a recess of a few minutes during which time you will notify Mr. Riley's client, that he will be obliged to secure other counsel, as Mr. Riley cannot represent him any further". This seemed to be a new turn in affairs and out of the order of the Court's fining the lawyer for contempt.

When our recess was over, the prisoner stated that he had no more money to pay another lawyer, as he had paid all he had to Mr. Riley. I stated to him, that as he had no counsel, it was the duty of the court to see that his rights were guarded and protected. Then I said to the District Attorney, "You will proceed with the trial". Soon Mr. Riley left the court room and the counsel for the other prisoner appeared for both.

The second morning after, Mr. Riley came into court, and I said good naturedly, "Good morning". He came to the bench and said to me, "Judge, I do not know my status in this court, I have several cases on the short-list". I replied, "The slate is all clear, my order only including the case on trial". He tried many cases before me after that, but always conducted himself with entire propriety. We became quite good friends. He learned that clients would not employ a lawyer who was liable to be sent out of court.

TRIBUTE TO CHARLES PERKINS THOMPSON, JUSTICE OF  
THE SUPERIOR COURT FROM 1885 TO 1894.

At a session of the Superior Court in Salem, June 29, 1894, Justices Sherman, Lilly and Sheldon (successor of Judge Thompson) being present, a memorial (prepared by a committee of the bar previously appointed) was pre-

sented to the court. Remarks were made by William D. Northend, Elbridge T. Burley, Daniel Saunders, Henry P. Moulton, William H. Niles, and Frank C. Richardson. After which Justice Sherman replied as follows:—

*Brethren of the Bar:—*

When I came to this bar in 1858 I first met Mr. Thompson, who had preceded me, having taken up his residence in Gloucester the year before. From that time until 1868, when I was elected to the office of district attorney, I met him occasionally. For the next fourteen years we met frequently in the civil and criminal courts, more frequently in the latter, as he had a large docket in that court.

After I became attorney general, in 1883, we met often, especially in the summer months, I some years prior, having taken up my residence in Gloucester during the summer.

He was appointed to the bench in 1885, and I in 1887, after which time our relations were very intimate. It is pleasant to remember that in the great number of cases we tried, as opposing counsel, there never was an unpleasant word between us.

I was once asked by former justice of this court, only slightly acquainted with Mr. Thompson, why it was that I manifested such a great respect for and confidence in him. I answered, "Because he is such a good fellow and so honorable in his practices,—if he should tell me that I made an agreement a year ago about the disposition of a criminal case, of which I had no recollection, I have such implicit confidence in his integrity, I should carry out the agreement according to his understanding".

As a lawyer he had a good degree of success, not in a financial sense, but in giving to a large number of his

fellow citizens the best of advice without charge or compensation, and in giving to a large clientage great ability and faithful services, with moderate charges.

He will be gratefully remembered by the citizens of Cape Ann as a lawyer who did not stir up strife, incite neighbors against neighbors, nor encourage litigation; he was a genuine peacemaker, and literally kept the attorney's oath,—“He would do no falsehood, nor consent to the doing of any in court; he did not wittingly or willingly promote or sue any false, groundless or unlawful suit; he delayed no man for lucre or malice; but he conducted himself in the office of an attorney within the courts according to the best of his knowledge and discretion, and with all good fidelity as well to the courts as to his clients”.

Judge Thompson, as a member of the legislature and of congress, established a reputation as a man of ability and integrity.

Mr. Justice Thompson was a popular judge; naturally such, with his genial disposition, pleasant ways, ready wit, and love of anecdote, he could not be otherwise; he carried about with him wherever he went a large amount of sunshine. The lawyers, court officers and jurors, were glad to meet him in or out of court. With his associates upon the bench he was considerate and companionable;

“None knew him but to love him,  
None named him but to praise”.

He possessed a sensitive conscience; he wanted to do right, administer exact justice, and he was determined to do it in such way, and with such care, as to leave no doubt in the mind of any person as to his purpose and motive.

The pleasantest and happiest years of his life were those immediately preceding his last illness. He thorough-

ly enjoyed his position and work upon the bench; he had a happy home, with a dutiful, affectionate and devoted wife; his son had passed the anxious years of boyhood into manhood and successful professional engagement; and a loving daughter, after long and anxious years of illness, had been restored to health, and everything seemed propitious for the future, and his friends expected he would reach the age of four score years. But what seemed to us, who cannot understand the mysteries of life and death, a cruel fate, decided otherwise. He was cut down in the midst of his usefulness by a fatal disease, which preyed upon both body and mind, until it so weakened the latter that life to him seemed a great burden, too great finally to be endured longer. And as we think how terribly he suffered in those last days, of the agony of those last hours, can we say that perhaps, after all, it was not best?\*

While we shall miss him and mourn his loss, we may be comforted with the thought of how much better this part of the world is on account of his life and example. He did much to make the world better, to fill it with sunshine and happiness, and he has left behind him a reputation for honesty and integrity as firm and rugged as the rocks of the Cape where he dwelt.

As I go to my summer home by the sea, where he so often visited me, I shall feel constantly,

“He will come no more,  
That friend of mine whose presence satisfied  
The thirst and hunger of my heart. Ah, me!  
He has forgotten the pathway to my door,  
Something has gone from Nature since he died,  
And summer is not summer, nor can be”.

\*Judge Thompson committed suicide.



In the year 1901, the *Boston Globe* published a fulsome article with a good picture of myself as follows:—

“TAUGHT DISTRICT SCHOOL.

*Judge Edgar J. Sherman, Now Leader of Massachusetts Bench and Bar.*

Judge Edgar J. Sherman of the Superior Court is another prominent Bay State character who taught school to earn the money which enabled him to study law. A Vermonter by birth and education, he was sent to the Wesleyan seminary. After graduating from this institution, he taught school on Cape Cod, and in 1855, at the age of 21, he began studying law, and in due time he was admitted to the bar in this state.

In 1859 he was appointed clerk of the Lawrence police court, and in 1861 he resigned this position to become a volunteer soldier in the war of the rebellion. He enrolled as an enlisted man, but was soon elected captain in the 48th regiment from this state. He served under General Banks and was brevetted a major for gallant and meritorious services at the second attack on Port Hudson, June 14, 1863.

At the expiration of his term of enlistment he returned to Lawrence, but on the threat of the rebels to raid Washington, Captain Sherman gathered together a company of volunteers and went to the front the second time as captain of the company in the famous old 6th Massachusetts.

In 1865 he was elected to the house of representatives and returned the following year. For some years after the war he was prominent in militia circles, and when he retired he held the position of judge advocate general.

In 1868 he was chosen district attorney for the eastern district of Massachusetts, and was honored with five consecutive elections, resigning to become attorney general in 1882. In 1887 he was made one of the judges of the superior court.

Judge Sherman belongs to the same branch of the Sherman family that produced Gen. W. T. Sherman and the



late John Sherman, and many see in him the same general features of the former mentioned distinguished brother.

Judge Sherman ranks as one of the most even tempered Justices of the Superior Court. Tall, thin and wiry, he moves about quickly, dispatches a deal of work in a short time, and is one of the most democratic justices of his court. He is often seen riding back and forth on his wheel. He is a hard worker, a great reader, and when practicing at the bar was regarded as an able lawyer."

I wrote a letter to the proprietor as follows:—

"Boston, June 15, 1901.

GEN'L CHAS. H. TAYLOR,

Proprietor of the Globe.

*My Dear General:*

Some writer published in your paper on Thursday, with a picture of myself, a fulsome article headed in large letters, "Judge Edgar J. Sherman, Now Leader of the Massachusetts Bench and Bar"!

My enemies will say the article is a lie, and my most admiring friends will not claim it to be true.

I am not the leader of the bench. There are seven justices of the Supreme Judicial Court and the Chief Justice of the Superior Court, who are my seniors, and there are many of my juniors of the latter court, who are better lawyers and judges than I am.

I never was the leader of the bar of Massachusetts, except in the sense that while I was attorney general I occupied the position as leader.

I cannot understand why the article was published. Undoubtedly the writer intended to do me a kindness. I am not in politics or a candidate for public office. I am put upon the shelf, without aspiration or ambition, simply trying to do my duty as a judge. If I was convivial, or in a position to justify "seeing my friends," the article would prove expensive. As it is, sedate gentlemen ask, "What does such an article cost?" Others make indirect





Judge Sherman's Summer Home from 1877 to 1903 at Bass Rocks

reference to the latest decision on punctuation\*, and comment on the hour when orders for luncheon may be given. The late George M. Stearns once remarked, that he would not be obliged to behave as well as a judge had to, for twice his salary.

This article is causing me much embarrassment.

I do not feel quite safe in asking to have it corrected. Will you kindly, in the most severe military style, command the writer "not to do it again"?

Very truly yours,

EDGAR J. SHERMAN".

\*Commonwealth vs. Kelly, 177 Mass. R., 221.

## CHAPTER X.

---

### CONTINUED JUDICIAL SERVICE.

---

#### CONTEMPT OF COURT PROCEEDINGS.

During the December (1898) Criminal Session of the Superior Court at Dedham, which was held by me, Daniel W. Getchell, a locomotive engineer, was tried upon an indictment charging him with manslaughter—criminal negligence—in running an engine and train of cars into the rear end of another train at Sharon Station, killing Franklin W. Waters, on August 21, 1898. A heavy train reached Taunton on the New York, New Haven and Hartford Railroad. The train was there divided into two divisions, Getchell running the second into Boston, and it was his duty to so run the rear division as not to run into the first division. Under the rules of the road he was not to run by a danger signal. When he reached such a signal, it was his duty to stop his train and wait until the signal was changed, showing that the train in front had passed beyond the next signal.

At Sharon Heights he saw the danger signal, but undoubtedly thought that before he reached Sharon Station, the first division would be out of his way; and so he “took chances”, coming on at full speed until he approached the Sharon Station, when he observed to his horror, that the other train was still there. He reversed his lever and

jumped off his engine, which came crashing into and running way through the rear car, killing Mr. Waters and five others and injuring many passengers.

While the case was being tried there appeared in "The Boston Traveler", an article containing a one-sided partisan view of the case, in favor of the defendant, winding up as follows:—"In either case who is to blame, certainly not Engineer Getchell, for he was inexperienced in the use of the air brake; he is not to be censured, but the fault lies with the road officials who allowed him to operate the train. From the evidence thus far given it is probable that the result will be in Mr. Getchell's favor". The facts were called to the attention of the Court, by the District Attorney alleging that the paper and article had a tendency to prevent a fair and impartial trial by the jury of said indictment against said Getchell, and which paper he stated was circulated about the court room, while said case was upon trial. The Court caused said complaint to be reduced to writing. It was thereupon ordered by the Court, that the sheriff notify Torrey E. Wardner, the publisher and manager of said paper, to appear before said Court on Tuesday, the twentieth day of December, 1898, at ten o'clock in the forenoon, then and there to show cause why he should not be adjudged guilty of a contempt, in publishing said article while said cause was on trial, with an expectation that it might be seen by the Court and jury.

On December 20, 1898, the sheriff reported to the Court that he had personally notified said Wardner on December 16, 1898, to appear at court in compliance with said order of Court but said Wardner did not so appear. On December 21, 1898, said Wardner still not appearing, the Court directed that a *capias* be issued for his arrest. At five o'clock p. m. on said December 21, said Wardner

appeared before said Court and was placed at the bar to answer and show cause why he should not be adjudged guilty of contempt as set forth in said complaint as aforesaid.

The said Wardner then and there admitted that he was responsible for said publication as set forth, but claimed that he had a right to make such publications and that he could not allow the Justices of the Superior Court to interfere with the freedom of the press. After fully hearing said Wardner in his defence, with the aid of counsel, and after full hearing and consideration, the Court found that the several matters hereinbefore recited, as to the printing, publishing and circulation of said article were true; that the Boston Traveler containing said article was circulated in the court room while said case was on trial and was seen by the jury or some of the jury engaged in the trial of said cause; and that said article was circulated to interfere with and prevent a fair trial by the jury in said cause; the Court thereupon adjudged said Wardner guilty of contempt, and at the suggestion and request of his counsel continued said matter upon the question of sentence to be heard December 23, 1898, at 10 o'clock a. m., said Wardner personally recognizing in the sum of \$500 for his appearance as directed.

December 23, 1898, said Wardner appeared with new counsel and had a full hearing upon the question of sentence, said Wardner still claiming the right to make the publication as set forth in this record, and still denying the right of the Court to interfere.

#### JUDGE SHERMAN'S REMARKS AT TIME OF SENTENCE.

"I feel like saying, before sentence is pronounced, that the Court of course has no personal feeling in the matter.



It was my duty, as I regarded it, when the District Attorney made the complaint and called to my attention this article to take some action on it, and I caused that complaint to be reduced to writing and then notified the defendant through the sheriff of the article, and then subsequently when he did not appear, of course had him called, and then issued a capias, but he came into court voluntarily before the capias reached him, and then there was a hearing upon the question, and his attitude then was the same as I understand it is now, practically that he felt that not having been instructed about the law—he felt he had the right to do what he did do and did not purpose to have the Court interfere with the management of his paper.

Now the practical question is,—I have no doubt it was clearly an article which would have a tendency to prejudice the minds of the jury; it was written and published at least while the jury had the case under consideration and the very article shows the writer knew it, that the case was being considered by the Court and jury. Of course the paper came out here, at what time it reached here is uncertain, but from the evidence which I have had, I am satisfied that it did reach here in time to have done harm to the jury, if it had been seen by them, but I do not think that is material. The important thing was the writing of such an article and circulating it where it would be expected that it would reach the jury. That paper—I do not know how large a circulation it has, but it is circulated here and was circulated in court, and was shown to the Court. The jury had the paper, and I am informed that they had it from the jury themselves, that they had the article while they were in the jury room, but that they took this view of it,—(evidently it did not influence them very much)—to wit: That that was the pub-

lic view of the case, but that they had not the right to take that into consideration, as their duty was to decide the case on the law and the evidence as given at the trial.

Now if Mr. Wardner had said that he was ignorant of the law and that he was a law-abiding citizen and that he was sorry that he had published such an article during trial and that he was prepared hereafter to be law-abiding, of course I should have felt, as we all must feel in this class of cases where we can, in either not taking any action or at least in taking lenient action simply for the purpose of informing newspaper men of their obligations. Now I am not aware that the courts in this Commonwealth have ever attempted in any way to interfere with newspapers, *except in just such cases, where reports or editorials are published either giving an unfair account of the trial or making comments during trial, so that it has a tendency to prejudice the jury.*

The law is, to my mind, perfectly well settled. An article giving a true and correct report of the trial is entirely lawful. Reporters may publish truthfully everything that takes place at the trial, but if they attempt to warp the proceedings, and give a false account which has a tendency to prejudice the trial it is within the prohibition, or if they write editorials which have a tendency to prevent a fair trial, either in a civil or criminal case, it is within the prohibited rule.

*If that is to be allowed then no man can have a fair trial and the case might as well be tried upon the newspaper article and not upon the evidence.*

Now this case stands like this: The defendant is here. I have heard him in his defence, have heard all the facts and circumstances, and have adjudged him within the rule that he is guilty of contempt. Now of course the only question is what sentence shall be imposed.

If the defendant took the other ground that by some omission or mistake he did commit the offence without understanding the law and that he was sorry for it, and that he should not again in a like case offend, I should be very much relieved; but evidently he thinks that he has a right, and he has if he wants to, to test the question. In other words he stands in this attitude,—“I do not mean any disrespect to the Court, but I will not obey the law. I will do as I have a mind to about it, and I will get the higher court if I can to change it, and if I cannot I will get the legislature to change the law; and I maintain this attitude for that purpose”.

Now of course I must deal with him in that view, but leniently; the Court should never do anything vindictively, but since he takes that attitude, I do not see that he leaves it open to me to impose a small fine. He compels me to inflict some punishment, but at the same time it ought to be done with moderation, because it is not the purpose of the law to be vindictive.

Since the brother of the defendant called on me last night and talked about the matter, I have given the case considerable consideration, because it is not a matter that is personal at all, it is a matter where I am acting in a judicial capacity, for the Court, and of course what I desire to do is just the right and proper thing, and after giving the case such consideration as I have been able to, I have come to a conclusion which the clerk may announce.

#### SENTENCE.

The Clerk. “Torrey E. Wardner:

You have been found guilty of a contempt of court, after due complaint and hearing, as appears of record in this court. It is considered and ordered by the Court that

you be punished therefor, by imprisonment in the common jail in the County of Norfolk, for a period of thirty days, unless you are sooner released therefrom by order of Court by due course of law.

Mr. Sheriff, this prisoner is in your custody, under sentence to the jail”.

Subsequently the following petition was filed.

NORFOLK, SS.

SUPERIOR COURT.

Dedham, December Sitting, 1898: December 31, 1898.

The following petition of Torrey E. Wardner was filed in court:

To His Honor, Mr. Justice Sherman of the Superior Court:

I, Torrey E. Wardner, respectfully represent that I have now served more than one week of the sentence to imprisonment in jail for contempt of court in publishing an editorial in the Boston Traveler, while the indictment against Daniel W. Getchell was being heard before the Court and jury, which article would have a tendency to prevent a fair and impartial trial; that since the adjudication and sentence by your Honor, I have applied to a Justice of the Supreme Judicial Court to be released from said imprisonment on *habeas corpus* upon the ground that said conviction and sentence was erroneous. After full hearing, Mr. Justice Knowlton refused my application upon the ground that that court had no authority to interfere.

I have since been advised by my counsel, in whom I have full confidence, that the full bench of the Supreme Judicial Court would not and could not order my release from imprisonment, and that the only court which can grant such a release is the Superior Court.

I am also now convinced that the article published by the Boston Traveler was a violation of the law, and that the decision of your Honor in so deciding was correct and proper, and that my attitude in claiming the right to publish such article and not allow the court to interfere was improper and erroneous.

I now regret that I violated the law and maintained such attitude before the Court.

I am and intend to be a law-abiding citizen and assure the Court that I will not again offend in this respect.

I find that the close confinement in prison is affecting my health and if I am required to serve the remainder of the sentence I may be seriously ill.

I therefore respectfully and earnestly pray that after having purged myself of said contempt, your Honor will order my release of the whole or some part of said imprisonment.

TORREY E. WARDNER.

Norfolk, ss.

December 30, 1898.

Then personally appeared before me the above-named Torrey E. Wardner and made oath that the statements above made by him are true.

Before me,

G. PHILIP WARDNER,

Notary Public.

And the following order was made thereon:—

COMMONWEALTH OF MASSACHUSETTS.

NORFOLK, SS.

SUPERIOR COURT.

Dedham, December Sitting, 1898.

In matter of petition of Torrey E. Wardner to be re-

leased from further imprisonment for the contempt of which he was adjudged guilty and sentenced.

After due consideration, the Court being satisfied that the petitioner has purged himself of the contempt of which he was adjudged guilty, and the only object of the Court in said adjudication and sentence having been accomplished, to wit, *of attempting to secure the litigant fair and impartial trial*, it is ordered that said Torrey E. Wardner be forthwith released and discharged from further imprisonment.

By order of court, this thirty-first day of December, 1898.

R. B. WORTHINGTON,  
Assistant Clerk.

A true copy of record—Attest:

R. B. WORTHINGTON,  
Assistant Clerk.

Getchell was found guilty of manslaughter, and sentenced to two years in the house of correction.

I did not know Mr. Torrey E. Wardner personally before these proceedings were commenced, although I was acquainted with his father, a very respectable citizen living in Lawrence, and I knew his brother, G. Philip Wardner, a reputable attorney practising in Boston.

I did not want to sentence Wardner to imprisonment, and hoped that he would so act that it could be avoided, but I was informed that he thought, if he was imprisoned, he would be regarded as suffering martyrdom for standing up for free and independent press, and thereby increase the circulation of his paper.

I sent a very judicious officer, Sheriff Endicott, to call upon Wardner at the Traveler office, and politely asked



him to come to court and explain how the article came to be published. The sheriff's report of the interview was quite interesting.

He had some difficulty in getting admitted to the Sanctum Sanctorum. The sheriff. "Judge Sherman wanted I should see you and request that you come to court at Dedham and explain how the article on the Getchell trial came to be published"? Wardner. "Well, I shall not go".

The sheriff. "I think you better—of course if you do not, probably I shall have to come again with a capias to arrest and bring you to court".

After considerable conversation, Wardner, still saying he would not go to court, finally added, "I am willing to wager the value of this newspaper, that they cannot get me into jail".

The Sheriff, who sometimes comes near stuttering said, "Well, if, if, it would be pr-proper for me to bet, I should be willing to take it, pro-provided you keep up this at-at-attitude".

None of the newspapers seemed to sympathize with Wardner, as they evidently thought the court had given him every reasonable opportunity to escape punishment, and finally they were very much disgusted with him, because after manifesting such courage; willing to suffer martyrdom, he "cried baby" so quickly to obtain his release.

It ought to be stated that Wardner was a large, good, healthy looking man—what might be called a high liver, smoking strong cigars and many of them in the course of the day. He thought he could go on in the same way, having the same high living in jail and editing his paper from his cell. After sentence, he asked the sheriff to take



him to Boston to make arrangements for his thirty days absence.

The sheriff. "I have no right to, my precept commands me to take you to jail". Wardner. "How about writing and receiving letters"? Sheriff. "You can write and receive one letter a week". Wardner. "How about tobacco"? Sheriff. "It is not allowed". Wardner. "Can I have my meals sent into the jail"? Sheriff. "We allow fruit to be sent to the prisoners once a week, but nothing else. You will have to subsist on the prison fare. We can show no distinction in the treatment of our prisoners. They must all be treated alike—no high, no low, no rich, no poor prisoners—they are all on the same level. Of course you would not recommend having it otherwise".

After a full day's imprisonment, he began to think he could not endure it, and sent to his brother to get him out at any cost. The brother told him that there was but one way, and that was the one, he, the brother, had first advised, to say that he had done wrong and that he would not do it again; that if he, the prisoner, was willing to do that, he, the brother, would try and obtain a release.

Of course, Wardner was afraid, if he did what the brother advised, his fellow editors would laugh at him, but that he finally concluded was not as bad to stand as the imprisonment.

A few days after this case of contempt, the Supreme Judicial Court decided the cases of Telegram Newspaper Company vs. the Commonwealth, and Gazette Company vs. the same—the liability of corporations for contempt. (See 172 Massachusetts Report, 294.)

It was stated some time afterwards that the reason for Wardner's publication of the article concerning the Getchell trial, was because he had had trouble with the railroad, that the company had refused him a pass. I

never investigated that question, and therefore can say nothing concerning the truth of the statement.

### SOME UNPLEASANT EXPERIENCES AS A JUDGE.

At the September session of the Superior Court (1899), at Lowell, Judge Lilley was assigned to preside, I during the same time was to preside at Lawrence.

Judge Lilley requested me to exchange sessions with him, as there were several cases for trial on his list between neighbors of his. I consented and went to Lowell.

The case of ——— Jefferson against George R. Richardson, the former being a son-in-law of the latter, was tried. Mr Richardson was the leading lawyer of Middlesex County. His daughter had obtained a divorce from Dr. Jefferson, the plaintiff. Charles Cowley was counsel for the plaintiff and Fred N. Wier was attorney for Mr. Richardson—Cowley and Richardson were not on good terms. There had been a long, unpleasant quarrel between Dr. Jefferson and his wife. The trial was somewhat heated and lasted many days. There were three or four other cases for trial to follow, all growing out of the same trouble, the quarrel between Dr. and Mrs. Jefferson. In the interest of time, after hearing, I ordered them tried together.

In the meantime, Cowley's client lost the first case, a verdict being rendered for the defendant. He stated in open court, after the above order, that he *would not* try those cases together. I remarked, quietly, that I could not say whether or not he would try the cases, but that they would be tried together. A jury was impanelled to try the cases, after which Cowley stated that he withdrew as counsel for Miss Fitch, the plaintiff in one of these suits.

I immediately said to Miss Fitch that during the noon recess she could obtain other counsel. After the recess, Miss Fitch stated that she had not obtained other counsel, and that she desired to become non suit in her case. As the defendant would not consent, a verdict was taken for the defendant with her consent.

Subsequently, Mr. Cowley filed a motion for a new trial for Miss Fitch before me, which after hearing, I overruled. Then Mr. Cowley filed a bill of exceptions, which I disallowed; first, because they were not conformable with the truth, and second, because as matter of law the plaintiff was not entitled to a new trial. Then Mr. Cowley moved in the Supreme Court to have his exceptions proved. At the same time Mr. Wier moved to have the exceptions dismissed, upon the same grounds stated by me in overruling the exceptions, to wit: Because taking them to be true as filed, he had no right to a new trial as a matter of law. The Supreme Court, after argument, took this view and so decided, dismissing the bill of exceptions. (See *Fitch vs. Jefferson*, 175 Mass. Reports 56.)

By this time, Mr. Cowley had worked himself up into a good deal of feeling against me, and subsequently presented petitions to the legislature in behalf of his clients to have me impeached.

After a committee of the legislature heard all the evidence he had to offer with his argument, the petition was dismissed, or in parliamentary language, the petitioners had leave to withdraw. The Essex and Middlesex Bar Associations considered this and other petitions for the removal of judges such a misuse of the great right of petitions that they published and issued a pamphlet, entitled "Misuse and Abuse of the Right of Petition for the Removal of Judicial Officers". Published by the Essex and Middlesex Bar Associations, 1900, as follows:—

*“Misuse and Abuse of the Right of Petition for the Removal of Judicial Officers.*

‘It is essential to the preservation of the rights of every individual, his life, liberty, property and character, that there be an impartial interpretation of the laws and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit. It is therefore, not only the best policy, but for the security of the rights of the people, and of every citizen, that judges of the Supreme Judicial Court should hold their offices as long as they behave themselves well, and that they should have honorable salaries ascertained and established by standing laws’. *Declaration of Rights, Article XXIX.*

The Constitution of Massachusetts provides, that ‘All judicial officers, duly appointed, commissioned and sworn, shall hold their offices during good behavior, . . . ; provided nevertheless, the governor, with the consent of the council, may remove them upon the address of both houses of the legislature’. *Chapter 3, Article I. . . . .*

In his address to the legislature in 1899, Governor Wolcott spoke as follows, concerning the judges of the Supreme Judicial and Superior Courts:

‘No questions are more important to the Commonwealth than those relating to the Judiciary. Massachusetts has always been distinguished for the ability, uprightness and learning of those who have administered the law in her courts. No stain of corruption has ever rested upon any of her judges, and the decisions of her court have from the beginning taken first rank in weight of authority’.

This undoubtedly expresses the general public sentiment of the Commonwealth concerning our judiciary.

Notwithstanding such sentiment, there have been presented to the legislature, within a few years, by disappointed litigants, several petitions to remove from office judges of the Supreme Judicial and Superior Courts.

Mira Beals commenced an action against Augustin Thompson for sending to her husband a letter containing a

'false and malicious libel concerning her', whereby, as she claimed, she was greatly damaged. She recovered at the trial a verdict of thirty thousand dollars. The case was taken by exceptions to the Supreme Judicial Court, where the verdict was sustained. (*Beals vs. Thompson*, 149 Mass. R., 405.) Subsequently said Thompson commenced an action against his attorneys in said case, alleging negligence on their part in conducting his defence, and because they did not plead in the answer the statute of limitations. A verdict was returned for the attorneys, and said Thompson took the case to the Supreme Judicial Court, where the verdict was sustained. (*Thompson vs. Dickinson*, 159 Mass. R., 210.) Said Thompson then petitioned the legislature for the removal of the judges of the Supreme Judicial Court, alleging that 'they aided and abetted in extortion, aided in barring the people from approaching the court for a redress of their wrongs; assisted to establish a privileged class within the laws; denying the people equality before the laws, and compelling the poor to submit to oppression and wrong or purchase protection at extortionate rates, almost invariably beyond their means of power'.

A petition was presented for the impeachment and removal of Hon. James R. Dunbar, a justice of the Superior Court, by James W. Stillman, an attorney, who represented that said Justice had wrongly and improperly decided a case against the petitioner.

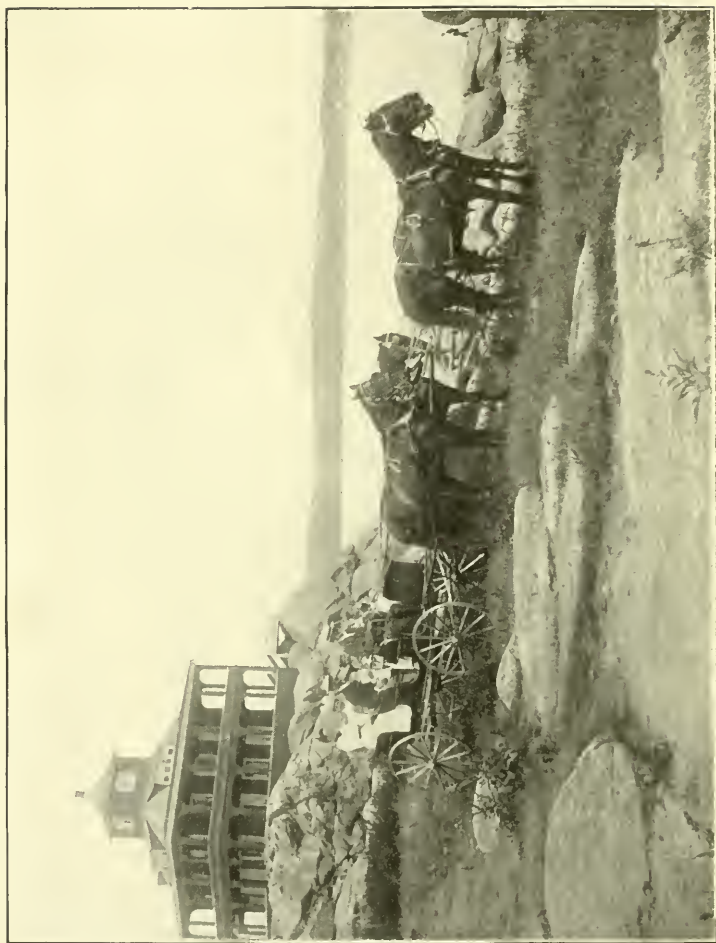
A petition was presented for the removal of Hon. Daniel W. Bond, a justice of the Superior Court, by Charles Cowley, an attorney. Judge Bond had previously heard a complaint against said Charles Cowley, for alleged malpractice as an attorney, had found said Cowley guilty and had sentenced him to be disbarred for a period of two years.

The petition alleged that in delivering judgment 'the said Justice Bond, without just cause, but with great presumption, officially pronounced words of censure upon your petitioner'.

The last petitions presented to the legislature were for the removal of Hon. Edgar J. Sherman, a justice of the







Judge Sherman's former Summer Home at Bass Rocks, Gloucester



Superior Court. These petitions were signed by Herbert P. Jefferson, Frances W. Fitch, and the same Charles Cowley.

The grounds for the removal of said Sherman were on account of the alleged misconduct of the judge in a trial before him in 1898, wherein said Fitch, Jefferson and others were plaintiffs, and said Cowley was acting as their counsel; that said Sherman improperly refused to continue said Fitch's case, and improperly and unlawfully ordered it tried with the case of said Jefferson and another.

A motion for a new trial was filed by said Cowley, in behalf of said Fitch, based upon the same grounds. The judge overruled said motion. Thereupon said Cowley filed exceptions. The judge disallowed them, 'first, because they were not conformable to the truth', and secondly, because 'the plaintiff does not state nor claim in her motion for a new trial or in these exceptions that she presented the questions of law attempted to be raised hereby at the trial and before the verdict and then saved exceptions to the alleged erroneous rulings of the Court, and they cannot now be presented'.

Said Cowley then petitioned the Supreme Judicial Court for leave to prove his exceptions. At the same time Mr. Wier, the defendant's counsel, moved to dismiss the petition.

The Supreme Judicial Court after full hearing dismissed the petition and sustained the decision of Judge Sherman.

(See opinion by Holmes, C. J., in *Fitch v. Richardson*, 175 Mass. R.)

Then said Cowley filed these petitions to the legislature for the removal of Judge Sherman.

The judges attacked by these several petitions are of the highest standing; they included the late Chief Justice Field, the present Chief Justice Holmes, and three justices promoted to the supreme from the superior bench on account of eminent fitness; Justice Dunbar, a man of acknowledged judicial ability and capacity; Justice Bond, who had been District Attorney of the Northwestern district for twelve years prior to his nine years service upon

the bench; and Mr. Justice Sherman, who had served fourteen years as District Attorney of the Eastern district, five years as Attorney General of the Commonwealth, and twelve years upon the bench of the Superior Court.

The committees on the judiciary of the different legislatures to whom were referred all the foregoing petitions, after full hearing, *unanimously found and reported, that the charges were not sustained, and that the petitioners have leave to withdraw.*

The different legislatures in all the cases accepted the reports of its committees.

In none of the cases did the judges appear before the committee, and the petitioners were given *ex parte* hearings so far as they were concerned. In most of the cases members of different bar associations were present to hear the complaints, and when they thought proper, in the public interest, to make suggestions to the committees.

The judiciary committee in its report on Judge Dunbar's case, states the rule, which we think should be commended by the bar and public, as follows, 'We find, and report therefore, after full public hearing, of all that the petitioner had to present, and there are no grounds what ever for instituting proceedings for impeachment. It is the just pride of the Commonwealth that its judges have been and are able and upright, and its courts pure, that to no person is justice sold or denied. The stability of our government rests largely upon their freedom from accusation or suspicion and in the constant confidence of all the people in their absolute integrity, and we should pause carefully to hear the proper complaint of any suitor that he has not received justice in our courts by reason of incompetent or corrupt judges. But petitions for impeachment plainly based upon trivial and groundless charges are a direct attack upon the dignity of the courts of this Commonwealth and its judiciary and deserve severe censure' ".

## CHAPTER XI.

---

### CONTINUED JUDICIAL SERVICE.

---

#### CASE OF TREFETHEN.

James Albert Trefethen was held for the murder of Deltena J. Davis.

The case was tried twice. The first time Trefethen was convicted of murder in the first degree, before Mason, C. J., Blodgett and Hammond, Justices. Albert E. Pillsbury, Attorney General, and Patrick H. Cooney, District Attorney, represented the government. Ex-Governor John D. Long and Marcellas Coggin appeared for the prisoner.

It appeared in evidence that the prisoner had been keeping company with Miss Davis for some time; that he had borrowed money from her; and got her in a family way; that she was insisting that he should marry her, that he was telling her that he could not as he had another girl in the same trouble. There was evidence tending to show that on the evening when she was drowned, he took her to drive in the direction of Wellington bridge, over the Mystic river; that the team came back with him alone.

There was considerable other evidence, all circumstantial. Her body was found in the river near the bridge. The defendant offered evidence to prove that Miss Davis had said that she intended to commit suicide.

This evidence was excluded on the authority of Com-

monwealth vs. Felch, 132 Mass. R. 22. The defendant was convicted of murder in the first degree.

The Supreme Judicial Court subsequently sustained the exception and granted a new trial on account of the exclusion of this evidence. (See Commonwealth vs. Trefethen, 157 Mass. R. 180.)

At the second trial the Chief Justice assigned the following judges to preside: Sherman, Dunbar and Braley. The Attorney General and P. H. Cooney, represented the Commonwealth. John D. Long and William Scofield, represented the defendant.

In examining the jurors as to their qualifications, one of them stated that he was over sixty-five years of age.

Governor Long stated that he challenged the juror for cause. The Attorney General argued that over age was not a cause for challenge.

I turned to Judge Dunbar and asked, "Shall the challenge for cause be allowed"? He answered, "No". I turned to Judge Braley and asked the same question, and he answered in the same way, "No". I then said aloud—"The challenge for cause is allowed, the juror may step aside". Dunbar supposed that Braley and I had decided adversely to his opinion and Braley supposed that Dunbar and I had decided adversely to his opinion.

After court, as we were walking home, I said to them by way of a joke, "You are not much aid in deciding upon evidence, you were both wrong on the question of admitting that evidence today, and I so decided against both of you".

I do not quote this circumstance as showing superior knowledge on my part, because they were both better lawyers than I, but as showing notwithstanding the serious and solemn work in which we were engaged, I could indulge in a little pleasantry when it could do no harm.

In this second trial, the prisoner was found not guilty, upon substantially the same evidence introduced at the first. A witness was allowed to testify that Miss Davis told her a short time before the homicide, that she intended to commit suicide, although I doubt if the jury believed the evidence.

This was one of those cases where all the judges, who sat in the two trials, believed the man acquitted to be guilty.

After the first trial a lot of so-called criminal lawyers, allowed themselves to be interviewed, and expressed opinions, which were published in the newspapers, that Trefethen had been convicted on insufficient evidence, when they must have known that the case would probably be tried again, such conduct being reprehensible.

#### LANGNER'S CASE.—*Attorney General Pillsbury.*

Langner was indicted for the murder of an old lady, and the evidence tended to show that the prisoner after having committed rape upon her, committed the murder to cover up that crime, upon the theory that "Dead men tell no tales".

Judges Blodgett, Sherman and Fessenden presided at the trial in Dedham, in 1893.

The indictment was drawn by Harvey H. Pratt the district attorney, and Robert O. Harris, who succeeded Mr. Pratt, represented the Commonwealth at the trial. Attorney General Pillsbury did not take part in the trial, although he was consulted during the trial by the District Attorney. Mr. Pratt had unwisely alleged in the indictment, that Langner committed the murder "with deliberately premeditated malice aforethought", instead of following the usual and approved form of indictment.

Fales and Mellen representing the prisoner, claimed and argued that the government having alleged that the murder was committed "with deliberately premeditated malice", must prove it, although otherwise they would not have been so required.

The court after arguments sustained the contention of the defence, and in the charge to the jury (which I delivered in behalf of the Court), the law was so ruled. The jury convicted the prisoner of murder in the second degree. It was understood that the jury stood for a long time 10 to 2 for conviction of murder in the first degree.

The following correspondence ensued:

"ATTORNEY GENERAL'S DEPARTMENT,  
Commonwealth Building.

Boston, Jan'y 4, 1894.

*My Dear Judge:—*

I have put down here a few observations on the indictment in Langner's case. After you have looked them over perhaps the Chief Justice, and possibly your associates at the trial, might like to see them.

There is no difficulty in this question, if we keep our heads clear and our feet on the ground. But I fear the truth is that even judges are sometimes affected by contemplation of the "solemn consequences" which always permeate all proceedings for murder (after the victim is well killed).

If the courts will look straight upon murder, with clear eyes, as they look at other things, instead of peering fearfully at it around the corner of the gallows, we shall have no more Borden rulings or charges, and murderers will be convicted.

I am, as ever,

Yours truly,

A. E. PILLSBURY.

HON. E. J. SHERMAN".



“THE SUPERIOR COURT,  
Boston, Jan’y 4, 1894.

*My Dear Pillsbury:*

Your letter, enclosing ‘a few observations on the indictment in the Langner’s case’ dated the *fourth* was duly received on the third instant. You are ahead of time in the date of your letter, if not with your observations.

I do not think a discussion of the question suggested, at this time, will be profitable, for two reasons. The decision and ruling at the trial cannot be recalled. Secondly, probably no district attorney will copy the form used in this case in the future, but if so, and the evidence shall be the same as in this case, neither he nor the attorney general will hazard the risk of a second trial, in a capital case, even if the presiding justices can be induced to rule in favor of your present contention, but will obtain a new indictment in the usual and approved form. Your criticism of the justices in another trial and suggestions of having justices preside with ‘clear heads and courage’ looks as though the ‘few observations’ are for the purpose of placing the responsibility for a partial miscarriage of justice.

When the justices who presided saw the indictment and learned of the evidence, which was to be presented in support of it, they made such examination as they were able to, and gave careful and conscientious consideration to the question raised, and then informed the district attorney, that they desired such suggestions and aid as he and the attorney general could give the court. After consulting with the attorney general and an examination of the authorities, the district attorney informed the court, that the attorney general and he both feared that the law was as finally ruled at the trial and that they could give the court no aid or suggestion.

The brief observations, which you now submit, would have been thankfully received at that time.

You have filled the office of attorney general with signal ability, and, if I have not entirely misjudged you, you have the strength and courage to take all the responsibility which belongs to you for errors or mistakes in the administration of the duties of that office.



While the attorney who drew the indictment takes a large share of the responsibility for not having followed an adjudicated form, I submit to your fair and just consideration, whether or not, the attorney general who saw the indictment and knew or ought to have known the evidence which was to be presented in support of it, for a long time before the trial, may not take upon himself some part of the balance for not having obtained a new indictment and thereby avoided the raising of at least a doubtful question.

Unless our relations were such that we may talk frankly as between Pillsbury and Sherman your letter would be improper and this letter could not be written.

I remain,

Sincerely yours,

EDGAR J. SHERMAN.

HON. ALBERT E. PILLSBURY,  
Attorney General”.

*(Copy of Pillsbury's reply of January 6, 1894).*

“Boston, Jan'y 6, 1894.

*My Dear Judge:*

I have seldom been more surprised than I was on receiving your letter. I trouble you with a reply to it principally in order to assure you of my regret that I evidently have spoken more freely than your view of our cordial relations will warrant. You will pardon me for adding one or two suggestions which seem necessary to meet other possible misapprehensions.

If the impression was ever given the judges that I regarded the questionable words in the indictment as material, it was an inadvertence. I tried as hard as I could to persuade Mr. Harris to argue the question thoroughly, believing that the argument would satisfy the court; but he seemed to think the judges had so fully made up their minds that it would be of no use, I have had but one opinion about it from the time when the words were first noticed and considered by us, on the eve of the trial; and

while I do not approve the form, nor deem it prudent to experiment with new forms of indictments for murder, and while I am willing to take my full share of the responsibility for this indictment, I take the responsibility also of such criticism as it may invite in saying that if the peculiarity had been discovered earlier I should have taken no steps toward a new indictment in this case, in the view which I have always taken that the words are of no effect.

I sent you the "observations" without the remotest idea that they or any comments of mine on the case could possibly be regarded as offensive, and because I knew that the judges were interested in the question, as I had talked it over very fully with the chief justice, and as Judge Blodgett, calling on me, had opened the subject, and I had discussed it somewhat fully with him.

I hope you do not mean all that your suggestion implies as to my unwillingness to take responsibility, criticism or blame when it belongs to me, and whether it does or not. I have been subjected to more unjust criticism during the past twelve months than any other man in Massachusetts. I knew beforehand that I should be, and I have not cried out about it. And I have refrained from mentioning this case in my report, as I might properly do in connection with other suggestions which I feel bound to make, only because I am reluctant to say anything not absolutely necessary, which may seem to involve the criticism of the courts or other constituted authorities.

You must also allow me, my good friend, respectfully but firmly to dissent from another intimation of your letter. I cannot admit that I am not a competent judge of what is proper in my correspondence with my friends or with public officers, nor that judges cannot be spoken to or even criticised; and I acknowledged no limitation upon the right to do this however plainly, if civilly, except that it is undesirable to disturb public confidence in the officers of the government especially in the judiciary. But my letter to you was not public, and if there was anything uncivil or discourteous in it I assure you it was not so intended, and I apologize for and withdraw it; and while it is beneath both you and me to bandy compliments, I may add, since

I have gone so far, that there is no judge on the bench in Massachusetts to whom I should be so unlikely to apply any such imputation as I fear you derived from my letter, as to you.

Very truly yours,

A. E. PILLSBURY.

HON E. J. SHERMAN".

I afterwards talked the question over in a friendly way with Mr. Pillsbury. We neither of us, "Were convinced against our wills, but were of the same opinions still".

Since I have known Mr. Pillsbury, I have entertained a high opinion of him. He is a very able lawyer, truthful and conscientious to the highest degree, and a faithful and abiding friend.

TRIAL OF COMMONWEALTH VS. PATRICK SULLIVAN,  
PATRICK J. FOLEY AND CORNELIUS NAGLE, FOR  
MURDER.

The account of this case is by Ex-Judge Charles S. Lilley.

In September, 1894, there lived in the town of Burlington, Massachusetts, a retired farmer named Duroy S. Foster. On the night of September 11th, he had occasion to visit a store in North Woburn. Having transacted the business which called him to the store he set out on foot at about ten o'clock for his home in Burlington. When he had travelled some distance and had reached a point in the highway which was somewhat secluded and remote from dwellings he was stopped by two men who gruffly demanded his money. Foster was about fifty years of age, tall and of good physique, but, seeing that the men were

armed with revolvers and having no weapon himself, he deemed resistance useless, and handed them his purse which contained about seven dollars. Not far away a horse and covered wagon stood in the road. Having secured Foster's money the robbers spoke sharply to some one in the wagon, and walking away rapidly were followed by the team.

At about half past ten o'clock Charles H. Nichols, who lived at the McIntire farm, so-called, was aroused by Foster who informed him that he had just been held up by men with revolvers and robbed of his money. Nichols joined Foster forthwith and the two went to the house of Henry P. Cox, in Burlington. On being told of the robbery and the direction in which the highwaymen had gone, Cox, who had a fast horse, promptly volunteered to assist in pursuing them. He harnessed his horse at once and accompanied by Foster and Nichols drove rapidly toward Billerica. Having driven several miles they saw a horse and covered wagon standing by the roadside nearly opposite the house of Mr. Pacho not far from Billerica Center. Foster believed this to be the same horse and wagon which he saw when he was robbed, and he and his companions pushed on to the house of Everett W. Livingston, constable of Billerica, arriving there about midnight. Livingston was a good specimen of the old New England town constable. He had held the office for some years, had sufficient knowledge of his powers and duties and was active and courageous. He was rather spare, but tall and muscular, and not without reputation for vigorously enforcing the law.

With promptitude which might well serve as an example to officers making greater pretensions than this plain town constable, Livingston, on hearing Foster's story, put his handcuffs and revolver in his pocket and quickly joining

Foster, Cox and Nichols drove to the Pacho house with them.

The horse and wagon which had been seen here had gone, but the tracks made by the wagon wheels and the horse's shoes were plainly visible. The wheel tracks indicated that the tires of the wheels were not of uniform width, and the horse's foot-prints showed that his shoes were very long and narrow. It was a clear night and the wheel and shoe tracks were easily traced in the highway. Following them for about ten minutes, Livingston and his party came to the house of Mrs. Leonard, situated not far from the road leading from Billerica to Lexington.

Here they saw a horse and covered wagon standing by the side of the road under some birch trees opposite the Leonard house. A man stood at the horse's head. Foster exclaimed "There they are". Livingston, Cox and Nichols alighted quickly and left Foster in their carriage to hold the horse. Livingston approached the man who stood at the horse's head by the roadside and saying, "I arrest you"! placed the muzzle of his revolver against the man's breast, passing his handcuffs to Nichols at the same time and directing him to secure the man's wrists. With his disengaged hand Livingston then gripped his prisoner by the coat collar. Nichols was trying to handcuff the man, and Cox, seeing that Livingston was resisted, seized him by the back of the neck. In the struggle which took place, and which occupied but a moment, the arresting party and their prisoner had moved to the middle of the road. In this posture of affairs two men suddenly bounded over the stone wall by the side of the road and opened fire on the arresting party with revolvers. One bullet grazed Livingston's cheek, others cut twigs from the low spreading branches above his head. Nichols and Cox moved away slowly toward their carriage. Seeing that a determined

attempt at rescue was to be made, and believing, as well he might, that he was in great peril, Livingston released his hold upon his prisoner, and, stepping backward a few paces under a brisk fire from his assailants, fired one shot at them. He tried to fire again, but found that the cylinder of his revolver had become fixed, and that the weapon was useless. Then, as he graphically said afterward, when the bullets were whistling about him, and he realized that he was defenceless, through the failure of his own weapon, the heart went out of him. When the firing began Cox's carriage in which Foster was still seated moved up the road twenty or thirty feet beyond the covered wagon. As Livingston, Cox and Nichols retreated toward the carriage their assailants fired volley after volley at them. Nichols turning to look at Cox's team saw the Foster's head was hanging over the seat of the carriage and that the horse was prancing. He ran toward the carriage, but before he reached it Foster had fallen to the ground, and on kneeling by his side to see whether he was injured Nichols found that he was dead. He immediately cried, "Foster is dead", and Livingston shouted "This is murder". A bullet had passed through Foster's brain killing him instantly, and, as he was in the direct line of the firing by the men who had come over the wall, it was plain that one of their shots had caused his death. The fatal bullet had entered his head about two and one half inches behind the right ear making a jagged opening from which blood was flowing freely. Cox's horse, having become excited by the firing and now being free from control, disappeared up the road, and, with the carriage, was found in North Lexington the next night. At the cry of "murder" Livingston's prisoner and his two rescuers sprung into the covered wagon and lashing their horses drove swiftly away in the direction of Billerica Center. Living-



ston followed on foot and kept the wagon in view for some distance when owing to the turn in the road it was lost to sight. As he ran he observed that several horse collars, and other parts of harnesses, and a carriage robe were scattered along the highway. As these were not in the road when he drove to the Leonard house, and as no one had passed in either direction in the meantime, it was evident that they were thrown from the wagon in its flight. Pressing on Livingston soon reached Billerica Center. There he secured a horse and carriage at once, and summoning to his assistance two townsmen, George B. Smith and James E. Coulter, he resumed the pursuit. Smith was armed with a revolver and Coulter with a double-barrelled shot gun.

The noise made by the fleeing wagon, driven at great speed and creaking and rattling from age and wear, was still audible in the quiet of the night. Guided by the sound Livingston soon found the peculiar wheel tracks and hoof-prints which had led him to the Leonard house, and followed them until they were lost in Woburn where the ground was so hard that passing teams left no traces. Livingston and his companions then returned to Billerica Center spreading the alarm to the countryside on their way.

Later the horse collars, parts of harnesses and other things which Livingston had seen in the highway as he pursued the covered wagon, immediately after the shooting near the Leonard house, were picked up and taken to the Stearns House, a public house in Billerica.

On the night of September 11th, Benjamin Spalding, who lived in Billerica, nearly opposite the Pacho house, saw that his barn was in order and securely locked, and went to bed at about nine o'clock. Rising very early the next morning, he found that the barn had been entered and



that three horse collars, a single harness, a carriage robe, and a bag of oats, which he had left in their proper places, had been stolen. He found his horse collars, harness and robe among the articles which had been taken to the Stearns house.

In the morning of September 12th, it was discovered that the barn of Mrs. Noyes, which was not far from the Leonard house, had been broken into during the night and that certain harnesses, a part of a saddle, a blanket, and a half barrel of cracked corn had been taken away. Some of these articles were found among those at the Stearns house.

As may be supposed, highway robbery, larceny from buildings in the night-time, and murder in quiet country towns of Middlesex County, noted for the peaceful and law-abiding character of their inhabitants, deeply aroused and agitated the whole community. As the news spread on the twelfth of September, many journeyed to the scene of the murder from far and near, and Billerica, awakened from its usual calm, became the centre of public interest.

A reward was offered and extraordinary efforts were made by state, city and town officers for the discovery and capture of the criminals.

At the time when he approached the man who stood at the horse's head near the Leonard house, Livingston observed that the horse was small and that his harness fitted him loosely, the collar and hames being much too large. After the covered wagon had driven away with Livingston in pursuit, Cox, who was a horseshoer by occupation, carefully examined the tracks made by the horse's hoofs and was again struck by the peculiar shape of the shoes, having seen few in his experience that were so long and narrow. It was evident then that the first thing to be done was to

find a covered wagon having wheels with tires of unequal width, and a small horse with long and narrow shoes.

Searching parties explored the country to the south and east of Woburn, some going by one highway, and some by another. It was soon found that at about three o'clock in the morning of September 12th, a small horse drawing a covered wagon was seen passing through Stoneham in the direction of Melrose Highlands on the road usually taken for Somerville; that an hour later a team of like description was seen passing through the square at Malden. The wagon seen in Malden had the name "P. Sullivan" painted on its side, and it was observed that the rear wheels were apparently older than the front ones, and that the latter were unusually small for a vehicle like that to which they were attached. Mile by mile the course of the team was traced from Malden, until finally the wagon was found in a yard in Somerville. On the top of its cover there were several long scratches in the dust which had lodged there. These scratches appeared to have been made by overhanging branches, and caught along the sides of the wagon there were fresh pine needles. It was found that the wagon belonged to Patrick Sullivan of Somerville, and on the night of September 12th, he was taken into custody. His arrest was immediately followed by that of Patrick J. Foley and Cornelius Nagle, both of Somerville. Thus within twenty-four hours from the time of Foster's death the men who were charged with his murder were in the hands of the officers of the law, who diligently pursued their investigation which brought to light the following facts: Sullivan, Foley and Nagle were related by marriage, and were in the habit of meeting frequently. Sullivan was twenty-eight years old, Foley was twenty-six, and Nagle was younger than the latter. Sullivan owned a small horse, variously described as a mustang, a broncho, and a pony, having

shoes that were long and narrow, and in his stable there was a harness, which being put upon the horse, was found to fit him loosely, the collar and hames being much too large. Sullivan was engaged in a small express and jobbing business. Early in the evening of September 11th, he detached the front wheels of his wagon and put in their place a pair of smaller wheels which he had borrowed from James E. McGaffigan, a fruit peddler of Somerville, McGaffigan's wheels were red and freshly painted and were in marked contrast to Sullivan's rear wheels, which were old and dingy. In answer to a question by McGaffigan, when he borrowed the latter's wheels, Sullivan said that he was going to Newton that night. At about eight o'clock in the evening, Sullivan harnessed his horse with the collar and hames harness, and, taking his covered wagon, drove to a store in Somerville where he met Foley and Nagle, who got into the wagon with him, and the three men set out on their sinister expedition. Their precise course was not ascertained, but the team was seen in Woburn by a police officer at about nine o'clock. It was driven to the side of the street, and the officer saw Sullivan, Foley and Nagle alight from the wagon and enter a neighboring barroom, where they remained for about twenty minutes and then drove off at a smart trot toward North Woburn. They were seen later by Francis H. Marion, a young man about eighteen years of age, living with his father in Burlington. He attended a temperance meeting at the church in that town on the night of the 11th of September. As the meeting was somewhat protracted, he did not leave for home until about ten o'clock. As he was walking by the side of the road leading to Billerica, at about twenty minutes past ten, he saw on the crest of an elevation in the highway a team coming toward him. He continued on his way and as the team passed him he saw

that the horse was small, that he had a loose-fitting harness with collar and hames, that the wagon was a covered wagon and that there was a man on the driver's seat. He then saw two men advancing on foot. One of them, whom he afterward identified as Foley, approached him, and assuming a threatening aspect, drove him into the middle of the road. Quickening his pace, Marion soon met Foster, whom he knew well. Foster was on foot and seemed to be much excited. Stopping for a moment only to exchange a word or two with Marion, he went on, apparently intent upon following the team and the two men.

An indictment was found by the grand jury for Middlesex County in which Sullivan, Foley and Nagle were charged with murder in the first degree, and a special session of the Superior Court for that county was ordered for their trial. This session was opened at Lowell on Monday, June 3d, 1895, Justices Sherman and Lilley presiding. The late Hosea M. Knowlton, Attorney General, and Fred N. Wier, District Attorney for the northern district, appeared for the Commonwealth.

Samuel K. Hamilton of Wakefield, a leading member of the Middlesex Bar, appeared for Foley, having been assigned to his defence by the court, and the late Francis P. Curran of Woburn, represented Sullivan and Nagle. The accused had been previously arraigned and had entered pleas of "not guilty".

Some two hundred or more citizens of the county had been summoned for service as jurors, and on motion of the Attorney General, the Court proceeded to impanel the jury. Each of the prisoners had the right to challenge twenty-two of the jurors peremptorily, and as many more as he could show cause for challenging, and the government had the like right of challenge. The work of selecting a jury was attended with some difficulty and delay, the

prisoners as well as the Commonwealth exercising the right of challenge freely. Many of the jurors, too, were excused from service by the Court, some upon the ground that they were opposed to capital punishment, some for the reason that they had formed an opinion as to the guilt of the accused, some because of bodily infirmities, and some because they were exempt by law from jury service.

In view of some of the grounds for exemption from service that were urged upon the Court, the senior Justice was moved to say that he was reminded of the story about the man who was summoned for jury duty in a New Hampshire court, and who, when his name was called, told the presiding Justice that he was very deaf and couldn't hear a word of the testimony if he were to serve as a juror. The Judge excused him at once, whereupon the clerk of the court said "Why, your Honor, I know that man well and he is no more deaf than I am". "Never mind Mr. Clerk", said the Judge, "if he's deaf we don't want him, and if he's a liar we don't want him". The senior Justice took pains to add, with a suspicious twinkle in his eye however, that of course the story had no application to matters then under consideration. The list of those who had been summoned for jury duty was exhausted before the array was completed, and the sheriff was ordered to bring in talesmen with the result that on the next day some thirty or forty substantial citizens, taken from their usual occupations at short notice, were presented to the court as more or less unwilling candidates for places on the panel. From these men the number of jurors still required was soon chosen. Horace Ela, a grocer of Lowell, who had been summoned by the sheriff in the street as he was making his rounds with his delivery wagon, was appointed foreman by the court, and,



the usual formalities being observed, the District Attorney outlined the Commonwealth's case to the jury.

The trial proceeded without serious interruption or unusual incident, save the brief illness of one of the jurors, and the sudden collapse of Foley's wife on the witness stand as she was testifying to her husband's whereabouts on the night of September 11th and 12th, until Thursday, June 13th, when late at night the jury returned a verdict of guilty of murder in the second degree as to each of the prisoners. The Commonwealth contended that the accused left Somerville on the night of September 11th, with the common purpose to go into the country and steal from buildings, and to resist any interference with or opposition to their unlawful enterprise to the extent of killing such person or persons as might interfere with, oppose, or attempt to detain them if necessary for their own security, or, that if their original plan did not contemplate the killing of such person or persons as might interfere with or oppose them, that at the time of the shooting near the Leonard house they were resisting a lawful arrest of which they had reasonable notice, and then formed the purpose to carry their resistance to the point of killing some one or more of the arresting party if their escape could not otherwise be effected, and that they were so co-operating in the execution of that purpose when Foster was killed.

Counsel for the prisoners combated these contentions vigorously and ably, overlooking nothing which told in favor of their clients.

Because of some of its peculiar circumstances the case excited no little public interest, and the court room was crowded from day to day, the attendance being very large as the time approached for the closing argument of the Attorney General. His fame as a lawyer and eloquent ad-

vocate had gone abroad, and those who came to hear him were not disappointed. His argument was worthy of his reputation.

The defence was an alibi, the prisoners asserting that they spent the entire night of the 11th and 12th of September in Somerville. Many questions of law were discussed at the trial and numerous exceptions were taken to the rulings of the presiding Justices.

Justice Sherman directed the course of the trial, and Justice Lilley delivered the charge to the jury.

Many of the exceptions to the rulings of the Justices were finally waived, but some of them were pressed and argued before the full bench of the Supreme Judicial Court, in November, 1895, and were overruled in January, 1896. The case is reported in volume 165, of the Massachusetts Reports, at page 183.

Upon the coming down of the rescript overruling the exceptions the Commonwealth moved for sentence in the Superior Court, and each of the prisoners was sentenced to imprisonment for life in the Massachusetts state prison.



## CHAPTER XII.

---

### CONTINUED JUDICIAL SERVICE.

---

#### COMMONWEALTH VS. FRANCISZEK UMILIAN FOR THE MURDER OF KAZINNEY JEDRUSIK.

This case was tried at Northampton before Justices Sherman and Stevens, October, 1900. District Attorney John C. Hammond appeared for the government and J. B. O'Donnell represented the prisoner.

This case is interesting as there is so much similiarity between it and the case of John C. Best (see page 208). Umilian and Jedrusik were farm hands working for Mr. Munroe Keith at Granby. Umilian was foreman and Jedrusik second hand. Umilian was engaged to one, Rosa, who did house work in the same family. Umilian and Rosa went to Chicopee to be married by a polish priest. The priest showed Umilian a letter in which it was stated that Umilian was a married man and had a wife and two children in Russia. The priest sent Umilian back to Granby with a trusted person to clear up the letter and obtain a marriage license.

When they reached Keith's house Jedrusik owned up that he and some other young men had sent that letter as a joke. Umilian obtained his marriage license with the explanation that the letter was a joke, went back to Chicopee and was married, but he was very angry and grew more and more so as time went on, swearing "That he would

kill Jedrusik and throw his head to the hogs". He made many violent threats of similiar kind. Umilian and Jedrusik both continued on the farm, although Umilian would not forgive Jedrusik, or have anything to do with him. Umilian's wife tried to make peace and have her husband be friends with Jedrusik, but it was of no use. Perhaps on that account he became somewhat jealous of Jedrusik.

One Sunday morning, January 31, 1899, after the family had gone to church, leaving Umilian, wife and Jedrusik at home, the two men went to the barn to do the chores. Jedrusik disappeared and was never again seen alive. Umilian stated that after the work was done at the barn Jedrusik went off in the direction of the village.

The wife acted very unhappy as if she believed that her husband had had something to do with Jedrusik's disappearance, but she said nothing.

On April 10, 1900, a green foreign boy, who was working with Umilian in the field, saw Umilian go to an old unused well, lift up a large flat stone which completely covered it, and look down into the well, after which he placed the stone back in position. The boy subsequently told Mr. Keith of this incident. The officers then examined the well, and found the body of Jedrusik tied up in a bag, weighted with stones, the arms and legs tied up in another bag also weighted with stones, but the head could not be found. Remembering Umilian's threats that he would kill Jedrusik and throw his head to the hogs, the hog pen was carefully cleared and down deep in the bottom the head was found.

Umilian was then arrested, the case was tried upon circumstantial evidence which was very strong and conclusive against the prisoner.

He testified in his own behalf, and called his wife as

a witness; in this he was unfortunate. She seemed to try to help him, but she knew many important things which were against him and she acted very much as though she believed her husband had killed Jedrusik.

I never heard a case tried like this; no objections or exceptions were taken during the trial. O'Donnell asked the court to rule that there was not sufficient evidence to convict the prisoner. This ruling being refused an exception was saved.

I charged the jury, which charge was entirely satisfactory to O'Donnell. A verdict of guilty was returned of murder in the first degree. The case was taken to the Supreme Court, which overruled the exceptions (see *Com. vs. Umilian*, 177 Mass. R. 582).

It became my duty to pass the sentence of death, that the prisoner be electrocuted, July 7, 1901, which sentence was carried into execution after the Governor and Council had refused a petition to commute the sentence to imprisonment for life.

The trial of John C. Best for the murder of George E. Bailey, tried before Justices Sherman and Fox, at Salem, in March, 1901, was an exceedingly interesting case, and particularly so, because it was one of the most satisfactory and conclusively proven cases of circumstantial evidence ever tried in this Commonwealth. Attorney General H. M. Knowlton, District Attorney W. Scott Peters and Roland H. Sherman, Assistant District Attorney, represented the government and James H. Sisk and N. A. Clarke appeared for the prisoner.

George E. Bailey was foreman on a farm in Saugus, called the Breakheart Hill Farm, owned by certain gentlemen, who used it as a farm for camping and hunting. Best was employed as a farm hand on the same farm.

The only other person on the farm was Susie L. Young, Bailey's wife's half sister.

While Susie Young was away on a visit in Maine, Bailey disappeared. Best, the only person remaining, reported "That Bailey had skipped"—run away.

There had been ill feeling between Bailey and Best for some time. Bailey and Susie Young had been living together in adultery, and Best knew this. Best had made love to Susie, but she remained loyal to Bailey. Bailey went home to the farm one evening and never was seen alive afterwards. Some nine days after a bag was discovered floating in the water near Floating Bridge in Lynn, six miles away from the Breakheart Hill Farm. It contained the trunk of a human body. Upon dragging the pond all the parts of the body were found, and it proved to be the body of Bailey.

Some of the circumstantial evidence was as follows:—Best stated that Bailey came home a little before eight o'clock, put up his horse, and then disappeared. There were found in Bailey's body near the heart, two bullets, which caused his death. It appeared that those bullets were fired from a Winchester rifle—wider and with different groove from other rifles—which grooves leave their imprint on the bullets; the bullets also showed another mark. Best was an excellent marksman, he owned a Winchester rifle which was kept at the farm. That rifle had a rust mark inside, which caused a mark on a bullet exactly like the ones found on the bullets in Bailey's body. At just before eight o'clock on the night of Bailey's disappearance, two shots in quick succession had been heard coming from the farm.

The four or five bags in which the body had been put, after being cut into parts, were the same kind with the same marks used at the farm. The bags were weighted

with stones and when the bags and stones were brought back to the farm, the stones fitted right into the bank wall, where they or ones just like them had recently been removed.

A wagon with a peculiar rattle, known to the neighbors, which had been used on the farm for a long time, was heard to pass the houses of the neighbors between nine and ten o'clock that night, going towards Floating bridge pond, and two hours afterwards returning home. This wagon with something in it covered, which looked like dead hogs was seen going towards the pond, and a short time after it was seen empty returning.

Evidence was given of hearing the same wagon drive down on to Floating bridge, stop a short time, turn around and come back; that when it went, it had something covered up in the body of the wagon and when it came back it was empty.

The government, during the trial, had learned that Best's brother-in-law, one William H. Stiles, had a burning secret—important evidence against the prisoner—but they did not know what it was. Best had told it to this brother-in-law and he was frightened at learning such a secret, as it convinced him that Best was guilty of the murder. So he could not keep it. He told it to a friend with a promise from that friend not to divulge it, but that friend could not keep it. It was at last learned by the government.

Stiles took the stand and testified that he went to the Salem jail, saw the prisoner and he gave him a plan of the cellar under the Breakheart Hill barn, told him to go there to a place marked by an X under the sill of the barn; he could find a paper, take it, keep the money and go with the watch at low tide and throw it as far as he could into the ocean; for, said the prisoner, "If they find

the watch they will hang me". Stiles said he never went to the barn. The next morning one of the officers testified, that since the night before he had been to the barn and found the bundle as described by Stiles, and produced it in court. It contained \$75.00 in money and bills, and Bailey's watch.

When the evidence was concluded and the trial finished the jury found the prisoner guilty of murder in the first degree. It was a clear case; there could be no reasonable doubt about the prisoner's guilt.

The prisoner had three motives for committing the murder:—

1. He was infatuated with Susie Young, and he thought if he could make her believe that Bailey had run away, deserted her, that she would consent to become his wife or mistress.

2. He believed that Bailey had about \$500, which he could secure. He was mistaken about the amount which Bailey had.

3. He believed that the owners of the farm would make him foreman if he could make them believe that Bailey had run away.

This case shows how the devil helps a man into crime but never helps him out. If Best had known what most Indians know, that in order to cause a human body to sink under the water and remain there, you must cut open the bowels, otherwise the gases will form, and the body will rise to the top of the water. This trunk of the body was weighted with a stone weighing forty pounds. As soon as the gases had time to form, the body rose to the top of the water.

If the bowels had been opened the body would have remained at the bottom of the pond, and very likely this murder never discovered.



The case was taken to the Supreme Court on exceptions, and after full hearing they were overruled. (See Commonwealth vs. John C. Best, 180 Mass. R. 492.)

Subsequently a motion was filed before Justices Sherman and Fox to set aside the verdict and grant the prisoner a new trial, because one of the jurors who sat in the trial was partially deaf. This motion was heard and overruled.

The case was taken to the Supreme Court a second time on exceptions. The exceptions were overruled by that court. (See Commonwealth vs. John C. Best, 181 Mass. R. 545.) It then became my duty to sentence the prisoner to be executed. A petition was presented to the Governor and Council to commute the sentence to imprisonment for life, which was refused. He was executed in accordance with the sentence, September 9, 1902.

The two cases just described were remarkable as being so similiar. One, the case of Umilian, was committed in Granby, Hampshire County, January 31, 1899, the other, the case of Best, was committed in Saugus, in Essex County, October 8, 1900. Both were farm hands and they killed farm hands working with them. Each cut in pieces his victim with an axe, put the body in a bag, weighted with stones, put the arms and legs in another bag, weighting that with stones; each put the bags under water, one in an old, unused well, the other in a pond.

COMMONWEALTH VS. LORENZO W. BARNES FOR THE  
MURDER OF ONE JOHN DRAKE.

The case was tried before Blodgett and Dewey, Justices, March, 1897. F N. Wier, District Attorney, George A. Sanderson, Assistant District Attorney, for the govern-



ment; John L. O'Neil and John C. Burke appeared for the prisoner.

The prisoner was convicted of murder in the first degree. When the time for sentence arrived, the government applied to Mr. Justice Blodgett, who was holding court in Boston.

Judge Dewey was then engaged in the western part of the state; Judge Blodgett said that it was an unpleasant duty, and that there was no reason why he should leave his court in Boston and go to East Cambridge to pass the sentence, as there was another judge holding the criminal session there, who should perform that duty. The government then applied to that judge. He replied that as a lawyer he had never been engaged in a murder trial; that he had never seen or heard a man sentenced to death; and that it did not seem to him that he could possibly pass the sentence. The Chief Justice intimated to him that it seemed to "fall to his lot", to be his duty to perform the ceremony, and as I was at the time holding civil session in East Cambridge, and as I had had a large experience in such cases, perhaps he could induce me to help him.

He then applied to me, telling me that he should die in attempting such an ordeal. I told him he should not regard such a duty as personal, that he was only one of the cogs in the machinery of state to carry out the execution of the law. I gave him the form of sentence and told him I would go into court with him and aid him with my presence and counsel. He expressed himself as very thankful.

The next morning we went into court together, which was opened in solemn form. There sat the convict, Barnes in the dock, pale and haggard. As I looked at the prisoner and at my associate, it was doubtful which was suffering the more. As the judge appealed to me for the

last time I could not refuse, so I pronounced the sentence, and the sad and painful ceremony was over.

In case of Commonwealth vs. Alfred C. Williams, tried in Salem before Dunbar and Braley, Justices, in February, 1898, there was a conviction of murder in first degree. The case was taken to the Supreme Court. (See Commonwealth vs. Alfred C. Williams, 171 Mass. R. 461.)

I was holding court in Salem at the time of sentence, and was asked to pass sentence by the Chief Justice, which I did.

#### THE TRIAL OF COMMONWEALTH VS. CHARLES L. TUCKER, FOR THE MURDER OF MABEL PAGE.

On March 31, 1904, Mabel Page was found murdered in the house of her father in the town of Weston. She was left in the house alone, and was murdered between eleven and one o'clock in the day time.

The house was in plain view of other houses in the vicinity. As soon as the murder was made known the officers of the law commenced an investigation. No cause for the murder could be discovered. Miss Page was a young woman of excellent character. The public was a good deal excited. The Boston American, owned by Mr. Hearst in New York, had just been established in Boston, and that paper at once commenced to publish with big headlines and pictures, something about the case with every issue—the most sensational stories—calculated to excite the public mind. The other Boston papers as if fearing that the American would get ahead in its publications, followed suit. All the papers acted as though they were not bound by facts, but that the imagination could

be allowed to run, and that rumor and suspicion must have full and unlimited sway. All rumors were published, good, bad and indifferent, and so the matter went on from March to January.

In the meantime Charles L. Tucker, a young man in the neighborhood, had been arrested, bound over to the grand jury and indicted.

The Chief Justice had assigned Justices Sherman and Sheldon to preside at the trial, and appointed, January 2, 1905, and East Cambridge as the time and place\*.

On account of the publications aforesaid no such public interest in a trial had manifested itself since the trial of Professor Webster, unless possibly the trial of Lizzie Borden for the murder of her father and mother in 1893.

The newspapers were impatient with the officers until they made the arrest of Tucker, and from that time on they expressed doubts about the prisoner's guilt.

Herbert Parker, Attorney General, George A. Sander-son, District Attorney, represented the government, and James H. Vahey, his brother, and Charles H. Innes appeared for the prisoner.

When the trial commenced I think the public feeling was perhaps that the prisoner was guilty, but the government had not sufficient evidence to convict him. During the whole trial, which lasted nearly three weeks, the newspapers, while professing to publish all the evidence, were only in fact publishing a small part of it with comments upon it unfavorable to the government, so that nearly the whole New England public were of the opinion that there was not sufficient evidence to convict the prisoner. The prisoner, who was a young man, not bad looking, had much sympathy in his favor.

\*Chief Justice Mason died in the early morning of the day the trial commenced; the court was adjourned on the afternoon of the 4th to enable the justices to attend his funeral.

A note had been found in the house, which the murderer had left telling Miss Page that her brother had been injured and carried to the hospital.

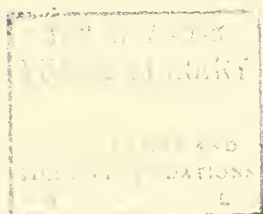
The evidence was all circumstantial. The government claimed (1) that this note was in the handwriting of the prisoner, (2) that the knife (a large dirk knife) with which he committed the murder had been found in the prisoner's coat, broken in pieces by the prisoner after the murder, (3) with a peculiar stick pin which belonged to Miss Page, that (4) money had been stolen from the house, which was afterwards in the prisoner's possession; (5) that he was in the vicinity at the time of the murder, so that he had the opportunity to commit it, (6) that he had told falsehoods about his whereabouts at the time of the murder, about the knife, etc.

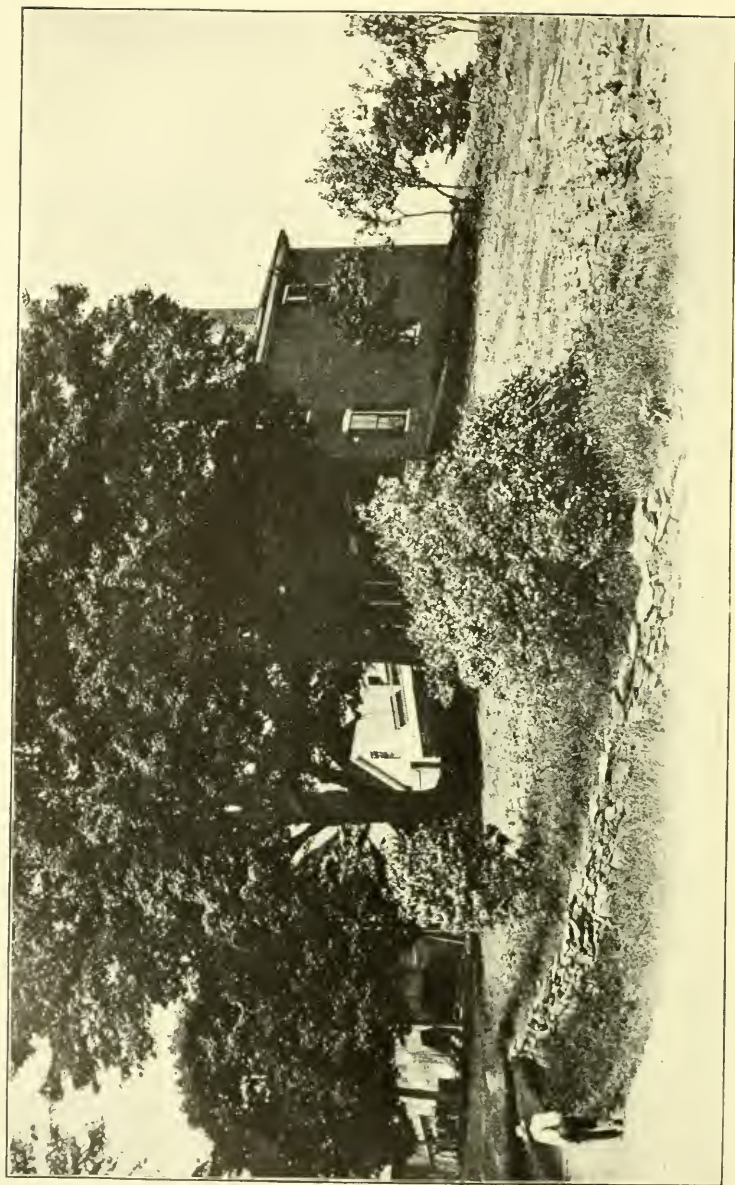
These claims of the government were all disputed by the defense. If the defense had rested on the government's case it would not have seemed so strong as it did in the end. The defense put in evidence of an alibi and much evidence that tended to prove the prisoner's innocence, yet the jury evidently believed that it was not true, but manufactured.

The charge by Mr. Justice Sheldon was a very clear and able one.

The jury which was an intelligent and fair minded jury, after mature and careful consideration, convicted the prisoner of murder in the first degree.

A motion was made to the presiding justices to set aside the verdict as against the evidence and the weight of the evidence, which, after arguments, was denied by the following memorandum and decision.





Judge Sherman's present Summer Home at West Windsor, Vt.



Middlesex, ss.

Superior Court.

April 3, 1905.

COMMONWEALTH VS. CHARLES L. TUCKER.

*Decision of Court on Prisoner's Motion for a New Trial.*

The different grounds assigned as reasons why the prisoner's motion for a new trial should be granted may be reduced to three, which we consider in the order of their presentation in argument.

1. That William W. Nason, one of the jurors, took and preserved some notes of the evidence given during the trial. The evidence relied on in support of this contention is contained in the affidavits of Mr. Nason, of the several counsel engaged in the defense and of the prisoner, and in an agreement as to the testimony that would be given by Mr. Nason himself. We are of the opinion that if it were necessary to rule upon this question that part of Mr. Nason's affidavit which states that upon one occasion during the early part of the trial he referred to his notes for the purpose of throwing light upon some questions which two of the jurors were discussing, would be incompetent to show anything that took place in discussion among the jurors; but as the affidavit does not state and there is no evidence to show that these notes or any part of them were read or in any way communicated to any other jurors, we do not think it necessary to rule upon this point. After examination and careful consideration of all the authorities which have been cited to us, we rule that the evidence does not require us as matter of law to set aside the verdict on this ground. We do not find that any of the prisoner's rights have been at all affected by the taking of these notes, or that the action of this juror has in any way worked to his prejudice; and we are satisfied that no injustice to him has resulted from this circumstance. We,



therefore, in the exercise of our judicial discretion for the furtherance of justice, decline to set aside the verdict upon this ground.

2. It is earnestly argued that erroneous instructions as to what constitutes deliberately premeditated malice aforethought were given to the jury, the effect of which it is contended was to allow them to convict of murder in the first degree upon findings which would justify a conviction only of murder in the second degree. We have weighed carefully the considerations which have been addressed to us upon this point and we are satisfied that the rulings complained of went no further than those which have always been given in capital cases, and in our judgment no further than a proper construction of our statute requires. They followed, as we believe, the rules which have always been observed in this Commonwealth since the enactment of our present statute, with no other variation than such as was favorable to the prisoner. We think it would be wrong for this court now to adopt the contention of the prisoner. If upon this question we are in error, it is a satisfaction to remember that the law affords the means of correcting our mistake; but it would be a weak and reprehensible shrinking from responsibility, if, with the views we entertain, we should now attempt to alter what we believe to have been for nearly fifty years the doctrine adopted at *nisi prius* in this Commonwealth. We cannot set aside the verdict upon this ground.

3. It is also claimed that this verdict was against the evidence and the weight of the evidence, that it was a surprising verdict, that it was an unjust conviction. If these contentions are sound, manifestly the verdict should be set aside; and although it is true that the verdict was rendered by an exceptionally able and intelligent jury, after an unusually protracted trial and an exhaustive presenta-

tion of all the evidence that could be procured by either party, that the prisoner was ably defended by counsel who spared no effort in his behalf, that the jury followed the evidence, the arguments of counsel, and the charge of the court with a closeness of attention which we have never seen surpassed, that the verdict was a result of long deliberation and manifest effort on the part of the jury to reach the right conclusion, yet these facts could not prevent the court from interposing. But we must remember that all the arguments now relied on in support of this contention were enforced upon the jury in their strongest light by the able counsel who have so zealously and faithfully labored in the prisoner's behalf. The jury was, as we have said, an unusually able, intelligent and fair-minded panel. It may be doubted if more careful and painstaking jurors have ever sat in a capital trial. They heard all the evidence; they saw all the witnesses; they listened attentively to the arguments; they gave close and careful attention to the charge of the Court. The prisoner has had a patient, fair and impartial trial. And we feel it our duty to say, after going over all the evidence, that in our judgment the verdict which the jury have returned was well warranted by the evidence; that a verdict of acquittal would have been a failure of justice. The evidence was ample to justify the jury in finding that the prisoner was where he had the opportunity to commit this murder, that he was present at its commission,—a long step towards his conviction in view of the fact that none of the circumstances, no suggestion from his own lips when he did speak, no contention of his counsel, and no tittle of evidence gave any ground for the supposition that his presence at the murder could have been compatible with innocence; that he stole from the house at that time, money and a pin, belonging to the victim; that he had in his possession on

that day shortly after the murder the knife with its sheath which was the instrument of the crime; that drops of the blood of the victim were found upon his knife and his clothing; that he attempted to do away with evidence against himself by mutilating, destroying and concealing this knife and pin and by fabricating false stories concerning his doings on and after the day in question, when if he were innocent this conduct on his part would have been without any motive; that the "J. L. Morton" note was written by him in the Page house for the purpose of misleading future inquiry, and this without giving weight to any of the expert testimony upon handwriting; and finally that much of the evidence produced at the trial on his behalf was untrue. The court closed its charge to the jury by urging them, in the language of Chief Justice Shaw in the Webster case, to weigh the evidence and return such a verdict as should satisfy their own judgments and their own enlightened consciences, and declared its confidence that such a verdict would be a true one. We believe that the jury have done this, that their verdict is a true one; and, so believing, we should be false to our own duty, we should violate our official oaths, if we took it upon ourselves to override their conclusion.

The motion for a new trial is denied.

Edgar J. Sherman and Henry N. Sheldon, justices.

Numerous exceptions were then filed to the rulings of the court during the trial, which were heard before the Supreme Judicial Court on oral and printed arguments. In due time that court, in an able and exhaustive opinion by Mr. Justice Hammond, overruled the exceptions, finding no error by the trial court. (See *Commonwealth vs. Charles L. Tucker*, 189 Mass. R. 457.)

A motion for a new trial was then filed in the Superior Court, which was heard before Mr. Justice Sherman alone (as Mr. Justice Sheldon had in the meantime been promoted to be a justice of the Supreme Judicial Court). After full hearing the motion was overruled by the following:—

Middlesex, ss.

Superior Court.

January 22, 1906.

COMMONWEALTH VS. CHARLES L. TUCKER.

*Decision of Mr. Justice Sherman upon the prisoner's  
Motion for a new trial.*

The defendant seeks a new trial upon two grounds:—

First, because of error at the trial in that the government was allowed to introduce evidence that the prisoner was without money before the murder, that he was possessed of it afterwards, and that there was no evidence that money was missing from the Page home.

This question was passed upon by the Supreme Court, which decided that there was no error on the part of the trial court. The prisoner then, as his counsel states, asked for a re-hearing before that court, upon the ground set forth in this motion,—which was denied; and now this court is asked to overrule a solemn and unanimous opinion of the Supreme Judicial Court on account of this alleged error in law. But this court is bound by the decisions of that court.

The counsel for the prisoner say in their request for rulings in this hearing: "From a careful reading of the

opinion of the Supreme Judicial court it is clear that the defendant's exceptions as to this evidence would have been sustained, except for the clause aforesaid, at the end of the bill of exceptions". On the contrary, in the very next paragraph of that opinion, the Court says: "But whether or not there was such evidence is not material to the inquiry before us".

It is apparent that the Commonwealth relied upon the fact that money was stolen from the Page house; that the trial justices both believed that there was such evidence, and Mr. Justice Sheldon vividly called the attention of the prisoner and his counsel to that fact in his charge to the jury, as follows:

"The claim of the Commonwealth is that he (the defendant) might have been there (in the Page house), that he carried from that house upon his knife and his clothing stains of the blood of his victim; that he stole money from her pocket book....."

And in another part of the charge as follows:

"So, too, as to the claim that he stole money from Miss Page's pocket book. It is claimed that shortly before the murder he was in great want of money, selling and pawning whatever he could to raise money for the purpose of going to St. Louis; that money, at least, a ten dollar bill, was stolen from Miss Page's pocket book, and that immediately after the murder the prisoner was in the possession of such money".

If the counsel for the prisoner then believed, that there was no such evidence, and this claim is not an afterthought, then it appears that they saw fit not to call this claim to the attention of the court during the trial, so that

a mistake of fact, if any, could then and there have been corrected.

But there was some evidence of loss of money from the Page house, the weight and value of which was entirely for the consideration of the jury.

The second ground of the motion is on account of alleged newly discovered evidence.

Some of the evidence offered is hearsay and clearly incompetent, and the balance is cumulative.

This evidence, in my opinion, would not have changed the verdict had it been offered at the trial.

After a careful and prolonged trial, before an able, fair-minded and impartial jury the defendant was found guilty.

A motion was made before the trial court to set aside the verdict as not warranted and as against the evidence. After a full hearing the presiding justices overruled that motion, stating that the verdict was fully authorized under the evidence, and that an acquittal would have been a miscarriage of justice.

The case was then taken before the Supreme Judicial Court on numerous exceptions taken at the trial.

That court, after hearing counsel in a prolonged oral argument and by the submission of an elaborate printed brief, has found no error in the proceedings, or at the trial.

The prisoner has had all his rights carefully guarded and preserved for him, and he is not entitled to a new trial, and, in the exercise of my discretion, I overrule his motion.

On the 27th day of January, 1906, the attorney moved that sentence be passed upon the prisoner.

In the Superior Court at East Cambridge, January 27, 1906, the prisoner, Charles L. Tucker, was brought into Court, and the Attorney General moved for sentence.



(*Judge Sherman imposes sentence*).

The clerk asked the prisoner if he had anything to say why the sentence of death should not be passed upon him. He replied in the negative.

Sherman, Judge. Charles L. Tucker, on the thirty-first day of March, 1904, an innocent woman of spotless character was murdered while alone in her own house in the quiet town of Weston. The officers of the law, in the performance of their duty, commenced a careful and painstaking investigation to ascertain and discover the murderer. It was soon evident that the murder was not committed by a tramp or a stranger, but by some one who knew the family and was well acquainted in the vicinity.

The officers investigated every rumor, followed every possible suggestion and clue, until the evidence pointed so strongly to you that they could delay no longer; you were arrested and subsequently indicted.

Able counsel were appointed to defend you. From that time to this they have labored unceasingly and tirelessly, and have expended a larger amount of the public money in your behalf than was ever expended before in a capital trial in this Commonwealth.

After a careful and prolonged trial, before an able, impartial and fair-minded jury, you have been found guilty, the jury after mature deliberation, decided that you were the man who used the knife and committed the murder, but upon the question of degree they asked the Court for further instructions. After fully understanding the law in this respect, they declared you guilty of *murder in the first degree*.

Subsequently, your counsel asked the presiding Justices to set aside the verdict of the jury, as not warranted and as



against the evidence and the weight of the evidence. After full hearing the Justices were obliged to refuse and deny said motion.

Since then the case has been reviewed by the Supreme Judicial Court, the highest court in this Commonwealth, and that court has found no error in the proceedings or at the trial.

Recently this court has heard, considered and overruled a second motion for a new trial.

Your conviction for the great crime of murder, in the first degree, has been sustained as proper, lawful and just.

When this murder was first discovered the public was greatly excited. Great anxiety was manifested for the arrest and conviction of the murderer, and great sympathy was expressed for the family of the victim.

Nine long months passed before you were put upon your trial. In the mean time Mabel Page had been buried and partially forgotten, and sympathy turned somewhat from the dead to the living.

When you left the lifeless body of Mabel Page on the floor of the Page house that day, you carried away with you many mute and silent witnesses of your guilt, enough with the other evidence in the case, to satisfy a jury of your peers, "twelve good men and true", beyond a reasonable doubt of your guilt.

I believe that many crimes are committed because their perpetrators have not understood the force and effect of *circumstantial evidence*.

I feel confident that many murderers would have been deterred and prevented from committing their great crimes if they had known what Chief Justice Shaw and other great judges and lawyers have often declared,—that circumstantial evidence may well be full as safe and satisfactory to prove the guilt as what is called direct evidence.

The frequent declarations against such evidence by men who hardly know what such evidence is, and who can know but little about it from observation or experience, I fear lead men to commit crime with a belief that, if no witnesses are present, there can be no convictions.

I am sorry for your family and I pity you, that you have come to this tragic end. But I am compelled to say that it is hard to imagine a more wanton, wicked and causeless murder than this, of a virtuous and blameless woman.

You stand here now for sentence; and it becomes my painful duty, as a magistrate and minister of the law, to pass sentence upon you.

It is considered and ordered by the Court, that you, Charles L. Tucker, shall be taken to the jail in this county, and there kept in close custody until within ten days prior to Sunday, the tenth day of June next, when you shall be removed to the State Prison in Boston, in the County of Suffolk, and there kept in close confinement until the said tenth day of said June, when, within the week beginning on said last day, you shall suffer death by the passage of electricity through your body; and this is the sentence required by law.

Application was made to a judge of the Supreme Court of the United States (Mr. Justice Harlan) to grant a stay of execution, alleging that a Federal question was involved, but that judge after considering the question, decided that no such question was raised and refused to grant a stay.

A petition was then presented to the Governor and Council to commute the sentence to imprisonment for life, numerous signed, and asking a hearing before the Governor and Council, claiming that the Governor was

obliged to submit the same to the Council. The Governor decided that he was not obliged to do so, but the Governor and Council submitted that question to the Supreme Judicial Court. That Court decided (see opinion of the Justices, 190 Mass. R. 616) that the Governor was not obliged to submit the petition to the Council.

The Governor subsequently gave the petitioners a full hearing. After hearing the evidence and arguments of the prisoner's Counsel the petition was refused.

*To the Petitioners for the Commutation of the Sentence of Charles L. Tucker:*

I have given to your petition and to the case of Charles L. Tucker, convicted of the murder of Mabel Page, the most careful consideration. Some time since I began my own investigation of the case.

I have read all the evidence presented in the lower court and the official stenographic report (2696 pages) of the proceedings in the Superior Court, together with various affidavits and reports submitted to me.

I have given a lengthy hearing to the counsel for the prisoner and to all witnesses as to fact whom they chose to summon, even when the testimony offered was such as could not be heard in a court of justice, recognizing that the Governor, on a plea of clemency, is not bound by technical laws of evidence. I have personally examined the neighborhood of the murder and have on foot passed, with time tests, over the roads and ways about the Page house in Weston and at about the hour of the day when the murder was committed. I have examined all the various exhibits in the case, and have myself fitted the blade of the knife of Charles L. Tucker into the slit in the blood-stained corset of Mabel Page.

I have no right, remembering my oath to enforce the laws of this Commonwealth, to consider my own or other

men's opinions of the character of those laws or to stay the execution of any law because of my opinion or of any other man's opinion. I have no right to refuse to enforce the law in regard to capital punishment on the ground that that law is abhorrent to any person or persons.

In considering so serious a case all prejudice should be removed and evidence carefully sifted. Irresponsible talk in regard to the manner in which the prisoner's wife met her death in his company can be given no more consideration than similar irresponsible talk of unidentified persons in Connecticut who looked as if they might have committed some crime somewhere.

Charles L. Tucker was arrested for the murder of Mabel Page, April 9, 1904. He was conveyed to the Newton Police station and was arraigned at once before the Waltham Police court. As a result of a hearing before Judge Luce the prisoner was bound over to await the action of the Grand Jury.

On June 9, 1904, the Grand Jury found an indictment against the prisoner. On June 16th he was arraigned and pleaded not guilty. Counsel were assigned him. Their first act was a motion to quash the indictment. This was overruled. A motion was then filed to withdraw the prisoner's plea to the indictment, which motion was denied. On January 2, 1905, the prisoner was tried in the Superior Court of Middlesex before a jury that has been aptly described as one of the most intelligent that ever sat in Massachusetts. Scores of talesmen were summoned and every possible right of challenge used to the uttermost by the prisoner's counsel. Every technicality of the law that could be used was used to prevent the introduction of evidence hostile to the prisoner. Yet this jury found him guilty of murder and in the first degree.

His counsel thereupon filed a motion for a new trial, which motion was denied. In refusing the new trial the justices found "That in our judgment the verdict which the jury has returned was well warranted by the evidence; that a verdict of acquittal would have been a failure of justice".

Thereupon the prisoner's counsel filed various exceptions to the rulings of the presiding justices. These were considered by the Supreme Judicial Court of the Commonwealth and were overruled.

A second motion for a new trial was then made by the prisoner's counsel. This motion was likewise overruled, January 22, 1906. An application for a writ of error was then made to the Supreme Court of the United States. This application also was denied. Finally an appeal was made to the Governor and Council with the contention that the Governor must of necessity refer all such petitions to the Council. This contention was declared erroneous by an opinion of the Justices of the Supreme Court of the Commonwealth. They also confirmed the view of the Governor, that the Chief Executive has the right to ask the advice of any citizens in regard to any matter at any hearing he may hold.

Accordingly, at the hearing before me at the Executive Chamber, Justices Sheldon and Sherman, who occupied the bench during the trial, were present at my invitation. They have reported as follows on the evidence offered:

*"To His Excellency the Governor:*

After carefully considering the testimony to which we listened yesterday, we respectfully report as follows:

A large part of this evidence was the merest hearsay, and could not have been considered in court. Much of this and also of the other evidence was only conjectural. The comparatively small portion that could have any legitimate bearing was cumulative, and not of a character that seemed to us to command confidence or to warrant any expectation that if produced at the trial it properly could have brought about a different result from that which was reached. We cannot find that there would now be any material change in the testimony of the medical experts. We heard nothing to meet the strong evidence of guilt which was offered at the trial.

Accordingly, if this were a question of setting aside the verdict of the jury, we should be unable to do so.

Very respectfully,

Your obedient servants,

EDGAR J. SHERMAN,

HENRY N. SHELDON.

Boston, June 6, 1906".

"This important report commands serious consideration.

The attempt at the hearing before me to offer a literary parody as evidence against the law officers of the Commonwealth but emphasizes their faithful, fair and intelligent services.

No medical authority who actually himself saw the wounds on the body of Mabel Page has ever wavered in his statement that they might have been made by a knife of the exact measurement of that which Tucker had tried to destroy, but which was found in fragments before he had time to dispose of them, in the side pocket of his coat, in company with a stick pin, sworn to have belonged to his victim. Men do not habitually carry stick pins loose in the side pockets of their coats. If this were one of the various pins that really did belong to Tucker, it is extraordinary that it should have been found in such an unusual place in company with fragments of a knife which he confessed he was trying to destroy, because they might be used to incriminate him. Why, regardless of ownership, was he trying to hide that pin?

A discussion of all the numerous points of evidence incriminating the prisoner is unnecessary. They are a matter of record.

Every decision handed down by every judicial authority to whom disputed questions of law have been referred has affirmed the correctness of the rulings in this case. Not only did every member of that jury, to whom the original evidence, ungarbled and undistorted, was presented, find



the prisoner guilty, but the Judge who pronounced sentence upon him, after every possible appeal to the judiciary had been exhausted, declared the verdict of murder in the first degree 'proper, lawful and just'. He even added: 'It is hard to imagine a more wanton, wicked and causeless murder than this of a virtuous and blameless woman'.

The causes usually urged for mercy to a convicted criminal are either extreme youth, notable public service, intense provocation, or a previously blameless life. No such plea can be entered for the prisoner. He is not a boy. Men of no greater age than his at the time of the murder have served in National Parliaments and commanded armies that have changed the destinies of the world. Not only is no claim of public service made for the prisoner, but he never rose or remained for any great length of time in any private employment. Neither Mabel Page nor any of her family had ever wronged him or his. His habits of life as disclosed to me by investigation, through official and other sources, seem almost impossible to one whose bitter duty it is to resist the appeals of his clear-eyed brother, his sorrowing mother and his father, honored and respected of all men.

I must, however, remember that other home: a pure and lovely girl murdered in a lonely house; a father martyred by sensationalism, a devoted sister driven to the verge of nervous prostration, and a faithful working girl persecuted by threats of bodily harm.

Proof of the miserable habit of life of this unhappy young man as disclosed by incidents in connection with this trial is confirmed by my own independent investigation.

The search warrant, prepared though not used, against Tucker did not specify the knife used in the murder, but did specify certain goods stolen on other occasions by the prisoner which were returned to their owners, chiefly by the prisoner, before his arrest.

The same plea, of having returned the fruits of a crime after its commission, has been publicly made to excuse the prisoner for and admitted forgery.

At the hearing before me the prisoner's counsel asserted that the prisoner on the day of the murder "committed an offence with Mabel Walker".

The evidence in the lower court, later confirmed by expert medical evidence summoned by both sides, furnishes uncontested proof that the prisoner was not accustomed to recognize even the bounds established by nature in the gratification of his passions.

In common with every other responsible person in this case, sworn to act in accordance with his convictions as to the prisoner's guilt or innocence, I am compelled to an undoubting belief in his guilt.

Neither, therefore, on the ground urged that the verdict was unwarranted by the evidence, nor on the grounds usually urged, can I interfere with the execution of this just sentence. Every citizen must sympathize and sorrow with this unhappy man's afflicted family, but of more importance than the life of any one citizen is the protection by government of the life of every citizen, is the safeguarding of woman's chastity in the lonely farmhouse as well as in the patrolled streets of the city, is the assurance to the people that the ordered action of their courts is to be respected and that irresponsible agitation cannot be substituted for law and order in this Commonwealth.

This melancholy chapter in our history may not have been written in vain if it serves to warn the youth of our Commonwealth, tempted by the allurements of vice to ignoble life, that the wages of sin is death, if it serves to show that government in Massachusetts still stands on the rock of her own Constitution to the end that it may be 'A government of laws and not of men'.

CURTIS GUILD, JR.

Executive Chamber,  
State House, Boston,  
June 7, 1906".

The prisoner was executed in accordance with sentence.

After the execution of Charles L. Tucker, a statement, purporting to come from James H. Vahey, his senior counsel, was published in the newspapers, explaining, or giving a reason, why the prisoner, Tucker, was not put upon the witness stand, as follows:

*(Boston Daily Globe, June 12, 1906. Third page, first column.)*

“James H. Vahey, senior counsel for Charles L. Tucker, made the following statement this morning, when he learned that Tucker was dead:—

The failure of the defendant to testify has also been a subject of much comment and we feel that the public ought to know exactly what the reasons were for the defendant's failure to testify.

This question gave us great concern throughout the trial and up to the moment when it was definitely determined that the prisoner would not testify. While the whole matter had remained in abeyance, I think we all had a feeling that the defendant would take the stand.

The evidence in the case was concluded on Saturday, January 21. On Friday, January 20, all the evidence had practically been presented, except that of the defendant, if he were to testify, and the court had adjourned a little earlier that day in order that we might have some farther time to reflect on that subject. I do not know that I state the things in their chronological order, but the substance of the various interviews follows:

Judge Sherman asked me if I wanted any advice from him on the matter. I said I would be glad to receive it. He told me that he thought it advisable from long experience to state all the reasons for and all the reasons against his testifying to the defendant and his people and let them decide.

I talked with one of the best criminal lawyers in Massachusetts that same evening for two hours and his advice substantially coincided with Judge Sherman's''.

The undersigned, except for that statement, would not feel called upon to make the following

MEMORANDUM.

James H. Vahey, during the trial of Charles L. Tucker for the murder of Mabel Page, entered the Judge's Lobby, after the adjournment of court, Judges Sherman and Sheldon, Sheriff John R. Fairbairn and Mr. Vahey, being present, the following conversation then took place.

Mr. Vahey. Judge Sherman, you having had a large experience as Attorney General and as a Justice of this Court in capital trials, I want to ask your advice, as I have had little or no experience in such cases and am a good deal embarrassed.

Judge Sherman. If I can properly advise you, I will.

Mr. Vahey. Shall I put the prisoner on the witness stand?

Judge Sherman. I do not think it would be proper for me to answer that question.

Perhaps I can tell you what the rule and practice is among the best lawyers in such cases. If the attorney believes his client innocent, put him on the witness stand without hesitation. If, however, he believes him guilty, never put him on the witness stand. If the prisoner insists upon being a witness and the Attorney believes him guilty, the Attorney should say to him: 'I advise you not to testify, but as you have more interest in the case than I have, I shall not interfere'.

What do you say, Judge Sheldon?

Judge Sheldon. I fully concur in what you say about the practice among the best lawyers in such cases.

Mr. Vahey. I thank you, gentlemen, for advising me.

Some days after, Mr. Vahey again entered the Judge's Lobby and said:

After our interview the other evening, I told Tucker what you said to me concerning his being a witness.

After talking with him a long time, I told him to think it over carefully and then decide what to do.

Subsequently he told me that he had decided not to be a witness, and thereby he relieved me of a great responsibility, and I did not have to advise him.

EDGAR J. SHERMAN,  
H. N. SHELDON,  
JOHN R. FAIRBAIRN.

I did not ask Mr. Vahey if he wanted me to advise him about Tucker's being a witness. The only conversation I ever had with him on that subject is stated in the above memorandum.

EDGAR J. SHERMAN.

## CHAPTER XIII.

---

### EXCURSIONS AND MEETINGS WITH FAMOUS MEN.

---

The Vermont Association of Boston is an organization of men and women born in Vermont and living in Boston and vicinity. It was organized in 1887.

The Presidents were as follows:—

Hon. H. O. Houghton, . . . .	1887-1893
Hon. Walbridge A. Field, . . . .	1894-1895
Hon. Alanson W. Beard, . . . .	1896-1897
Hon. Alden Spear, . . . .	1897-1899
Hon. William E. Fuller, . . . .	1899-1900
Hon. Edgar J. Sherman, . . . .	1900-1903

The fifteenth annual report of the Association, 1901, at a meeting at Young's Hotel, April 8, 1901, proceeds as follows:

#### PRESIDENT SUGGESTS A TRIP TO VERMONT.

President Sherman then suggested the advisability of the Association's making a trip to the Vermont Old Home Week, and of holding the annual banquet at some point in that state. This matter was discussed at some length, and



Mr. Arthur L. Robinson, of the Executive Committee, gave the Association a very cordial invitation to a trip on Lake Champlain and a dinner near his old home, South Hero.

At the close of the discussion, the President asked for a show of hands of those who favored the plan of such a trip Old Home Week, and it was the unanimous opinion that such a trip, if feasible, would prove to be of special interest to the members of the Association.

Plans were sufficiently matured so that August 1 the Secretary was able to issue a circular of information containing the following itinerary:—

#### ITINERARY OF OLD HOME WEEK TRIP.

Tuesday, August 13.

Party to leave the North Union Station, by special train, via Boston & Maine Railroad, at 9.30 A. M., arriving at the state line White River Junction, at about 12.30 P. M. Proceed to Montpelier under escort of Gen. W. H. Gilmore, of the Governor's Staff, Members of State Old Home Week Association, Montpelier Old Home Week Association, and Burlington Old Home Week Association, and arriving there about 2.00 P. M. Lunch at the pavilion, to be given by the Montpelier Old Home Week Association, to be followed by a reception at Executive Chamber, State House, by Governor and Mrs. Stickney. Band concert on State House grounds. Leave Montpelier for Burlington at about 4.30 P. M., under escort of Mayor Hawley of Burlington and members of Burlington Old Home Week Association, arriving at Burlington at about 6.30 P. M. Headquarters of the Association at the Van

Ness House. Band concert at City Hall Park. Short carriage drives about Burlington, by those who desire them, Tuesday evening.

### Wednesday, August 14.

From 8.30 to 10.30 A. M., carriage drives about Burlington; 10.30, embark on steamboat Reindeer for trip on Lake Champlain; 12.00 M., annual meeting of the Association on board steamboat Reindeer; 1.00 P. M., annual dinner of the Association, given by Mr. Arthur L. Robinson, on one of the most beautiful islands of Lake Champlain, to which Governor Stickney, United States Senators Proctor and Dillingham, Congressmen Haskins and Foster, and other prominent Vermonters, will be invited; 3.30 P. M., embark on Reindeer for return trip to Burlington, arriving about 5 P. M.; 8 P. M., reception and ball by Burlington Old Home Week Association, at the Billings library.

### Thursday, August 15.

Carriage rides about Burlington and return to native towns, at which Old Home Week exercises are to be held, in most instances, on Friday, August 16.

According to the foregoing schedule, a party of about one hundred and sixty boarded a special train at the North Union Station, on the morning of August 13, under the direction of Mr. Thomas H Hanley, New England Passenger agent of the Central Vermont Railway. It was a vestibule train, made up of four Pullman parlor cars, one regular day coach, one smoking car and one baggage car;

and the party consisted of members of the Association and their friends.

The weather being of the finest, the members of the party in their happiest moods, at the thought of going back to the old home, and being comfortably seated in the spacious accommodations furnished, could indeed say with that Vermont bard, Saxe,

“Singing through the forests,  
Rattling over ridges,  
Shooting under arches,  
Rumbling over bridges,  
Whizzing through the mountains,  
Buzzing o’er the vale—  
Bless me! This is pleasant—  
Riding on the rail”.

A most pleasant feature of the occasion was the official greeting extended the visitors at the state line, White River Junction, by a general reception committee, appointed for the purpose, representing the executive and legislative departments of the State Government, the Federal Government, and the Vermont Old Home Week Associations of the cities of Montpelier and Burlington, and the Central Vermont Railway Company. This committee was made up as follows:—

Representing the Governor: Adjutant General W. H. Gilmore, of Fairlee.

Representing the State Government: Hon. Martin F. Allen, of North Ferrisburg; Hon. Fletcher D. Proctor, of Proctor.

Representing the Federal Government: Hon. James L. Martin, of Brattleboro; Hon. Fred A. Field, of Rutland;

Hon. Olin Merrill, of Enosburg Falls; Hon. Z. M. Mansur, of Newport.

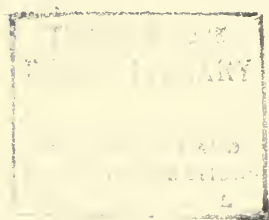
Representing the Vermont Old Home Week Association: Colonel Charles S. Forbes, of St. Albans; Hon. Elias Lyman, of Burlington; Colonel Thad E. Chapman, of Middlebury; Hon. Charles H. Darling, of Bennington; Hon. E. M. Bartlett, of Island Pond; Hon. N. W. Fiske, of Isle La Motte; Hon. Roger W. Hulburd, of Hyde Park; Colonel Curtis S. Emery, of Chelsea; Mr. Seymour Lane, of Newport; Colonel Henry O. Carpenter, of Rutland; Hon. Hiram Carlton, of Montpelier; Mr. E. H. Porter, of Wilmington; Mr. E. J. Wallace, of White River Junction.

Representing the City of Montpelier: Hon. Joseph G. Brown, Mayor; Hon. William P. Dillingham, Hon. Benjamin F. Fifield, Hon. Fred A. Howland, Hon. Joseph A. DeBoar, Mr. James M. Boutwell, Mr. L. Bart Cross.

Representing the City of Burlington: Dr. D. C. Hawley, Mayor; Hon. U. A. Woodbury, Hon. D. J. Foster, Colonel F. E. Burgess, Mr. J. B. Henderson, Mr. B. J. Derby.

The journey of the reception committee to White River Junction was made in a special train, provided through the courtesy of Mr. R. S. Logan, Vice President and General Manager of the Central Vermont Railway Company. It consisted of the official car "Mansfield", a coach, and the observation engine "St. Lawrence".

The members of the Vermont Association were cordially welcomed by the several reception committees upon their arrival at White River Junction, the exercises being wholly informal. Senator William P. Dillingham voiced the greeting on behalf of the general committee, and Pres-





MRS. EDGAR J. SHERMAN  
(The Judge's first Wife.)



ident Edgar J. Sherman responded thereto for the Association.

General Gilmore then, in behalf of the Governor and in token of the welcome he wished to extend to each member of the Association, presented each one with sprigs of red clover, the State flower.

The two special trains were then united and the trip through the state began over the Central Vermont line. The party arrived in the State Capital at 4 P. M.

The City of Montpelier was beautifully decorated with flags, banners and bunting, and as the visitors alighted from the special train, the Montpelier Military Band discoursed its choicest strains.

Major J. G. Brown, escorting President Sherman of the Boston Association, headed the procession which marched to the pavilion dining rooms, where a bountiful lunch, arranged by a committee consisting of Colonel O. D. Clark and R. C. Bowers, was served. After the guests had been refreshed with their lunch they repaired to the State House, where an informal reception was held in the Executive Chamber. The receiving party consisted of Governor W. W. Stickney, Mrs. Stickney, Lieutenant Governor M. F. Allen, Judge Edgar J. Sherman, of Boston, Mrs. Sherman, Hon. W. P. Dillingham, Hon. D. J. Foster, Mayor J. G. Brown, of Montpelier, and Mayor D. C. Hawley, of Burlington.

The guests were presented by the following introduction committee:—

Adjutant General W. H. Gilmore, Surgeon General W. D. Huntington, Colonel F. E. Burgess, Colonel J. C. Coolidge, N. L. Sheldon, Esq., Hon. J. A. DeBoar, Hon. Elias Lyman, Colonel C. S. Emery, Colonel C. S. Forbes, Mr. Robert T. Phinney.

A delightful social hour was enjoyed by all. The party then took their train and proceeded to Burlington, which was reached about 6.45 P. M. The next day was spent on the Lake with a dinner on Grand Isle.

#### RECEPTION AT BILLINGS LIBRARY.

The festivities of the day came to an end with a reception at the Billings library in the evening. About three hundred people were present, half of the number being residents of Burlington, who found pleasure in making the acquaintance of former Vermonters. The guests were received by President Sherman of the Association, Mrs. Sherman, Mayor and Mrs. Hawley, Hon. and Mrs. Elias Lyman, Ex-Governor U A. Woodbury, Mrs. N. L. Sheldon, and Colonel F. S. Burgess. The ushers were General T. S. Peck, Mr. D. W. Robinson, Colonel H. W. Allen, Mr. Robert Noble, Mr. C. S. Van Patten and Mr. F. A. Richardson.

Shortly after nine P. M. the company found seats in the auditorium, and President Sherman stated that it had been decided to have a few short speeches. He spoke of the formation of the association and of some of the prominent Vermonters who had been connected with it. He felt that the members of the association had been most hospitably entertained, and that the visit during the first Old Home Week had been such a success that they would be up here fully four hundred strong next year.

President Sherman then called upon Mayor Hawley, who with Congressman David J. Foster, and ex-Governor Woodbury, made interesting and appropriate speeches.

Light refreshments were then served, and the remainder

of the evening was spent most delightfully. A large party "tripped the light fantastic toe" to the music of the Howard Opera House orchestra, till the "wee sma' hours" came, while others improved the rare opportunity of social intercourse, and all reluctantly left that seemingly charmed spot of the evening's festivities.

Early the next morning, the party separated, several members going on a trip to Ausable Chasm and other points of interest on and near Lake Champlain, while others went to their native towns to enjoy Old Home Week festivities on Friday.

Thus closed the programme, as laid out by the executive committee, of the first Old Home Week trip to Vermont, and it was the unanimous opinion of all in any wise participating in the trip that it had been a most enjoyable occasion, and, while an innovation in the proceedings of the association, it must be pronounced an unqualified success.

Mrs. Sherman was taken seriously ill before she reached home and died within a week.

The annual report of the association closed as follows:—

"Following this occasion, so full of joy and pleasure, within one short week's time, came that saddest of sad news, of the death of Mrs. Sherman, wife of the esteemed President of the association. Mrs. Sherman, being of a most happy disposition, was the life of the party, and added materially to the pleasure of the trip, and she will always be of most pleasant memory to all who were so fortunate as to make her acquaintance.

Her happy disposition and joyous countenance will ever be an inspiration to all, and a constant reminder that, truly, 'In the presence of life is death', and that to live this life as did she is to be ever ready for the life that is to come".

THE CELEBRATION OF THE FIFTIETH ANNIVERSARY OF  
THE SETTLEMENT OF LAWRENCE.

Second Regular Toast.

*"The Commonwealth of Massachusetts".*

(Responded to by Judge Sherman of the Superior Court).

It is an honor to speak for the Commonwealth as the representative of two and a half million of people; a State which is foremost in all that goes to make a great State, possessing a wealth in taxable property of two and one-half billion of dollars, which amount is so well distributed among her citizens as to have, belonging to her industrial and laboring classes, deposited in her savings banks four hundred and seventeen million of dollars; a Commonwealth which provides for and requires the education of all her children, whose citizens are so peaceable and law-abiding, that strikes with violence and mobs are of rare occurrence.

A State which showed the loyalty and patriotism of her citizens in the War of the Rebellion by furnishing for the army and navy over one hundred and sixty thousand soldiers and sailors and in sustaining a loss of nearly fourteen thousand in killed and of those who died of wounds and disease; a State which has paid out of its treasury to the soldiers and their families, during the war and since, over forty millions of dollars.

The Commonwealth is composed of thirty-one cities and three hundred and thirty towns, and the City of Lawrence is the ninth in population. She, today, is celebrating her fiftieth birthday, and we are invited to the feast. Coming then, in behalf of the Commonwealth, to extend congratu-

lations, we find she has a population of over fifty-two thousand people; a wealth in taxable property of over thirty-three millions of dollars; that her wealth is distributed among the masses, and so that her laboring and industrial classes have deposited, in our savings banks, over nine millions of dollars; that her citizens are enterprising, successful and contented. She was loyal and patriotic during the war, and furnished for the army and navy nearly three thousand soldiers and sailors.

Lawrence not only furnished more than her quota of soldiers, but she has done well in furnishing statesmen for the country. Since she became a city, she has furnished for the Congress of the United States three of her citizens, Hon. William A. Russell, who represented this district for three terms, serving for a part of that time upon the Committee of Ways and Means of the House of Representatives, and doing much for the manufacturing interests of our city; Hon. John K. Tarbox, whose memory will ever be cherished in all our hearts, who served for one term; and Hon. William S. Knox, who was elected last year, and who, we believe, will ably represent our interests in the next Congress. We might also claim, Hon. Moses T. Stevens, of Ward Seven (North Andover), who so faithfully represented our interests for the last four years. Lawrence has also furnished officials for the Commonwealth; an Attorney General, a Justice of the Superior Court, a member of the Governor's Council, two Insurance Commissioners, Hon. John K. Tarbox, and Major George S. Merrill, who together have made the insurance department outrank those of all other States in the Union. We have also furnished for the County of Essex many officers, notably among them a Sheriff, in the person of Captain H. G. Herrick, who served in that office for a period of nearly thirty years.

Looking down these tables and observing the orators and statesmen, I feel authorized in saying, that Lawrence is willing to do much better in the future; she volunteers to furnish in the future, men for Governors, Lieutenant Governors, Councillors, Congressmen and State officers, without number, and I feel quite confident, if she does not have an opportunity to furnish her share, you will hear what the father told his son was sometimes heard. The boy said, "Father, what are those men doing who are holding up their right hand"? "Being sworn into office", replied the father. "Are they obliged to swear when they go out of office"? asked the son. "No"; replied the father, "but they sometimes do".

In looking at the record of the municipal affairs of the city, I think I can speak with impartiality, as I never held a city office. The offices have been held, a part of the time by one party, and a part of the time by the other, the honors are about easy, and the tide of good government has ebbed and flowed, sometimes it has been high and sometimes low, but the "record" has been made and must stand, no matter if, like the old sea captain, you are not satisfied with it. The mate of the ship was an excellent officer, and had but one fault. Once in six months he would become intoxicated. On one of these occasions, the captain wrote in the log-book, "The mate is drunk today". When the mate saw the entry, he said to the captain, "Did you write that"? "Certainly I did" replied the captain. "Why do you want to disgrace me to the owners"? asked the mate. "Were you not drunk on that day"? asked the captain. "Certainly I was", replied the mate. "Very well then", said the captain, "We will let the record stand". A few days later, the captain to his astonishment discovered on the log book, the entry in large letters, "The captain is sober today"! He flew to



the mate and demanded, "Did you write that in the log-book"? "Yes", answered the mate. "But am I not always sober"? asked the captain. "Certainly", said the mate, "but were you not sober on that day"? "Yes", yelled the captain. "Well then", calmly replied the mate, "we will let the *record stand*".

I give you, Mr. Chairman, the sentiment, "The City of Lawrence, may its records of good government in the future, be, what all good citizens desire, the best of any city in the Commonwealth".

#### VISIT TO THE SOUTH.

Mr. Edward Rotan and family of Waco, Texas, for some years prior to 1900,— had spent their summers at Bass Rock, Gloucester, near my summer home. They were pleasant and interesting neighbors. Their family and mine became quite intimate.

Mr. and Mrs. Rotan gave Mr. and Mrs. Edwin B. Haskell of Auburndale, Mass., and Mrs. Sherman and myself an urgent invitation to spend Christmas week (1900) at their home in Texas.

The invitation was accepted, and the Haskells and Shermans went to Washington, stopping a couple of days, then to New Orleans (a place I had not visited since I was there during the war), and after remaining a few days, proceeded to Waco.

The Rotan home was a large mansion house, beautifully situated in the city, well equipped for hospitable entertainment. We learned when we reached there, that they had issued invitations for a grand reception in our honor, for those invited "to meet Judge and Mrs. Edgar J. Sher-

man and Mr. and Mrs. Edwin B. Haskell of Massachusetts". It was a grand entertainment, some hundreds attending. I refer to one incident of the reception, as showing that there was some of the *ante bellum* spirit still remaining, especially among the women.

As I was being introduced to one lady—somewhat advanced in years—she said, before giving her hand, "Are you related to General Sherman"? I replied, smiling good naturedly, "I have to confess I belong to the same family, but as I once told the General himself, not near enough to give him any special uneasiness". "Then I do not want to know you", replied the woman. "But", chimed in Mrs. Rotan, "you are not going to blame the Judge for what the General did". "But I do not want to make the acquaintance of any of the tribe", said the woman. Then gathered around us very many who had fought for the southern cause (Mr. Rotan was a soldier in the southern army) and laughed and jollied the woman, until finally she shook hands and said, "that I had all the characteristics of a gentleman, and of course, I was not to blame for the conduct of the General".

On Christmas morning, Mr. Rotan asked Mr. Haskell and myself what we most desired to see. We both replied a real southern plantation. Soon we were driven out ten or more miles to a large plantation of many hundred acres, beautifully situated. As we drove to Mason House, back a quarter of a mile from the highway, a fine looking man, over six feet tall, of sixty or more years of age came out to greet us.

We were introduced and invited into the house, and introduced to the lady of the house and a fine looking son, between twenty or thirty years of age, tall like his father. After doing what I suppose no southern man ever failed to do on a like occasion, offering us some good whiskey,

we expressed a desire to walk about the ranch. That we will do, said the gentlemen, but not until after dinner. It was then just about twelve o'clock. But, said Mr. Rotan, we are to be home for dinner. But there was no use in refusing; all three members of the family insisted that we must take seats at the table and within fifteen minutes, we were partaking of one of the best turkey dinners ever served. Everything was finely cooked in the old brick oven.

After dinner we walked about, and, among other things, I saw two or three hundred of the best mules I ever saw. It was a large fine ranch and we enjoyed our visit much. As sometimes happens, I got into some difficulty by too much talk. As I was walking with this tall, fine looking, young man, and having seen no wife, I said to him, "why, you ought to be married and bringing up a family". "Well", he said, "he supposed that might come in due time, that he was not very old yet", etc. When we all came together again in our walk, I said to the father, "I have been telling your son that he ought to be married, that it will not do to let this family run out", etc. The father said, "I suppose he will attend to that in due time".

When we returned to the house, I told the mother what I had been saying to the son. After we bade our host goodbye and drove away, Mr. Rotan said to me, "Well, you have got yourself into a pretty mess. I tried to catch your eye when you were talking about the son getting married, but I could not, you were so much interested in the subject. That young man", said Mr. Rotan, "married a girl from New York, and brought her down here some years ago, but she left him and has gone home and will not come back and live with him any more. We do not know the reason, and that is all we know about it,

but the family are greatly mortified over it, so you see Judge you were touching on a delicate subject”.

When we reached the Rotan home and told what had happened, I was not particularly happy over the day's experience. If I am not a better man I am a wiser one. I have learned not to talk in a strange family about the marriage of the young men.

We remained nearly a week with the Rotans, enjoying every moment of our visit. From there we went to Columbia, South Carolina, and visited for a couple of days, Colonel Haskell, a cousin of Edwin B. Haskell. Colonel Haskell had been in the rebel army, making a fine military record, and had been several times badly wounded and left on the field as dead, but he had finally survived the war.

After the so-called carpet bag government was ousted from offices in the State, Colonel Haskell entered the civil service of the State. He was finally elected one of the Judges of the Supreme Court. He remained on that Court some years, but finally when a majority of the Court made a decision in favor of allowing the State to repudiate its debts, he resigned, saying he would no longer be a member of a Court which would make such a disgraceful decision.

We enjoyed our visit at the Haskell's and in Columbia very much.

#### DISTINGUISHED MEN I HAVE MET.

I saw President Lincoln at the White House in 1862 and had a pleasant conversation with him. I saw him at another and later time at one of his receptions.

I met General Grant while he was at the head of the army and talked with him for twenty minutes. I also saw him several times while he was President.

I saw Presidents Pierce and Buchanan before the war, and I have seen all since, Johnson, Hayes, Garfield, Arthur, Cleveland, Harrison, McKinley and Roosevelt.

I saw General William T. Sherman many times. I did not meet him until after the war. I saw him while he was General of the Army in his office at Washington, in the War Department. I sent in my card, and when I entered his room, he said, "Well, Mr. Sherman, are we related"? I answered "Yes, General, but not near enough to cause you any special uneasiness". I explained to him just what the relationship was, that we belonged to the same "Sherman Family", that we separated four generations back from him. I found he was well up in the genealogy.

"Well", said the General, "we Shermans, all look alike". After a little, another card came in. The General remarked that probably the gentleman had never seen him, and he asked me to take his chair which I did, we both being in civilian dress.

As the gentleman approached, I rose and offered him my hand, and as he took it he said to me; "I should know you General from your pictures". I replied, "I cannot claim to be General Sherman, I am only a Colonel. This (turning to the General) is General Sherman".

"Well", said the General, "I had just remarked to Colonel Sherman that we Shermans all looked alike".

At another time, later, when the General was living in St. Louis, while I was visiting Washington with my wife and two eldest daughters, learning that the General was there with his brother John, I called on him at his brother's house.

I said to the General, "I am here with my wife and two of my daughters, and they are very anxious to meet you". His brother insisted that I bring them to his house, but I thanked him and said no. The General said, "why cannot I call at your Hotel just after dinner tonight, say, half past seven". I said that would be delightful, if he would take the trouble to do so.

Promptly at the appointed time, as we came into the parlor the General appeared. Before we could reach him the people crowded around to shake hands. The General turned his back on them, refused to shake hands, and as I thought treated them very rudely. We finally found a corner where we sat down and he made himself very agreeable to my wife and daughters. He partly apologized to us, for his apparent rudeness, saying, that it was the only way he could meet his friends, on account of this everlasting weakness of our people to shake hands.

I met General Sheridan and also Admiral Farragut. I had a delightful conversation with Farragut about the capture of New Orleans.

I saw Edward Seventh when he was in this country in 1859 or 1860 as the Prince of Wales. I also met Henry W. Longfellow, John G. Whittier, Oliver Wendell Holmes and Chief Justice Shaw.

I have entertained at my house in Lawrence or at my summer home at Bass Rocks, Gloucester, Charles Sumner, Henry Wilson, Frederick Douglass, George S. Boutwell, Judge E. Rockwood Hoar, Wendell Phillips, Dr. Samuel G. Howe, General Benjamin F. Butler, General Nathaniel P. Banks and many other noted persons.



I received the following letter from President Roosevelt:—

“White House, Washington,  
February 11, 1903.

*My Dear Judge Sherman:*

Secretary Moody has shown me your letter and I cannot refrain from writing to thank you for it, and to say how much I appreciate both it and the address of Mr. Haskell. If you see Mr. Haskell I wish you would tell him how much I should like to have him come to Washington so that I might go over with him everything that is being done.

With great regard, believe me,

Sincerely yours,

THEODORE ROOSEVELT.

Hon. Edgar J. Sherman,  
Judge Superior Court,  
Boston, Mass”.

As I remember, I had sent my friend William H. Moody, a letter enclosing some remarks which Mr. Edwin B. Haskell had made at a club dinner, complimentary to something that the President had said or done. I showed Mr. Haskell the letter, and the next time he was in Washington he called on the President, and was invited to dinner, and had an interesting conversation concerning public affairs, which Mr. Haskell gave me an account of on his return.

Later in February, 1904, while Mrs. Sherman and I were in Washington, we received an invitation through Secretary Moody to visit the President. Mr. Moody took

us into the Cabinet room, and as the President came out from luncheon presented us. He received us kindly and invited us into his room. I said, "Mr. President, we have learned that you have some thirty persons in the ante-room, among them the new Chinese Ambassador, waiting to see you, and you will excuse us. We only called to pay our respects". "But", said the President, "Mr. Moody has told me about you, and I feel acquainted and want to talk with you". He kept us some fifteen minutes with interesting conversation.

CHARLES SUMNER—JAMES G. BLAINE.

While Charles Sumner was Senator, I visited Washington with my friend, Elbridge T. Burley,—a lawyer of standing and ability—who expressed a wish to meet Senator Sumner. I volunteered to introduce him, saying that I belonged to the same club, The Massachusetts Club. At a convenient time we called at Mr. Sumner's rooms, and I presented to the colored messenger a card,

"Edgar J. Sherman and friend, Lawrence".

The messenger, after seeing the Senator, said, "Walk up stairs, gentlemen, the Senator will be glad to meet you". Mr. Sumner received me cordially, I introduced my friend, and after a little pleasant conversation, the colored man appeared with another card. "Show him up", said Mr. Sumner, "these gentlemen will be glad to meet Mr. Wade of Ohio, old Ben Wade as he is familiarly called". We admitted that we should be pleased to meet Mr. Wade.

He soon appeared, and Mr. Sumner introduced us as "Messrs. Sherman and Burley of *Kansas*\*. I looked at Mr. Burley in a manner that indicated that I appreciated the joke which was clearly upon me this time.

Upon returning to Boston, and attending the Massachusetts Club, on the following Saturday, I related the incident. Dr. Samuel G. Howe seemed greatly disturbed, "Why", said the Doctor, "Sumner knows you perfectly well, he has dined with you here a great many times, and more than that, I have talked with him about you". I replied, that it was clear he did not know me from Adam; that Sumner was not a politician, and knew but few men, that the incident did not affect me, and that I was a great admirer of his just the same.

The next time I visited Washington, I called upon Mr. Sumner, and this time he knew me, and insisted upon my dining with him. Dr. Howe or some one had evidently been talking to him.

---

As showing the difference in public men, I think of an incident relating to James G. Blaine. Visiting Washington, while he was Speaker of the House, I attended one of his receptions, I was introduced as "Colonel Sherman of Lawrence". I never had met Mr. Blaine before and not again until (I think) four years thereafter; when about to be presented to him, upon a like occasion, he said, "I need no introduction to this gentleman, Colonel Sherman of Lawrence". I could not believe he remembered me; I thought some one had told him that evening who I was. Later in the evening, finding him at leisure, I said to him,

\*Mr. Sumner mistook the Lawrence for Lawrence, Kansas.

"Mr. Blaine, I am something of a Yankee, and I would like to know the true inwardness of your calling my name this evening. It cannot be that you remember everybody whom you have ever met". "Well", said Mr. Blaine, "I remember names and faces pretty well. When I met you four years ago, I had a son (I think he said) at Phillips Academy, Andover. Andover is four miles from Lawrence, and that gave me the clue to remember you by".

### COLONEL ROBERT G. INGERSOLL.

In the summer of 1880, Colonel Ingersoll was for nearly three months at the Bass Rocks Hotel, near my cottage at Bass Rocks, Gloucester. I had met him casually before and had heard him lecture. During that summer I came to know him and the whole family intimately. The family consisted of Mrs. Parker, Mrs. Ingersoll's mother, Colonel and Mrs. Ingersoll, the two daughters, Eva and Maude, Mrs. Farrell (Mrs. Ingersoll's sister), her husband and their daughter Eva.

I was at the hotel to see the family, almost every day, and the Colonel with or without some members of the family was nearly as often on my piazza.

I never knew a happier family. From Mrs. Parker to the little Eva, they each and all seemed to enjoy life to the full. They were quite popular at the hotel.

There was a large number of people from Canada, stopping at the hotel; they were religious people and commenced to have prayers in the parlor after breakfast. The manager of the hotel did not like to have his parlor thus occupied. He stated to them that it was objectionable to Colonel Ingersoll and family.

One of the gentlemen of the Canadian party, called upon the Colonel, and asked if he had any objections. He replied that he had not, that he spent his mornings out of doors, or on the piazzas, in the fields, or on the beach.

### REMENJI, THE VIOLINIST.

Reménji, the great violinist, was an admirer of Colonel Ingersoll, and he came to the hotel to visit the family. While there, Reménji gave a violin concert. Invitations were sent to the cottages inviting us all. No fee was charged and no collection taken. It was a free concert in honor of Colonel Ingersoll. It was a fine concert. Reménji was one of the best in the line, and all lovers of music enjoyed it very much. But as all there were not lovers of music, a few such kept up a continual conversation in whispers or in low voices, to the great disturbance of the concert. Finally, right in the midst of one of the sweetest strains of music, Reménji exploded. He stopped short. "Here I am giving a free concert and pouring into it my best effort, my very life, and there are a lot of old women cackling like so many hens". The Colonel came forward, and with great tact, smoothed the troubled waters; half apologizing for the old women, and also for his friend's temper, under provocation. The audience sympathized with the violinist. The concert went on, after the excitement was over, and there was no more cackling from any one, and it did seem as though the artist poured his whole soul into the music.

## INGERSOLL'S WIT.

The last of the season the Colonel delivered a few lectures in different cities in Essex County, and made one speech at the City Hall, Gloucester, in behalf of General Garfield, the Republican candidate for President.

From that time until the Colonel's death, I visited him in Washington and New York, whenever I had occasion to go to those cities. He seldom visited Boston without calling upon me or inviting me to call on him.

I insert a copy of a letter which he sent me after one of my visits to Washington, published at the request of friends, which is self-explanatory. It shows what Ingersoll could do as a humorist. I also insert a copy of a letter sent me May 17, 1888, concerning the Goodwin trial, which shows his kindly feelings toward me by over-stating and over-praising my argument.

"Bass Rocks, Gloucester,

August 9, 1898.

*My Dear Friend:*

During the summer of 1880, Colonel Robert G. Ingersoll and his family were at the Bass Rocks Hotel, near my cottage. I saw them often and formed a strong attachment for the whole family.

In the Spring of 1883, I visited them where they were then living, in Washington.

The Colonel took but little exercise and seemed to be growing stout. I recommended exercise, and especially walking. I must have talked "walk" a good deal.

Soon after reaching home I received the following letter. It has been read from time to time to friends, who



have asked for a copy. I enclose it to those who have made the request and to others who I think will enjoy it.

Sincerely yours.

EDGAR J. SHERMAN".

"Washington, D. C., April 26, 1883.

HON. E. J. SHERMAN,

Lawrence, Mass.

*My Dear Colonel:*

After you went away, the folks commenced. No one man ever received an equal amount of advice in an equal time.

'You must *walk*. Colonel Sherman says that you are liable to fall dead for want of exercise. Do you *hear*? You must *WALK*'!

'Yes', said grandmother, 'the apoplexy is lurking in your blood'.

'You are liable to be paralyzed', said my wife.

'Or to die in your sleep', said Mrs. Farrell.

'Or after you wake up', chimed in the baby.

'You must walk', said Eva.

'You ought to run', added Maude.

'And never sit down again as long as you live', shouted Clint.

So I started for Georgetown, and walked five miles before breakfast. Then I footed it to the Court, and walked home. After supper, I took a stroll in the country, reaching home a little before midnight. The next morning my calves were swollen so that they looked like yearlings. After being rubbed down with whisky and red pepper, and oiling my principal joints, I started out again about daylight, and walked to Bladensburgh—distant about eleven miles. On my return, about half-way home, I was taken with cramps and lock-jaw. I managed by signs to attract the attention of some people on their way to market, and

was kindly taken home in a cart laden with garlic, kale, and sassafras.

I was carried in very tenderly by the entire family, all of whom insisted that MORE WALKING was what I needed!

‘He stopped and cooled off too suddenly’, said Clint.

‘Lying down in the road will give anybody the cramps’, said Maude.

‘I guess Colonel Sherman knows what he is talking about’, said Mrs. Farrell.

‘Limber him up and start him again’, yelled Clint.

So I was put to bed—covered with mustard—my legs straightened out by putting weights on my knees—and my mouth filled with dried apples so as to swell my teeth apart.

As soon as I was able to speak, I sent for Baker that I might dictate a letter to you for further instructions.

Of course it is necessary for you to know my general condition:

1. Both my feet are covered with blisters.
2. The chords in my legs are as tight as the strings of a bass viol.
3. Great pain in the small of my back.
4. Sudden flushes of heat running up and down the spine.
5. Knees badly swollen.
6. Mind wandering.
7. Pulse about 120.
8. Temperature of the body 115 degrees.
9. Fur enough on my tongue to make a seal skin sacque.

I think I have walked enough. The rest say not. Telegraph your opinion. I am held up in bed to sign this letter.

I have looked through WALK-er’s Dictionary without finding anything on the subject. I have also read ‘Plato on the *Sole*’.

Yours till death,

R. G. INGERSOLL”.

Ingersoll was a great lover of nature, and, independent in his views of religion, which he seldom intruded upon others (uninvited?) he was a great and lovable character.

While the Star Route trials were going on in Washington I called upon Colonel Ingersoll, who was of Counsel. He introduced me to the presiding Judge, a strong believer in religion. At the intermission the Judge invited me into his lobby. As we talked about Colonel Ingersoll, the Judge said, "When I learned that he was to take part in this trial, I was unhappy, I regarded him as a blatant infidel. After three weeks of the trial of the case, I have become a great admirer of his. He can bring more sunshine into a court room than any man I ever saw".

I would enlarge the statement by saying, that he has brought more sunshine into the world than any man I ever saw.

I was naturally gratified to receive the following note:

"400 Fifth Avenue,  
New York, May 17, 1888.

*My Dear Judge:—*

I received your book (the Goodwin trial) and read your speech and Butler's. You got away with the old man in splendid style on the definition of insanity.

It is not often that I really get interested in a case that I am not in, but I did in this, and particularly in your argument. It is clear, forcible, and above all natural. You started on a gait that you held to the end, and every word was well placed.

After reading that speech I concluded that you ought never to have gone on the bench. Your place is at the bar.

Well, thanking you again for the book, and wishing the best of luck that any Judge ever had, I remain,

Yours always,

R. G. INGERSOLL".

### MY RELIGION.

"The Sherman Family" seem to have been composed of religious believers and unbelievers. In the same family were pious and devout men, brothers who were of liberal opinions and doubters. My grandfather was a Calvinist Baptist, a very religious and devout man. I do not remember ever to have seen him laugh; his was a serious life, without jokes or frivolity. He acted as though the All Seeing Eye was upon him all the time. His children were divided, somewhat evenly, one half Christians and the other half infidels and atheists.

In early life I tried to be a believer, and afterwards, I became somewhat of a doubter. I thought the matter could be settled by evidence like other matters, and thereupon I began to read both sides; I read a good deal carefully and conscientiously to find the truth. I found, however, that it was not a matter to be settled logically by reason, but a pure matter of faith. Since then I have not tried to discuss the matter, or urge my views of belief or unbelief upon others.

I have read lately with interest an article in the North American Review of October, 1907, by the late Ex-Governor, D. H. Chamberlain, "Some Conclusions of a Free Thinker".

General William T. Sherman had a son who went over to the Romish Church and is now a priest. My oldest son, after becoming an Episcopal clergyman and a Chaplain in the U. S. Navy, resigned his position and joined the Roman Catholic Church.

Whatever my belief, I have experienced a happy life, have been reasonably prosperous, and with a happy disposition, have enjoyed my life from childhood to old age.

I have heard men say, that if all there is of life is upon this earth, then it is a delusion and not worth the living. I have a very different feeling, I have enjoyed life to the full, and have no anxiety concerning the future.

#### RUM.—*Intoxicating Liquors.*

The Sherman family, so far as I can learn, have been temperate in the use of intoxicating liquors. My father was a total abstainer. I never drank liquor of any kind until I entered the army. In the Department of the Gulf, whiskey and quinine were served by the government as a preventive to malarial fever. Since then I have not been a total abstainer. I have used the lighter wines occasionally,—always temperately.

On the other hand, my intimate friends, boys and men, have generally used intoxicating liquors to excess. Many of them have been cut off from spheres of usefulness and gone down to premature graves. I have been a missionary to those friends from boyhood to old age, and I believe I have saved some of them; but the way is strewn from one end to the other with the premature dead. Many of them made strenuous and heroic efforts to throw off the

habit, but it was so firmly established they did not succeed.

As I look back upon this terrible havoc among the brightest of boys and men along the pathway of life, it seems to me if it could be seen and appreciated by the rising generation, it would be the best temperance lesson which could be given.

### SECOND MARRIAGE.

On the evening of February 15, 1904, I was married to Miss Virginia Bryant, my sister's adopted daughter.

Previous to our marriage my sister and Miss Bryant had built a house at Jamaica Plain. Since the marriage we have resided there, the family consisting of my sister, my wife, her adopted son, Malcolm Clarke and myself.

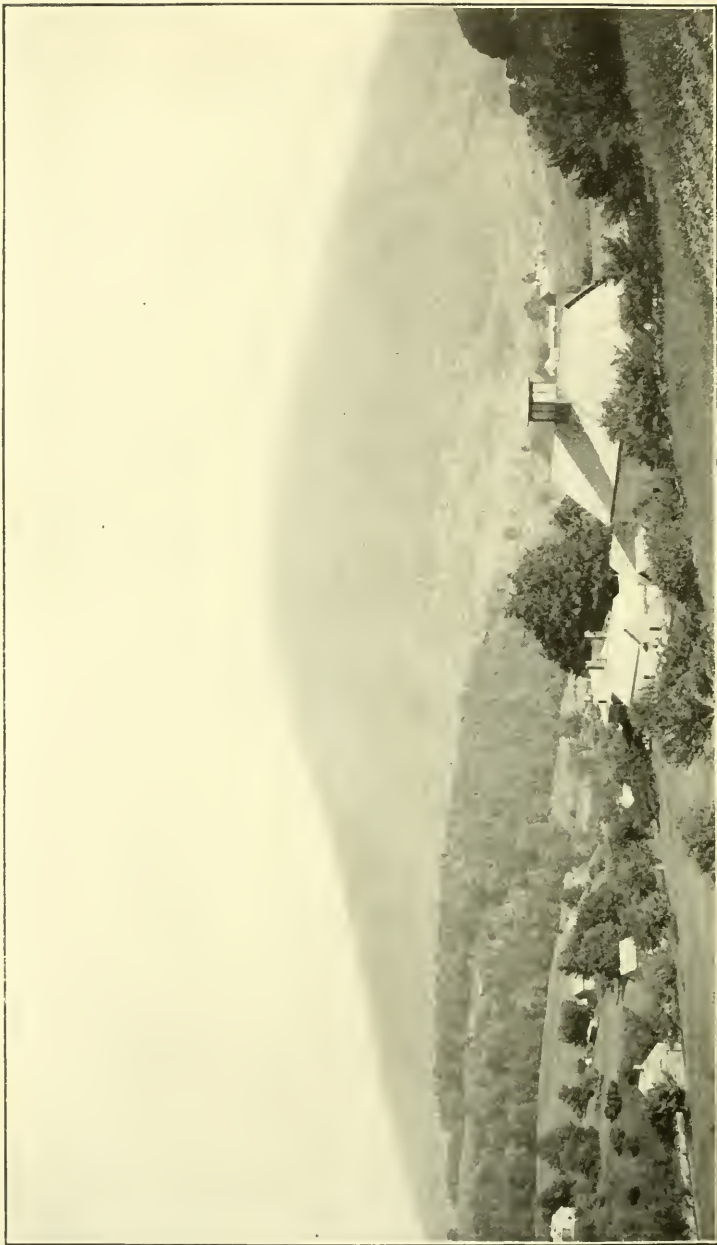
The Boston Herald of February 16, 1904, contained the following notice of the marriage:—

“The marriage of Judge Edgar J. Sherman of the Massachusetts Superior Court, and formerly Attorney General of the Commonwealth, and Miss Virginia Bryant of this city, took place last evening at the residence of Mrs. Malvina E. Backus, a widowed sister of the Judge, on Hampstead Road, Jamaica Plain. The ceremony was performed by the Rev. Charles F. Dole of the First Congregational Society. Judge Sherman's eminence at the bar long since gave him prominence professionally, and, with his unusual ‘capacity for friendship’, has made him an ever welcome companion and prominent socially, not only at his old home in Lawrence, but in all circles he entered.

The bride comes of old New England Bryant stock of







Ascuney Mountain, from Judge Sherman's Summer Place

which William Cullen Bryant is its most conspicuous member, and is a lady of culture and refinement. Her early home was in Andover, and from that pious hilltop her father, E. K. Bryant, went out for service in the war of the rebellion. He had talent as an artist and inventor; in fact he was among the first to anticipate the automobile of today. He was wounded at the battle of Spottsylvania and died in Washington a few weeks later.

In 1880 Miss Bryant's mother died and the following year Mrs. Backus lost her only child, a daughter, between whom and Miss Bryant there had always seemed a most striking resemblance. Since that time Mrs. Backus and Miss Bryant have made their home together. Subsequently Mrs. Backus legally adopted Miss Bryant as her daughter.

For three years Miss Bryant acted as dramatic editor of one of the Boston papers. She has been for many years a member of Dorchester Women's Book Review Club, also a member of the Appalachian Club".

### JUDICIAL DIGNITY.

It is supposed by the outsiders that "the serious looking judges" do not have or enjoy jokes or a little bit of fun, now and then. In the lobby it is quite otherwise. They play jokes on each other.

One day Judge Fox came into the lobby with \$25.00 in bills in his vest pocket, the ends of which could be seen. Some one remarked, "Look out Judge or some pickpocket will steal your money". "I wonder", said Judge Fox, "how those pickpockets do their work without being detected". "Oh, that is easy enough", said Judge Sherman, who was standing near Judge Fox, "they walk up to you this way, and take your money and walk away". At the same time Judge Sherman had taken Judge Fox's money.

Soon after some one asked Judge Fox for a loan of \$5.00. Putting his hand into his pocket, Judge Fox found that his money was missing. "Judge Sherman, have you my money"? asked Judge Fox. "No", replied Judge Sherman, which was true, as still imitating the pickpocket, he had passed it to Judge Lawton.

While we were in the old Court House, Judge Pitman came into the lobby one rainy Saturday morning with a new silk hat. A little before one o'clock I went out, leaving Judges Pitman and Blodgett there. Some time after, the Court messenger came to the hotel, where I was dining, and asked if I had Pitman's hat. I answered that I had not. The next Saturday several judges were in the lobby, including Judges Pitman, Blodgett and myself. Judge Pitman stated, that he should think matters were coming to a serious pass, if new silk hats were to be stolen from the judge's lobby. He then exhibited an old hat, the same size as his, in place of the one taken. All agreed it was serious. I remarked to Judge Pitman, "I am something of a detective, I can tell who has your hat"! "Well, I wish you would do so", said Judge Pitman. "Judge Blodgett has your hat", said I.

Judge Blodgett. "What do you mean by saying that I have his hat"?

Judge Sherman. "I have nothing to say except that it is a fact".

Judge Blodgett at once left the Court House, without saying another word. In about an hour, he returned with Judge Pitman's hat. He then explained. "I had just bought a Jackson hat of exactly the same make and size as Judge Pitman's, and I took his hat by mistake". Now they both said, "Judge Sherman we would like to know how you knew these facts"?

"That is easy to explain", said I, "I saw Pitman come in with a new hat on a rainy morning. When I went out you both were here and alone. I had not taken it, so I thought Blodgett must have. More than that, I felt sure a careful, prudent man like Blodgett, would not have worn his new hat, when he had an old one, on such a rainy morning". Then I added laughing, "But I noticed when Judge Blodgett left here to go to his home to see if he had Pitman's hat, he still hung on to the new hat, rather than take the old one which he had worn for years". All the judges laughed, in which Blodgett joined.

Judge Thompson, while at the bar, tried a large number of criminal cases while I was District Attorney.

It was a long criminal term at Lawrence, near its close, and we were trying one Bernard F. McBride of Lynn for keeping a liquor nuisance. The State Constable had raided McBride's small grocery store, finding about a pint and a half of whisky, concealed between the partitions.

In this case Mr. Thompson had not had his client beside him, nor had he afforded any evidence. When Mr. Thompson commenced his argument, he called upon McBride to stand up. He did so. McBride had a remarkably red, rum-looking face. "Now, Mr. Foreman and gentlemen look at Bernard, look at that face. How long do you think it has taken to color it? How much liquor do you think it has taken to do the business? It appears that this was on Saturday, and that they seized a pint and a half of whisky. Do you think if Bernard had only a pint and a half, and he could get no more until Monday, that he would sell it"?

He further said, "Gentlemen, there are two kinds of verdicts, which you can render, 'guilty', which you seem well acquainted with, but there is another kind, 'not

guilty', which verdict I hope my client Bernard may hear, and return home with a smiling countenance''.

Henry Martin was a Gloucester liquor seller. Thompson used to tell me, when Martin went over to the great majority, he would sell liquor there, if there was any chance.

On day, the Constables seized all of Martin's liquor, cleared out his stock entirely. Martin, fearing he would lose some trade, and that other dealers would get ahead of him, at once on the same day, got in a new stock, and sent the town crier out to cry his wares. (Martin was being tried for keeping a liquor nuisance on that day.)

Hearing of this, I thought it was too good evidence to be lost, so I summoned and put on the stand, the crier as the first witness. "Were you employed by the defendant, Henry Martin, to act as crier? If so, what did he say to you"?

"He told me to go to the corner of the streets, and cry as follows, after ringing my bell:—'Henry Martin has constantly on hand at his place of business, 38 Duncan St., all kinds of liquors, rum, gin, brandy, whisky, etc., and is sole agent for the Bunker Hill Brewery Co.'"

This was conclusive evidence against Martin and he was convicted.

Thompson, Henry Martin and everybody in the court room laughed, and none seemed to enjoy the joke more than Martin and Mr. Thompson.

While at my summer home in Gloucester, and having an old school-mate visiting me, I saw Thompson driving over to make a call. I went out to meet him and told him, that my friend was a nice clergyman, but a sort of a religious crank, that I did not think he would say



anything to him (Thompson), if so, he would understand the situation.

As we entered the house, I introduced the two gentlemen. Mr. Thompson at once commenced to talk, and I never heard him talk faster or more interestingly for nearly an hour, then a shower was threatening. Thompson excused himself and left suddenly.

After he had gone, my friend the clergyman said, "Do all of your judges talk as much as this one"? When I subsequently told Judge Thompson of this remark, he laughed heartily and said, "I intended to hold the floor".

#### ASKING LEAVE OF COURT TO WAKE UP A JUROR.

Charles P. Thompson at one time defended most of the persons charged with the violation of the liquor law in Essex County.

Judge Pitman, a strong prohibitionist, was holding the Superior Court at Newburyport, and Mr. Thompson was acting upon the theory that having, say, sixty cases to defend, if he tried only three or four cases a day, and the Court had only two weeks before it would be required to adjourn, quite a number of the cases would have to go over to the next term, and perhaps, in the meantime, some of the witnesses would disappear and those cases could not be tried. So Mr. Thompson took all the time he could in cross-examination of the government witnesses and then argued every case an hour,—the longest time allowed under the rule of Court. There really was no defence to these cases, so Mr. Thompson had to "talk against time", quoting from the Bible, Watts' Hymns, Shakespeare, etc., etc.

Judge Pitman was very unhappy over this condition of affairs; thought this conduct on the part of Mr. Thompson reprehensible and unprofessional, tending to bring the Courts of Justice into contempt, and whenever he saw an opportunity he would reprimand Mr. Thompson.

One day, while Mr. Thompson was arguing a case, having his voice pitched on the high key when the Judge interrupted, saying "Mr. Thompson, there is no occasion for your hallooing loud enough to take the roof off the court house; the jurors are not deaf"!

Mr. Thompson, good-naturedly, said, "Perhaps, your Honor, I was speaking rather loudly. I will lower my voice".

It being a warm day, one of the jurors closed his eyes, when Mr. Thompson, with a dramatic gesture, said, "Your Honor, I notice that one of the jurors is asleep. I trust your Honor will allow me to speak loud enough to wake him up"!

A laugh went around the court room, the sheriff cried "Order in Court", the juror opened his eyes, and Mr. Thompson went on with his argument.

At the time of completing our new Court House at Lawrence, we had a dedicatory banquet, at which the three judges of the Superior Court, Sherman, Bell, and DeCourcy, were present.

Ex-Congressman William S. Knox made a speech; one paragraph will bear repeating:

"We have a new Court House, which has cost the county so much (naming the figure), and it is worth all it has cost us; we have a pretty good library, which has cost us so much, and it is worth all it has cost us; and we have

three judges of the Superior Court—they cost us nothing, and they are worth all they cost us”.

A story has been in circulation for some time concerning Judge Bishop and myself. Perhaps it is better to tell the whole story.

At one of the meetings of the Justices, which I have been in the habit of calling our Quarterly Conference, we were considering the question of employing women stenographers.

Some of the justices were strongly opposed to their employment; they said it might cause scandal, etc.; others favored the employment of a reasonable number. The arguments on the one side and the other became quite earnest. Judge Bishop argued against and I for their employment. I argued that if they passed as good or better examinations than the men they should have the places, that we had already tried the experiment (we then had a few women stenographers) that it had proved a success, and that we had heard of no scandal thus far. Judge Bishop then turned to me, as if to settle the whole matter by a question, and said, “ Judge Sherman, if I was holding the equity session, and after the Court adjourned I wanted to consult the stenographer and she was a female, would you think it safe and proper, after the other judge had gone, to send for her and meet her here alone”?

I replied, “As the officers are always in the room across the hall way, I do think it would be safe for you, as if anything happened, you could hallo”. The serious and sedate judges smiled, and Judge Bishop did not seem offended at my answer.

It was decided to give the women a fair chance in the competitive examinations.

## CHAPTER XIV.

---

### THE JUBILEE BANQUET, MARCH 17th, 1908.

---

The first suggestion of the banquet to Judge Sherman came from Henry F. Hurlburt and Boyd B. Jones in the following letter:

Boston, Dec. 14, 1907.

WILLIAM H. NILES, Esq., Lynn, Mass.

*Dear Mr. Niles:—*

In a very short time I presume you will be making arrangements for the Essex Bar dinner. It occurred to Mr. Jones and myself to make a suggestion to you which we think would be met with favor by all the members of the bar, and in addition would make the evening an eventful one.

Judge Sherman has been at the bar and upon the bench fifty years the early part of next year. The Middlesex Bar Association has heretofore honored the members of the bench who were taken from their bar, having given a dinner to Judge Hammond, and one this year in honor of Judge McIntyre of the Probate Court. It is a very appropriate thing to do, and as Judge Sherman started in Essex County and occupied a position of District Attorney there for many years, having been Attorney General and now the senior Justice of the Superior Court, it

seems to us as though the Bar Association would be doing itself an honor by having the next Bar dinner given in honor of Mr. Justice Sherman. If the dinner is given in his honor, you will have no difficulty in having a large number of the Judges present to do honor to the guests.

We trust that this suggestion will appeal to you, and we shall be pleased to hear from you.

Very sincerely yours,

HENRY F. HURLBURT.

---

### JUDGE SHERMAN.

---

The complimentary banquet to be given by the Essex Bar Association to Judge Edgar J. Sherman of the Superior Court this evening, in recognition of the fiftieth anniversary of his admission to the bar, will bring together a fine array of distinguished judges and lawyers who will delight to pay appropriate tribute to the guest of honor. The Massachusetts bench has been adorned by many eminent jurists, famous in many ways, but the career of few of them have been characterized by loftier ideals, or by sounder common sense, in the administration of justice than Judge Sherman has been wont to display during his long and devoted judicial service.

*Editorial in the Boston Herald, March 17, 1908.*

ORGANIZATION  
OF THE  
ESSEX BAR ASSOCIATION.

---

*President,*

WILLIAM HENRY NILES.

*Secretary,*

ALDEN PERLEY WHITE.

*Treasurer,*

FRANK VERNON WRIGHT.

*Executive Committee,*

CHARLES AUGUSTUS SAYWARD, NATHANIEL NELSON JONES,  
HARRY ROBINSON DOW, JOSEPH FRANCIS QUINN,  
JAMES HENRY SISK, CHARLES ALBERT RUSSELL,  
FRANCIS H. PEARL.

*Committee on Banquet,*

EDWARD BARTON GEORGE.

*Chorister,*

EDWARD MARK SULLIVAN.



## GUESTS.

HON. EDGAR J. SHERMAN,

Senior Justice of the Superior Court;

HON. MARCUS P. KNOWLTON, Chief Justice,

AND

HON. JAMES M. MORTON,

HON. HENRY K. BRALEY,

HON. JOHN W. HAMMOND,

HON. HENRY N. SHELDON,

HON. WILLIAM C. LORING,

HON. ARTHUR P. RUGG,

Associate Justices of the Supreme Judicial Court;

HON. WILLIAM L. PUTNAM,

Judge of the United States Circuit Court of Appeals;

HON. CLARENCE HALE,

Judge of the United States District Court of Maine;

HON. FREDERICK DODGE,

Judge of the United States District Court of Massachusetts;

HON. JOHN ADAMS AIKEN, Chief Justice,

AND

HON. ROBERT R. BISHOP,

HON. EDWARD P. PIERCE,

HON. FRANKLIN G. FESSEN-

HON. JABEZ FOX,

DEN,

HON. CHARLES A. DECOURCY,

HON. JAMES B. RICHARDSON,

HON. ROBERT O. HARRIS,

HON. FRANCIS A. GASKILL,

HON. LLOYD E. WHITE,

HON. JOHN H. HARDY,

HON. JOHN C. CROSBY,

HON. WILLIAM B. STEVENS,

HON. WILLIAM F. DANA,

HON. CHARLES U. BELL,

HON. JOHN F. BROWN,

HON. FREDERICK LAWTON,

HON. GEORGE A. SANDERSON,

HON. ROBERT F. RAYMOND,

Associate Justices of the Superior Court;

HON. DANA MALONE,  
Attorney General;

HON. JOHN D. LONG,  
Ex-Governor;

HON. JOHN L. BATES,  
Ex-Governor;

HON. ALBERT E. PILLSBURY,  
Ex-Attorney General;

HON. MELVIN O. ADAMS,  
Ex-United States District Attorney;

HON. BOYD B. JONES,  
Ex-United States District Attorney.

## ESSEX BAR DINNER

---

(There were some three hundred members of the bar in attendance at the banquet.)

President Niles, on arising to call the company to order, was greeted with prolonged applause and cheering. He spoke as follows:

*Gentlemen of the Essex Bar Association:—*

For the sixth time it is my privilege and great pleasure to greet you at the annual banquet to our Association, and in your behalf to extend to our distinguished guests the most sincere and hearty welcome of the Association, and to assure them, and each one of them, of our heartfelt appreciation of the honor they confer upon us by their presence.

In referring to the honor they do us, I do not forget that they come not so much to honor us as to honor our chief guest, and to join us in the celebration of the fiftieth anniversary of his admission to the bar.

Judge Sherman has been a valued member of our association for many years, and throughout all this time has been so actively and so earnestly interested in the work of the association that while we know that our guests come principally to honor him, they also by honoring him highly honor us.

My acquaintance with Judge Sherman reaches back nearly forty years, and during that time I have personally been greatly indebted to him for advice and assistance in my profession. I never knew a member of the bar who exercised a more friendly, watchful care of his brethren, or who was more free, generous, or painstaking in his efforts to help them on and to aid them in finding the right way. It would therefore give me much pleasure to speak of him as District Attorney, as Register in Bankruptcy, as Attorney General, and as Judge of the Superior Court, in all of which offices I have known him well, and have observed the honor which he has reflected upon every one of them, but another member of our bar will speak in this behalf for our Association, and I leave that pleasure to him, without trenching upon the part which he will so fitly and gracefully perform.

We have many eminent guests with us and I know how much it would gratify you, if the time permitted, to hear from every one of them, but our time is so limited that we shall not be able to afford ourselves that pleasure. We hope that at some time not far distant we may have with us again the guests who do not speak tonight and that we may then be permitted to listen to them.

As every moment I detain you diminishes to that extent the time which we have allotted to those who are to address you, and whom I know you are so anxious to hear, you will commend me if I at once give way to others, and you would not be willing to pardon me if I failed to do so.

Gentlemen, up to the last moment I have been watching that door expecting to see our brother Moody enter it. (Applause.) I have reason to suppose that he has left New York and is on his way here. A telegram has been received here addressed to him, but he has not arrived. A letter was received by me, however, from him, saying

that he thought it impossible for him to reach here and I will ask our Secretary to read that letter. Several other letters have been received, but of those that have been received I will ask the Secretary to read those that I have handed to him.

SECRETARY WHITE: Mr. President, these are the words of Mr. Justice William H. Moody of the United States Supreme Court:

SUPREME COURT OF THE UNITED STATES.

Washington, D. C., March 15, 1908.

*My Dear Mr. Niles:*

"I had hoped up to yesterday afternoon that I might be able to be with you on Tuesday night, but it cannot be. I think that you and my brethren of the Bar will need no other assurance that I cannot come than lies in the fact that I do not come, so I will waste no time on that.

It distresses me very much to be deprived in a share of this manifestation of respect and affection for our brother and friend Sherman, but I am comforted by the thought that my absence at the command of duty will to him, who burning with fever, in violation of the orders of the surgeon, led the companies who carried the colors in the charge at Port Hudson, need no explanation or excuse. (Applause.)

I came to know well Colonel Sherman, as we then called him, soon after my admission to the Bar, and formed a friendship with him which I hope and believe has constantly strengthened to this day. He was then District Attorney, with an unerring instinct for the jugu-

lar vein of the proved offender (laughter), yet vigilant to protect innocence and with a humane allowance for the frailties of mankind.

On the civil side of the court he met on equal footing, those leaders of the Bar who have long since ended their strivings. As a sagacious adviser and as an effective prosecutor of crime, he equalled the best of our attorneys general. Mr. Justice Holmes, who here sits next me on the Bench, never tires of describing the argument in *Commonwealth v. Nicholson*, which first arrested and then turned the tide of sympathy which was running in favor of a deliberate murder, and compelled a just verdict of condemnation.

I well remember predicting when he was appointed to the Bench that he would exceed the expectations of his best friends. I now triumphantly call upon our brethren to bear witness to the truth of my prophecy. As a Judge he has not been content to preside over the disputes of counsel, to deliver a charge free from academic error and leave the jury to bear their burden unaided. (Laughter and applause, in the midst of which the Secretary paused for a moment in his reading).

JUDGE SHERMAN: Go on. (Laughter.)

THE SECRETARY: (Reading).

"He has felt responsibility for the justice of the verdicts in his court (renewed laughter), and within the limits prescribed by the law (applause), but up to them (great laughter), he has aided the juries in ascertaining and declaring the truth. He has realized that trial by jury would be a failure without the help of a strong and fearless presiding justice. (Applause).

We are not likely to overestimate the value to the community of a life like that of Judge Sherman. Let us do



him all honor, wish him life and health and happiness, and assure him that he has troops of friends. Tell him that I am among the chief of those friends and I offer to him and to my dear brethren of the Essex Bar my loving remembrances.

Sincerely,

WILLIAM HENRY MOODY."

(Great applause.)

MR. WHITE. I read the letter of Hon. Herbert Parker, Ex-Attorney-General.

Boston, Massachusetts.

March 17, 1908.

WILLIAM H. NILES, Esq.,

President Essex Bar Association, Lynn, Mass.

*My dear Mr. President:—*

The united Bar of Massachusetts joins in a common sentiment of affectionate respect for the honored guest of the Essex Bar. Present and absent, we are all together in this. No Judge has ever been more loved by lawyer and laymen alike, for he has known the hearts of the people, their strength and their weakness, sustaining the one, and uplifting the other. He has been compassionate with the unfortunate and charitable in his judgment of those who have sinned. He has saved a multitude from despair and set them again in paths of virtue. He has humbled and overwhelmed arrogant crime by austere and just punishment. No judge of our time has exhibited

more instant appreciation of the true merit of the issue before him. He has been always a *nisi-prius* judge of surpassing sagacity.

He has made the law a system of justice and has applied it to the exact maintenance of human rights. Kindliness, sympathy, generosity and courage have marked his every relation in life. Though he has been deservedly distinguished, and has held, rightfully, positions of public honor and authority, and has earned their rewards through high achievement, yet I venture to believe to-night his happiness is in the affectionate regard and love of all who know him. We envy the Essex Bar in their claim to his companionship, but we claim equal right with them in his public service and in the affection to which he has given us admittance.

I am, with heartiest sympathy in your celebration,

Faithfully and obediently yours,

HERBERT PARKER.

PRESIDENT NILES: Those of you who were with us at our banquet last year and who spent a social hour with the Chief Justice of our Supreme Judicial Court and listened, as I am sure we all did, with interest and delight to the admirable address he then delivered, realize how fortunate we are in having him with us again. He needs no introduction to this audience, every man of whom knows him and regards him not only with most profound respect but with sincere affection. I now present to you Chief Justice Marcus P. Knowlton.

## REMARKS OF HON. MARCUS P. KNOWLTON,

Chief Justice of the Massachusetts Supreme Judicial  
Court.

*Mr. President, and Gentlemen of the Essex Bar:*

One year ago I was invited to join you in expressing appreciation of a favorite son of Essex County, a Justice of the Supreme Court of the United States. Tonight I come again on your invitation to a banquet given in honor of another favorite son of Essex County, the Senior Associate Justice of the Superior Court of Massachusetts. I feel personal pride and pleasure in these annual meetings, for these favorite sons are my brothers, children of the same foster mother that received my ancestors in old Ipswich more than two hundred and seventy years ago. (Applause.)

My first definite knowledge of your honored guest was imparted long ago by one of the ablest judges of the Superior Court, who told me that Mr. Sherman was the best District Attorney in the Commonwealth. (Applause.) Not long afterward, at my first term of court in Salem, he tried cases before me, the most memorable of which was an important suit for libel brought against a Roman Catholic priest. That exceedingly astute and able lawyer, Stephen B. Ives, was the leading counsel for the other party, and I quickly discovered that these gentlemen had encountered each other previously as belligerents. Almost from the beginning their zeal and earnestness and rivalry were such as to call for regulation by the Court. (Laughter.) I am glad to say that after one or two gentle reminders from the presiding Judge, and another reminder that was not altogether gentle, the remainder of the rather long trial was conducted most decorously by both of them.

Soon after this our friend was elected to the office of Attorney General, and in that important place he was the official adviser of Governor Benjamin F. Butler and of two of his successors, Governor Robinson and Governor Ames. Of his experience in furnishing law for General Butler I cannot speak from knowledge. (Laughter and applause.) We fairly may assume that it was sometimes enlivening.

In September, 1887, he was appointed a Justice of the Superior Court. He took the place made vacant by my promotion, and in this succession I have always felt great interest and satisfaction. Different causes have combined to give Judge Sherman special fitness for the performance of judicial duties. By natural endowment he has a strong sense of justice and a keen perception of men's motives. He is quick to perceive the underlying purpose of an actor, even when the act itself seems colorless. In his boyhood and youth on the hills of Vermont he breathed an exhilarating atmosphere, and from the scenes of beauty that distinguish his native state he brought to Massachusetts a vigorous and breezy personality. His experience was broadened by service as an officer in the Civil War, so that when he was settled in the practice of the law his equipment was not limited to lessons taught in schools, but included a variety of weapons forged in armories remote from one another.

As the Senior of the twenty-five Justices who sit on the Superior Bench, he has exhibited qualities that have greatly strengthened the confidence of the people in our great trial court. While by no means commonplace, his judicial work has been fairly representative of that of his associates. His chief aim has been to regulate the machinery of the Court in such a way as to do justice in individual cases. In interpreting the law he has found his strength

where enduring strength lies—in the discovery and application of principles, rather than in the search for cases showing similar facts. (Applause). When compelled to make a legal adjudication in a new field he has asked himself what the law ought to be upon the undecided question, and in that way has commonly reached correct conclusions. (Applause).

We may well congratulate the lawyers and the people of the Commonwealth upon the men and the methods so honorably represented by your distinguished guest. When we consider him and others like him, and reflect upon the administration of justice in those of our courts that bring judges face to face with suitors in the trial of cases, one would almost think that the Governors of the Commonwealth had taken counsel of Lord Bacon, and had followed his suggestions implicitly. Hear what he said to George Villiers, afterwards Duke of Buckingham, the favorite minister of James I, in advising him as to the duties of the sovereign in regard to law and justice. These are his words.

“Let no arbitrary power be intruded. The people of this kingdom love the laws thereof, and nothing will oblige them more than a confidence of the free enjoying of them. What the nobles on an occasion once said in parliament, *Nolumus leges Angliae mutare*, is imprinted in the hearts of all the people. But because the life of laws lies in the due execution and administration of them, let your eye be in the first place in the choice of good judges. These properties have they need to be furnished with:—to be learned in their profession, patient in hearing, prudent in governing, powerful in their elocution to persuade and satisfy both the parties and hearers, just in their judgment; and to sum up all, they must have these three attributes: They must be men of courage, fearing God, and hating covetousness. An ignorant man cannot, a coward

dares not be a good judge. (Applause.) By no means be you persuaded to interpose yourself either by word or letter in any cause depending in any court of justice. If any sue to be made a judge, for my own part I should distrust him; but if, either directly or indirectly he should bargain for a place of judicature, let him be rejected with shame. —*Vendere jure potest, emerat ille prius*".

Courts organized and conducted on these principles are an honor to any state or nation. Life, liberty and property are safe under such guardians, so selected. (Great applause.)

PRESIDENT NILES: We have with us, notwithstanding the absense of Judge Moody, three Judges of the Federal Courts. Two of them have come from Portland to be our guests. Judge Putnam, who comes from Portland, has heretofore, though we have repeatedly desired his attendance with us, been unable to come, but this year at our request he is here to join us in celebrating this anniversary. I appreciate very, very much, as I know you will appreciate, gentlemen, his presence and the effort that he has made to be with us. The members of our Bar are not often in the Federal Court, but certainly every one of our brethren who has been before him honors him most highly as the rest of us do from our knowledge gained of him otherwise. Gentlemen, I take very great pleasure in presenting to you Judge Putnam of the United States Circuit Court of Appeals. (Applause.)



REMARKS OF HON. WILLIAM L. PUTNAM,  
Circuit Judge.

*Mr. President and Gentlemen of the Essex Bar:—*

Sometime since a friend told me that on the invitation of that distinguished Essex lawyer, Hon. Caleb Cushing, he attended to dine with him at seven o'clock at his residence at Newburyport. He was there at seven o'clock. At nine o'clock Mr. Cushing asked my friend if he had dined. He replied "No, you asked me to dine with you". "So I did, and I will see what I can do". He took a candle, he descended into the cellar—*facilis descensus*—is not that what they said at college?—brought up some corned beef, some bread and butter and a bottle of port wine; and said my friend: "That was the most delightful dinner I ever had". What would have been his sentiment had he been in my place, dining with all you gentlemen from Essex, with this bountiful dinner and with the presence of the Chief Justice, and the other members of the Supreme Judicial Court of Massachusetts and of the Superior Court, including my friend for many years, Judge Sherman?

The County of Essex is a tremendous equation. Probably there is no part of the world's surface where so large a proportion of the people live in absolute comfort, and in true happiness, as in that county. Seven cities claimed Homer; Essex County claims an equal number. Ask one gentleman what is the leading place in Essex, and he will speak of Lawrence, whose early history gave us studies in sociology, and whose later days find her the residence of our friend Charles Upham Bell. Another one will speak of Gloucester; another of dear old Salem, with my late friend Northend; the home of Mr. Perry, a quiet gentlemen who woke up one morning and found himself

famous wherever the English language was used in court; the scene of that famous incident, when Charles Thompson asked Judge Lord for leave to wake up a jurymen. (Laughter.) Here one thinks of Abbott, the prince of all clerks, and associate of all the judges, and Herrick, whom we gave you from Maine, unrivalled as a Sheriff. (Applause.) Then Haverhill we cannot forget. Ask any man in Washington about Haverhill, and he will ask: "Oh, is not that the city Mr. Justice Moody came from"? (Applause.)

I have known the Bar of Essex thoroughly, and I speak of it without qualification with great admiration. Notwithstanding what my friend said here, the Bar of Essex has flowed over into Suffolk County as did the Saxons into England. It comes into the Federal courts, and we welcome it. There is a great deal in the old Latin maxim, "*Lucus a non lucendo*". You can illustrate so well a principle by stating the reverse of it. Henry W. Paine, of whom Judge Morton was not long ago speaking, was once congratulated on having a great fame in Maine and a great fame in Massachusetts. In reply, Mr. Paine told this story: There was a man at Newburyport—still in Essex County—in the days when the salmon in the Merrimack River were famous, and when stage coaches had not disappeared, who took a salmon, carefully boxed, and started for Boston to present it to the Governor. He stopped on his way at a tavern, and when he opened his box in the Capitol here his salmon had turned to a codfish. (Laughter.) He went back with his codfish, stopped again at the tavern, and told his story, then went on to his home, told his wife the happenings, opened the box, and lo, the salmon reappeared. He threw the salmon out of the window saying: "You durned old fish, you are salmon in Newburyport, you are only codfish in Boston".

(Laughter). That illustrated Mr. Paine's idea of what he was in Boston. But, gentlemen of the Essex Bar, so far as we find you in the Federal Courts, you are salmon everywhere. (Laughter and applause).

Here Judge Putnam spoke of certain criticisms recently made on the Federal Courts and defended their use of the power of injunction in certain cases. In conclusion, he said:

"But, gentlemen, I have gone away from my topic. I came here at the invitation of Mr. Niles to meet you, to revive my memories of this splendid Bar which I knew so much better when I was younger than now, and to join in paying a tribute to Judge Sherman, whom I have known many years, with a deal of heartfelt regard and sympathy". (Applause.)

PRESIDENT NILES: Gentlemen, three year ago, when Judge Aiken was appointed Chief Justice of the Superior Court, the first public meeting that he attended was a banquet of our Essex Bar Association, tendered to him as our principal guest, and the members of our Bar then, in no unmeasured terms, predicted that he would give splendid success in the discharge of the duties of that office. How mildly, how gracefully and how efficiently he has discharged those duties is now an established fact, and it needs no support from the members of the Essex Bar Association. Yet I know it will give you very great satisfaction to hear from him to-night and to have the pleasure of attesting our appreciation of the faithful, the impartial, and the able manner in which he has discharged the delicate and important duties of Chief Justice of that court. Gentlemen, I now present to you Chief Justice Aiken of the Superior Court. (Applause.)

REMARKS OF HON. JOHN A. AIKEN,  
Chief Justice of the Superior Court.

*Mr. President*, I assure you that I am most happy to renew the acquaintance of three years ago. Events, sir, in your distinguished service as president of this association have been crowding one another with a historic rapidity that is amazing. A year ago in this hall you commemorated the elevation of one of your number to the highest court on earth. (Applause.) And since that time I am told that it is going to be impossible to get any Essex County man to accept judicial office upon any court other than the Supreme Court of the United States. (Laughter.) It is accordingly well that you, on an occasion like this, and as soon as may be after the event of a year ago, commemorate a Justice of the Commonwealth, that we may see and realize how distinguished service can be rendered at home with benefit to the Commonwealth. (Applause.) Judge Sherman is the first born of the Superior Court, as it is now constituted, and we are proud of him. His progress through life has been preceded by no Dorian moods and soft recorders, nor by Lydian zephyrs, there have been gales, but the gales have been favoring gales. To start with, his natal day as a lawyer was a historic day (applause), and an intimate acquaintance whom I will indicate by a wave of the left hand and leave you to guess, says that an explanation of a great many mysterious things about Judge Sherman can be found when you recur to this natal day. (Laughter.) Fortunate in this natal day, fortunate in his place of birth—for you have in mind, as the Chief Justice has reminded you, that he came from Vermont, an isolated, peculiar, primitive community (laughter), the like of which is not to be found among the New England States or any of the other states of the

Union—founded upon limestone, the material gets into their bones and makes them strong; living upon mountains, they have the spirit of the mountaineer, independent and dominating. (Laughter). The two achievements of the War with Spain that are worth recording were done by Vermonters, boys with Judge Sherman. A brigade of raw Vermont boys that never saw the clash of arms, under Stannard turns the tide of battle at Gettysburg. Ethan Allen with “the great Jehovah and the Continental Congress” upon his lips and eighty of these Vermont youngsters at his back, takes the proudest fortress on the continent. I never yet saw a Vermont boy—and I live close to the line—that did not come down from these mountains with the spirit of Ethan Allen in his breast, and the determination to take a citadel of some sort or other. (Applause.)

Now, there, we have got a natal day—to sum up as far as we have gone—and a good starting place. He comes to Essex. It was not very different from Vermont, except that the country was flat. (Laughter.) “The shot heard round the world”, so Colonel Johnson tells me, came near being fired at the North Bridge in Salem, and would have been had Pitcairn instead of Leslie been in command. Your lads of Essex, Mr. President, in those days, were circumnavigating the globe and bringing back the treasures of the East.

Now, that is the next chapter in Judge Sherman’s history. Judge Richardson says—and he is the most practical sociologist on the Superior Court (Laughter)—that it is environment and not pedigree that makes the man. (Laughter.)

There was in Essex County, and there is today—for I have been there recently—more experience lying round

to be gathered in than in any other equal area on this side of the Atlantic; and Judge Sherman fills both baskets.

There is another element or incident of life in Essex, now that I have that county in mind, but I do not want to pass by—that it is the home of that “Broth of a Boy” and a “Honey Boy” who leads your orchestra. (Applause.) And it makes me want to go there myself if I can find out where he lives.

Now, I pass on to the third chapter in this memorable story. Judge Sherman becomes a Justice of the Superior Court. And with twenty years of experience we have filled him out and rounded him out and given him symmetry and—confidence in himself. (Great applause.)

Now, gentlemen—

JUDGE SHERMAN: Remember, I have the close on you. (Laughter.)

CHIEF JUSTICE AIKEN: You always have the last word. (Laughter.)

When I come to write his history—and I mean ante-mortem, not post-mortem—I am going to mention various things. But I know we are running on schedule time and I see the President is saying to himself that we are behind time already. I am going to speak of that sublime, intuitive sense that always tells Judge Sherman what ought to be, and that determination that he always has to bring to pass as far as in his power what ought to be. And I come to my final chapter in that book, and it will have but two sentences: “He loved his fellow men; they all loved him”. (Great applause.)

PRESIDENT NILES: Gentlemen, we have with us tonight for the first time at one of our banquets a former



Secretary of the Navy and Governor of the Commonwealth, who has not only honored himself but has in every place, as citizen, as Secretary, as Chief Magistrate of the Commonwealth, honored the Commonwealth. I present to you the Hon. John D. Long.

SPEECH OF HON. JOHN D. LONG.

Our presiding officer was very wise and shrewd in suggesting to the speakers of the evening, as he did to me, very delicately but very decidedly, that they should limit their speeches to five minutes each. Brevity is the soul of wit, and the lack of it is the rock on which most of us after-dinner speakers split. Certainly to-night brevity is desirable, for, while one might speak till morning without exhausting the praises of our beloved and honored guest, it is certainly more fitting that many, aye each one here, should add a leaf to the crown that we are weaving round his head.

Fifty years of professional life. Fifty years without a stain or a dishonor! Fifty years with the respect for him of all his fellow-members of the Bar and confidence in him of all his fellow-members of the old county and the Commonwealth accumulating like a rolling snow-ball! It is not, of course, for me, especially after what has been said, to rehearse the record of his career as citizen, lawyer, soldier, District Attorney, Attorney General, and now and for many years a Judge. That record is so bright and clear that it stands out in letters of light that need no rehearsing. Rather, with my sentimental bent, my heart turns, as your hearts turn, to the true friendship of now these many years, the kindly face and hand that have always given me warm greeting, the pith of

common sense, the candor of sincerity, the freedom from sham or affectation, the downright, straightforward honesty that had won and kept my respect, yes, my affection, and yours.

There are many types of what we call the New England character. Of one of the best of these is Judge Sherman. Born among the Vermont hills, blown through with their breezes, flavored with the farm, he yet easily adjusted himself to the environment of our Massachusetts complexity of industrial, commercial, political, professional and social life, and yet has never lost the simplicity and quality of the rural beginnings. Who in all our Commonwealth is more noted than he for the quaint, apt, homely turn of speech, the electric spark of Yankee mother-wit that has so often embraced in a single word or phrase the whole gist of an argument, the rivet of a demonstration? (Applause.)

Fifty years of honest, loyal service! And he has his reward. He has it here to-night, not in treasures which moth or rust doth corrupt and thieves break through and steal—it would go mighty hard with the thieves if the Judge should get after them—but the treasures of the consciousness of a life that is the full corn in the ear, the consciousness of being loved and honored by all who know him. Reward! A leading merchant showed me the other day a check for \$100,000 payable to his order, which he said was the profit on a single venture. Somehow it touched not my wonder or my envy, but a sort of pitying sympathy. He already had enough and more than enough. He had neither wife nor child. What could he do with it? What could it buy or bring to him that would add one cubit to the stature of his happiness or his comfort or even his self-respect? Except to give it away he might as well toss it into the fire. What comparison,

Judge Sherman, could it bear, or, had it been ten times as large, could it have borne to the rich harvest which crowns your years and your labors—you who have everything that should accompany old age, as “Honor, love, obedience, troops of friends”.

Yes, Judge, troops of friends, the best gift this world can give. And I, as one of them with all my heart join in the tribute which we pay to your good life, your hard head, your true heart. (Great applause.)

*Sero in coelum redeas!*

PRESIDENT NILES: When our present Attorney General entered upon the discharge of his duties, he was a guest of this association and addressed us. He has not been with us since until to-night. He is a successor of our Brother Sherman in the office of Attorney General, an office which he has certainly well filled and honored. Gentlemen, I introduce to you Dana Malone, our Attorney General.

(Applause.)

REMARKS OF HON. DANA MALONE,  
Attorney General.

*Mr. President and Gentlemen of the Essex Bar:—*

This is the first notice that I have had that I was to be called upon to speak this evening. It is always a difficult thing to speak upon an occasion like this, even if one has had some time for preparation. But I am always glad to speak when I can for the Commonwealth, the great, old Commonwealth of Massachusetts. The office of Attorney General has almost always been filled by great lawyers;

it was never more efficiently filled than by the gentleman, the good Judge whom you honor here to-night. (Applause).

I come from Franklin County, one of the smaller counties of the old Commonwealth, but the loyalty of the county to the courts is as great there as it is in your more populous counties in the east. It is always a pleasure to bear witness to the fidelity and the character of the Bench of Massachusetts. It gives me the greatest pleasure, so far as I can represent the Commonwealth, to extend the greetings to the members of the Essex Bar and to Judge Sherman and to say, as I do now, that he has deserved well of this grand old Commonwealth. I thank you. (Applause.)

PRESIDENT NILES: The senior member of our Bar is present and I had hoped that we might have time to present him to you, but as we must dissolve this meeting at about eleven o'clock, our time is so short that I come directly to what I promised to in the beginning, an address by one of our own members, who has been selected as the neighbor, the professional friend of our Brother Sherman, coming from his home city. We have thought it fit that he should present to our brother, in behalf of our Association, our congratulations and our most affectionate regard. Therefore, without delaying you another moment, I take great pleasure in presenting to you our brother John P. Sweeney of Lawrence. (Great applause.)

COLONEL JOHN P. SWEENEY delivered the following tribute to JUDGE EDGAR J. SHERMAN.

*Mr. President and Gentlemen of the Bar:*

To have arrived at a point in life which marks a period of fifty years of service in the administration of the law is an event of some significance even when the period embraces nothing beyond the humdrum and routine experience of the ordinary practitioner. But when that span of life has been spent largely in the public view, in faithful and conscientious service to the public it is an achievement that falls to the lot of few men, and that is worthy of at least a passing notice. And when the close of that period finds the actor still vigorous and able, with physical and mental powers unimpaired, unsoured by the world and sustained by a cheerful and sane philosophy, still doing the day's work and pulling more than his own weight, the occasion is one for rejoicings and congratulations. A meritorious record of service in the civil war, for fifteen years the district attorney of Essex, for nine years a register in bankruptcy, for five years attorney general of the Commonwealth, for twenty-one years a justice of the Superior Court, of which he is now the dean in point of service, these are the incidents in the public life of our honored brother whose jubilee as a lawyer we celebrate to-night.

It was a happy thought, a fitting suggestion that the annual dinner of our association should recognize this event in the life of our friend, for Judge Sherman is peculiarly a representative of the bar of Essex County, a link in the chain of tradition that unites the present with the glorious past. It seems a far cry to 1858, when many of those who may be said to have achieved some local distinction at our bar, some of whom have passed away,

were not yet born. It carries us back to that golden age, to the day of the two Lords, of Perry, of Huntington, of Ives and of Abbott, names whose memories we honor, in whose distinguished company our friend began his practice and with whom he was wont to contend.

And yet it all seems to be an illusion, for when we observe him at his work, and see how easily he does it, when we note the frolic that enlivens his serious duties, when he startles us with his quaint comments on men and things, when we catch the gleam of that native shrewdness that sizes up all situations and that penetrates all disguises, he seems to us a child of the present age and we are forced to realize that he is fully up to date, that he is still the friskiest colt in the judicial pasture. And we know that if he were coming down from the judge's stand and enter himself in the running, he would be entitled to no handicap for age and that it would be sound judgment to play him for the place. His conduct seems to belie his years, and he must not blame us if we judge him by his actions. We decline, therefore, to regard our friend as an old man. In this instance, we refuse to be bound by the record or, if necessary, we will move to amend it. To us he is not a grave and reverend senior to be venerated afar off, but a lively and cheerful companion whose flow of spirits the passing years cannot check and who sets us the example of a true philosopher. To paraphrase Shakespeare a little: for us "Age cannot wither nor custom stale his infinite variety".

This is neither the time nor the place for an estimate of the career of our friend, much of which we hope and believe still lies before him. I shall not therefore afford him the pleasure of listening to his own obituary by an enumeration of all the qualities of mind and of character that have contributed to his success upon the bench, but



some of them are so conspicuous that an occasion like this would be incomplete without a reference to them. Nature endowed him with a large share of practical wisdom and good sense. He was fortunate also in possessing the gift of a kindly and social instinct which led him to mingle with his fellow men, to become acquainted with them and with the feelings and motives which actuate them. His long service as district attorney and an extensive civil practice afforded him ample opportunity for the study of human character, so that when he came to the bench he brought with him a native aptitude supplemented and enlarged by his experience as a trial lawyer. If we were asked to name the leading mental trait of our friend, I think we would all agree that it is his intimate knowledge of the world in its practical aspect. His life has not been spent in the closet, but it has been lived in the open, in close contact with human nature. He knows men and things. There is no other quality so valuable for a *nisi prius* judge. Without it, no matter how well read he may be, there is something lacking which largely neutralizes his work and renders it conspicuously defective. My friend would never forgive me were I to speak the language of indiscriminating eulogy. There are those who surpass him in extent of reading, though there are few, perhaps, who have a readier working knowledge of Massachusetts cases, but I think I express the sentiment of the bar when I say that our friend has been and is today one of the most useful judges on the bench, with a large capacity for all round work, and that he has a conspicuous talent for wise and practical administration of the law. Far be it from me to deprecate that learning in the law which comes from close and patient application to its study. I have a genuine respect for legal erudition, all the greater because I have never been able to acquire it,

but I have also an admiration for those who, without any very close or extensive reading seem to have an innate perception of legal principles, a perception which seems to be grounded on that common sense of which the law is said to be the refinement. Some irreverent individual has said that the law is something which everybody is presumed to know, which nobody does know and which the judges of the Supreme Court are paid to guess at. Our Supreme Court judges, of course, have no occasion to guess at the law, but if, by guessing, we mean the gift of intuition, then the remark, if applied to the justices of the Superior Court, is not irreverent. For to them there come sudden occasions of doubt and perplexity when new questions of law or practice have to be passed upon without the opportunity for reading or for consultation. In such emergencies nobody is quicker or keener than our friend, Judge Sherman. If he doesn't know what the law has been decided to be, he knows what it ought to be and in unprecedented situations his intuitions are pretty sure to be correct.

He is one of the men whom we seek when difficulties perplex us, and whether we encounter him on the bench or off we usually get the shrewd suggestion that makes the crooked path plain and straight. He is a resourceful man and his legal weapons are always where he can lay his hands on them. To young practitioners he stands *in loco parentis*, ever ready with the helpful word and always eager to render first aid to the injured. Unlike one of his Vermont maples he can be tapped at any season of the year and nobody ever draws on him without getting a supply of legal sap. Even his horse-shed opinions are valuable.

It has fallen to his lot while on the bench, to be confronted with many large and important cases presenting

situations involving new questions, and his native sagacity and practical wisdom have enabled him to solve them with credit to himself and satisfaction to the public. For Judge Sherman is a typical New Englander in whom are wrapped up the qualities of good sense, homely wisdom and shrewd perception that go to make up the race. He has the solid basis on which to ground a successful career in almost any field of human activity. These are the qualities which, joined to a keen discernment of men and affairs have made him a strong *nisi prius* judge, and which have won for him the respect and esteem of the bar.

One of his distinguishing characteristics is his tactfulness. He has the rare faculty of dealing with delicate situations with diplomatic skill. Wise and politic, he is the great peacemaker, the great harmonizer. Amid the strife of contending counsel, he never loses sight of the ground whereon compromise is possible, and not the least valuable of his services are those by which he leads parties to a settlement of their disputes.

When we are before him we know that long before the trial is over he has a correct apprehension of the truth of the controversy, in spite of its conflicting claims. His alert intelligence quickly analyzes the motives of parties and witnesses, sees through the unfounded pretensions of both sides and discerns the justice of the cause to which our zeal as counsel renders us blind. And sometimes he lets us know that he sees. Occasionally he puts leading questions to counsel. For, although born in Vermont, our friend's motto is emblazoned on the coat-of-arms of the State of Maine. Things are not left to drift in his court. He has the notion that a judge has some other function than merely to keep order in the court. As a consequence, there is something doing most of the time and trials proceed with some dispatch. While he recognizes the prin-

ciples of practice and the rules that govern evidence and gives fair scope to legitimate strategy, nothing that he thinks savors of chicanery or is at war with substantial justice ever gets by the Court. And before him the young and inexperienced practitioner, with justice on his side, has a fair chance to use his sling.

The thing that interests us most in the trial of a case is the judge's charge. While the walls are still echoing our eloquence and the jurors are struggling out from under the avalanche of words in which we have buried them and striving to throw off the hypnotic spell that we have cast upon them, the judge rises to make his charge, and we sit up and begin to take notice. A distinguished member of the bar gave me, the other day, an imitation of what he calls the phonographic charge in personal injury cases, consisting of a string of severely correct legal platitudes, interspersed with quotations from decisions in the plain and simple language of the Supreme Judicial Court that is so readily comprehensible by the average jurymen. Now, nobody ever heard Judge Sherman deliver a phonographic charge. Once in a while he gives us *Com. vs. Toohey*, but as a rule his charges are expressed in a language that is peculiarly his own. If a hypercritical listener might deem them lacking in literary merit they have at least the undeniable merit of having some relation to the facts in the case. You might think that sometimes they are too closely related—next of kin, as it were, depending upon which side of the case you happen to be on. They are spoken in the vernacular and usually contain some quaint and homely illustrations that appeal to the common sense and judgment of practical men. They are not lacking in local color. Sometimes it may seem that the color is laid on a little too thick, but the judge does not belong to the severely classical school of word-paint-

ers, but rather to the modern impressionistic school, in which the paint is put on with free and easy strokes of the brush. And they usually make an impression, on one side or the other. I have heard charges that satisfied neither side—but never from Judge Sherman. But, after all, it is only a question of perspective. When we are too near the picture we see only the brush marks. We cannot see the forest for the trees. But when the contentions of the hour are past and we are able to look back upon the event, free from zeal or bias, when we regard them in the tout ensemble, they appear to have been, after all, what justice required.

Nevertheless, it is cruel sometimes the way in which he demolishes the structures we have so carefully built in argument, or punctures the bladders on which we have fondly hoped to swim with a favoring tide. It makes us gasp, too, to see him get around the end and run off with the ball. But it is done with an apparent guilelessness that compels our admiration.

Among the traits that we admire in our friend is his courage, the courage that makes him ready to assume responsibility and to act when action is required. In a trying situation, in a time of misdirected popular sentiment, when public clamor is hostile to the even course of justice, we know him to be a man ready to do his duty. No influence is strong enough to swerve him from the obligations of his oath of office. Beneath his genial and kindly surface there lurks something of the Puritan blood that makes for law and order.

These are some of the leading traits that are manifested in his long and useful public career. They are illustrated by the incidents that make up the record of a life well spent and that have made him a notable figure in the Commonwealth. In the years that have passed he has left

the impress on his time of a strong, rugged and forceful personality. He stands forth in his generation with a positive individuality that has made him a leader among men. We cheerfully accord him the station that has come to him, not by accident or good fortune, but by manful effort amid difficulties that would have daunted a weaker man. Looking back on his career, we know that the past, at least, is secure, and in that past we see the harbinger of what the future will be. We congratulate him on this auspicious day and bid him go forward to further achievements with the assurance that Essex County is proud to number him as one of her sons.

But after all is said, the qualities that endear a man to his fellows are the social qualities. We may admire another for his abilities and respect him for his achievements, but we cherish him for those traits that appeal to our yearnings for friendship and companionship. Those qualities that make a man a good neighbor, a genial companion, a cheerful associate, a sympathetic friend, these are the things that endure, and without them any distinction, however great, any station however exalted, are barren and cold. And these qualities our friend possesses in a superlative degree. Genuinely democratic in his nature, simple in his tastes, charitable in his judgments of others, loyal to his friends, cheery and kind, human in his failings as well as in his virtues, he has won not merely our esteem as a judge, but our affection as a man. We rejoice that, on the whole, fortune has dealt with him so kindly, and we wish for him

"An old age, serene and bright,  
And lovely as a Lapland night".  
"And that which should accompany old age,  
As honor, love, obedience and troops of friends".



PRESIDENT NILES: Gentlemen, after all that has been said complimentary to our distinguished brother, there seems to be absolutely nothing left for me to add, and if you will permit me simply to express my concurrence in all that has been said I will leave it there and not attempt longer to repress the impatience that I know every one of you feels to hear from our guest of honor. I, therefore, without further delay, present to you the Hon. Edgar J. Sherman, the Senior Justice of our Superior Court. (Great applause; the entire company rose and joined in singing "For He's a Jolly Good Fellow".)

#### REMARKS OF JUDGE SHERMAN.

*Mr. President, guests of this occasion, and brethren of the Essex Bar:*

A countryman was indicted for an offense. The trial proceeded. He did not take any part in it, by cross-examining the witnesses, or arguing the case, nor was he asked to. The district attorney argued, the judge charged the jury and the defendant was convicted. The clerk then asked him if he had anything to say about his sentence. He arose and said, "If I had been asked earlier in the proceedings, I should have been glad to have said something; but after hearing those lying witnesses, and hearing that man who claims to represent the people (the district attorney) and after listening to that old bald-headed cuss in the box, who spoke against me, the subject in hand seems to be disposed of. But if there is any other subject which you would like to have me discuss, I shall be willing to speak".

I seem to be in a similar position. The old bald-headed fellow in the box fits Chief Justice Aiken. The subject in

hand seems to have been disposed of by the preceding speakers.

Yes, gentlemen, I have been at the bar fifty years! I was admitted to the bar before Chief Justice Mellen in the old Court of Common Pleas, March 17, 1858; That was more than a year before the Superior Court was established. I cannot make it seem so long as the record shows it to be.

When I arose to speak, I thought I had something to say in my head—not on paper—but your kind reception has quite overcome me.

Perhaps I can say something concerning the difference in practice and in trials fifty years ago and now. Before I was admitted to the bar, I attended a session of the Supreme Judicial Court at Salem. An aged judge was presiding, and Benjamin F. Butler and Otis P. Lord were much in evidence. Mr. Lord had made a motion to require the client of Mr. Butler to furnish an indorser on the writ. Such a motion as that would ordinarily be disposed of now in twenty minutes. The hearing lasted all the forenoon, and the biographies of Mr. Lord and Mr. Butler were carefully discussed and considered in an unfavorable light. It was a personal quarrel between those two gentlemen; each saying all the unfavorable things he could of the other.

The practice in the Courts then was very different from what it is now, in Essex, Middlesex and Suffolk. If a witness in court came out with any character left, he considered himself fortunate. Witnesses were abused and brow-beaten, counsel were quarrelling with each other, and occasionally were in an altercation with the judge. I wonder that justice could be administered under such circumstances.

But, gentlemen, that practice has all passed away. We

have no such scenes in court today. The bar is to be congratulated on this change, because they have had very much to do in bringing it about. Such men as Robert M. Morse, Lewis S. Dabney, Ex-Governor Long, Samuel J. Elder and the gentlemen I see before me have been influential in this particular. In fact, those attorneys conduct themselves toward parties, witnesses, each other, and toward the Court, in about the same way as they would toward visitors in their own parlors. In this way we believe that justice is much better administered now than formerly.

The gentlemen who have spoken have told you what I have been doing since I was admitted to the bar. Yes, gentlemen, it is true, I have been in public office for forty years. General Grant and I were elected to office on the same ticket, in 1868, he to the office of President of the United States, and I to the office of district attorney in Essex, and I have been in office since. I am not like the boy whose mother had occasion to chide him. She said, "Johnnie, when you went into the pantry there were three doughnuts there; now there are only two". "Well", said Johnnie, "I guess I overlooked the other two in the dark". I do not seem to have overlooked anything in the dark. (Laughter.)

When I was offered a place upon the bench of the Superior Court, I had some doubt whether I was qualified for it. I had a very intimate friend, the late Elbridge T. Burley, well known to you gentlemen as a very able lawyer, a frank, plain, blunt and truthful man. I did not feel like asking him what he thought about my qualifications. But a lawyer did. He said to Mr. Burley, "It seems that Sherman is going to be a judge. What do you think of it"? "Well", replied the squire, "Sherman has had a large experience, has tried a great many cases, has

good sense, and when he does not know what the law is, he knows what it ought to be, and I think he will make about the average judge of the Superior Court". I have been trying since my appointment to be the average judge of that court and I have succeeded, if you take the opinions of the Supreme Court on that subject. (Laughter.)

I am a good deal embarrassed in speaking here tonight, in the presence of our Supreme Judicial Court, because that court has lately offered some criticisms on my speeches. (Laughter.) In one case, where I tried to make the parties settle—and talked about it—Mr. Justice Loring, who wrote the opinion, says that I talked too much on that subject. (Laughter.) In another case, the Court says that I did not talk enough. So you see I am in an embarrassing position here.

But I would like to say one thing in behalf of our court, as distinguished from the Supreme Judicial Court. We have to decide our questions on the instant; we have to shoot our game on the wing (applause); and the Supreme Court have an opportunity to put their guns at rest, to take plenty of time, and have able lawyers to show them how to shoot. And I can show you a case where four of the justices decided that they finally hit the game, while the other three insist that the four justices came nowhere near the game. (Applause.) So you must be charitable to our judges, who have to shoot their game on the wing.

Now, gentlemen, joking aside, I want to say something about our Supreme Court. You hear some lawyers—not in Essex, I am glad to say, but some opinionated lawyers in Suffolk—say, "Oh, the Supreme Court is not what it used to be; all the great judges on both courts are dead." Now, gentlemen, I have no sympathy with that sentiment. I have known that court for over fifty

years—and you have given me credit for good sense. In my opinion we never had a better court than that court is today. (Applause.) They are all able, faithful, conscientious justices, from the Chief Justice to the last appointment. That court has much more to do than it formerly had. It is a hard-working court.

We of the Superior Court believe that appointments to the Supreme Court should come from our court, by way of promotion, unless a better lawyer can be found outside. Of course, we have three notable cases coming within the rule I have stated. Take the case of Mr. Justice Morton. He has the Morton ability and common sense—a cousin of Marcus, senior, and Marcus, junior—and he comes clearly within the rule. And Mr. Justice Loring, we all know to be a man of great learning and ability, and he has fully justified his appointment as within the rule. And if Mr. Justice Rugg keeps on writing such opinions as he has already given us, there will be no doubt about the propriety of his appointment.

I know but very little about the administration of justice in the United States courts; but ex-District Attorney Boyd B. Jones assures me that the judges are first-class, and Boyd knows.

I would like to say a word about our court. When I was appointed, our court consisted of twelve judges, and now we have twenty-five. The late Judge Berry said that we ought to be numbered and uniformed in order to keep track of us. In my opinion, our court was never in better condition than it is today, for the work it has in hand as the great trial court of the Commonwealth.

A word concerning our Chief Justice Aiken. When he was offered the position of Chief Justice by Governor Douglas, he was unwilling to accept it. He is really a very modest man. It took much argument from judges

and lawyers to induce him to accept the appointment. We have always been most fortunate in our Chief Justices, but we never have had a man better beloved and more justly popular with bench, bar and the public, than Chief Justice Aiken. (Applause.)

I would like to advise the young lawyers who may be thought of for judicial positions. Do not aspire to go directly upon the Supreme bench, but come first to the Superior Court. Those gentlemen see but few people, and I should think they would become lonesome; while we are engaged in great public trials, seeing witnesses, jurors, lawyers, etc. That court has but little fun and enjoyment, while we have considerable.

Let me give you a look into our lobby and have you see how serious and sedate judges act. When Judge Dunbar was on the bench, he came into the lobby one day and addressing me, said: "I saw the foreman of your jury, and he says that you make matters very plain and clear in your charges." I knew better than to ask any questions, but some other judge did. So Judge Dunbar went on, "He says that in charging a jury in a case of trespass, the judge gave this illustration: 'If a man comes on to the lawn in front of your house, and he is objectionable, you have a right to order him off, and if he does not go, you have a right to use sufficient force to put him off; but you have no right to kick his back-sides across the street' ". The judges laughed. Thereupon Judge Hammond, who was sitting with his feet upon the table, said: "I do not believe that Sherman said that". I did not ask why; I knew better than that; but some other judge did ask why, and Hammond replied, "Because that is good law". (Applause.) Young man, go on to our court, enjoy life and be happy.

Gentlemen of the Essex Bar, I fully appreciate your



kindness in tendering me this banquet. I was elected district attorney by your influence, and partially, I was also elected attorney general by your efforts and influence. What happened then I think never happened before, and probably never will again. I received the vote of every delegate from the county, save one, at the Worcester convention, which enabled me to beat a better man—the late Judge Barker—and secure the nomination for the office of attorney general.

After so many kindnesses, you observed that I had passed the biblical line of life, more than “three score and ten years,” that most men near that time in life go down in sorrow to the grave. You probably have read the lives of the Chief Justices of England. You see the old men, as they give up a long life, become despondent and gloomy, and perhaps hear them say, “Life is not worth the living”; that “It is all a fleeting show for a man’s delusion given”. But, gentlemen, I assure you that I have none of that feeling. I have a happy, philosophical and contented disposition. I have enjoyed life to the full. Life is worth living, whether it ends in a great sleep and rest, or whether it goes on. I have no anxiety for the future. When the time comes for me to pass over to the great majority, if I am then in the possession of my mental faculties, I shall go with all the flags flying. (Great applause.)

I am very much obliged to you, Mr. President, to the members of the bar, to the judges of the United States courts, the judges of our Supreme Court, and to my associates; to one and all who have come here to extend greeting and congratulations. I thank you all from the bottom of my heart. I bid you all an affectionate good night.

## LETTER OF HON. DANIEL SAUNDERS.

*Partner of Judge Sherman from 1858 to 1864. Mr. Saunders is the Senior Member of the Essex Bar, now eighty-six years old.*

LAWRENCE, March 26th, 1908.

WILLIAM H. NILES, Esq.

President of the Essex Bar Association.

*My Dear Brother Niles:—*

I want to thank you for the admirable arrangements you made for the Bar dinner given in honor of my old partner, Judge Sherman. As a lover of justice, I am happy to say that he got his just deserts when he was sentenced for life to sit on the Superior Court Bench, with the only hope that his sentence might be commuted by being sent to the less punitive institution, the Supreme Court.

The Essex Bar very soon found, after he came to it, that he had a way of taking things, a knack of getting verdicts which some of us thought did not belong to him; not content with getting his brothers' verdicts away from them, he took the District Attorneyship, and then he grabbed the Attorney Generalship and a lot of other things, leaving of what he wanted, only those things which he had overlooked. So it went on until it became evident that if he were allowed to go at large there would be nothing left for the rest of us; so, holding a council we advised the Governor, for the good of the community and for the safety of the Bar, that he should be confined at hard labor, for the rest of his life on the Superior Court Bench. This was done and he was committed; I under-

stand that he has proved a model prisoner, and by his good conduct (although some complain that he had not forgotten how to get verdicts) he is entitled to favorable consideration, and there would be no protest if the Executive should extend clemency in his case, and allow him to serve out the remainder of his sentence on the Supreme Judicial Bench. But, seriously, I can say that the honors which have come to him have been well earned and well bestowed. As a lawyer (and I knew him well, and speak from knowledge), he was diligent in the preparation of his cases, able in their presentation, strong and eloquent in argument and successful in procuring verdicts for his clients. Always courteous to his brother lawyers and most respectful to the Courts. His word was his bond, which never went to protest. As a prosecuting officer his motto was "let no guilty man escape", and he lived up to it. As a judge he has proved the wisdom of his selection to that high office. It only remains to be said that the record of his life is a higher eulogy than any of the just compliments that were so well paid to him at the meeting of our Association on the occasion of the fiftieth anniversary of his legal life, so well spent in the service of our good old Commonwealth.

There is one phase of his life of which I cannot speak as well as others, his brothers in arms. When the glow of patriotism spread from mountain top to mountain top and illuminated every valley, he caught and felt that glow and enlisted as a soldier in the service of his country. It appears from the records of his regiment that he was soon promoted to a captaincy, and in the assault on Port Hudson, June 14th, 1863, he was brevetted Major for "gallant and meritorious services"; just such conduct as his friends expected of him. And here it may be proper to add, without in the least detracting from the gallant services

of his brother officers, that he was the only man in his regiment who was brevetted for "gallant and meritorious services".

Our bar is justly proud if not a little envious of him.

Trusting that our Association may long have the benefit and honor of your presence as its presiding officer, I am,

Most Sincerely Yours,

DANIEL SAUNDERS.

LETTER OF HARVEY N. SHEPARD.

Boston, March 17, 1908.

WILLIAM HENRY NILES, Esq., President Essex Bar Association.

*Brother Niles:—*

Unfortunately my throat is inflamed from a severe cold and my physician has forbidden me to be out evenings; but nevertheless I am going to make the venture to be there for a short time in order to pay to Judge Sherman my tribute of most sincere affection and esteem.

I came first to know him upon an occasion which probably he does not now recall but which then made a strong impression upon me. I had just come to the bar, and was sent from the office where I was a student, to testify as to some matters which had arisen in the office, before the Grand Jury. I never had been in court, or before any judicial tribunal, and naturally was nervous at the prospect. I cannot forget the courtesy and kindness with which I was received by Judge Sherman, then the District Attorney, which at once placed me at ease. Later, I had

the honor to serve with him for five years as his First Assistant Attorney General, and this association deepened and strengthened my feelings.

His administration marks the beginning of the change which has continued on the same lines in this great office. Before then the Attorney General treated the Commonwealth as any other client, and attended to its affairs as he did to the affairs of other clients, in his own office, wherever that might be. In his administration a removal was made to a state building, and since that time the Commonwealth has had first place. Naturally, with no fixed office, the records were deficient, and then began the custom of keeping records of all opinions, a custom which has been followed ever since. Before then the duties of the Attorney General were defined with considerable laxity. Custom, rather than law, had established relations which led him to appear before the Committee on Claims, for instance, as a paid attorney would, to resist every claim, however just he might believe it to be, examine witnesses, and make an argument against its allowance. This was changed, so that, instead of taking part in the investigation of facts, he attended to the higher and more proper duty of his position in giving advice solely upon the law. Also it had grown to be the habit in town offices, and in all parts of the state, to put verbal inquiries to the Attorney General and receive verbal advice as to matters arising in their town affairs. This loose practice frequently resulted in misunderstandings, and of course was without warrant in law. All this was changed, so that, from then on, it has been distinctly understood to whom his opinions are due. Of course, being without the sanction of law, his opinion, given under such circumstances, had no binding force, and was of no legal value.

Also it has been the custom for the Attorney General

to argue all exceptions in criminal cases, a custom which every lawyer perceives at once was a disadvantage, as no man can understand so well the meaning and intent of an exception as the lawyer who took it when the case was on trial. The process to obtain the surrender of fugitives from justice was examined with great care, changes were made, and rules then defined, which ever since have been followed.

The civil business of the office grew each year in importance, and some of the cases were of great value in determining the legal rights of the Commonwealth in most important respects. Such, for instance, as those relating to the South Boston Flats, the Hotel Kensington, and the Western Union Telegraph Company. One important item of civil business at that time, which no longer is found there, arose from the ownership and control by the Commonwealth of the Hoosac Tunnel. The Attorney General was the legal adviser of the Manager of the tunnel; and, once a year, at least, he was obliged to consider all the accounts, and from time to time he had to pass upon the many perplexing questions which spring up in the management of a railroad.

What specially impressed me during my association with Judge Sherman was not only his great tact in dealing with all the many and various calls upon him, but also the wonderful facility by which, as though by intuition, he came to a conclusion what the law must be; and I do not remember an instance when upon thorough examination afterwards he was found to be wrong. These remarkable qualities, it is needless to say, have characterized him as a judge of the great trial court of the Commonwealth; while his kindness of manner and unfailing courtesy have endeared him to all who have been so fortunate as to come into contact with him.



To me it is one of the dearest recollections of my life that for five years I was associated with him so intimately, and came to know him so well; and the affection which I then formed has grown stronger every year. May he long be spared to us as an inspiring example of that kind of public service which every earnest and sincere lawyer ought at all times to be willing to give.

Yours fraternally,

HARVEY N. SHEPARD.

LETTER OF SAMUEL J. ELDER.

Pemberton Building, Boston, Mass, March 19, 1908.

HON. EDGAR J. SHERMAN, Superior Court, Boston.

*Dear Judge Sherman:—*

Pray let me thank you again for your courteous remembrance of me and for the ticket to the banquet last Tuesday of the Essex County Bar in honor of the Fiftieth Anniversary of your admission to practice.

It is entirely impossible for me to express the pleasure and gratification which the occasion gave me. All the way through I was bearing in mind the distinguished assembly which gathered in the Old Boston Museum to greet William Warren on the Fiftieth Anniversary of his first appearance upon the stage and of the superb enthusiasm which pervaded the audience. Mr. Warren, called before the curtain, made a charming little speech, in the course of which he said:

“Although I have not scaled the heights of Parnassus, I am profoundly grateful to have found so cozy a nook on the mountain side.”

But Mr. Warren was mistaken. He had scaled the heights of Parnassus. He had done far better than to have been an itinerant star travelling through the States behind great posters and announcements. He had touched the hearts of a great community; he had portrayed life as it was in every phase, from the humblest to the highest, and he had left an enduring impression of faithfulness to truth in his art.

You were equally deprecatory of your achievement in your charming reply at the close of the banquet. You will pardon me, because I am not saying it to your face, for saying that you have touched the hearts of every one with whom you have come in contact. You have known the lives and struggles and sorrows of all the people in the State, and you have held with strong hand, the balances, and with a merciful hand have tempered judgment.

You might very well say as Kipling did to his kinsfolk in India on leaving:

“I have tasted your bread and salt,  
I have drunk your water and wine,  
The deaths ye have died I have watched beside,  
And the lives ye have lived were mine”.

As an old Lawrence boy whose first glimpse of the inside of a law office was of your office, and as one whose earliest thoughts of the law were kindled by glimpses of you and your work, I add my leaf to the laurel that was woven for you by your troops of friends.

Faithfully yours,

SAM J. ELDER.

## LETTER OF GEO. FRED. WILLIAMS.

Dedham, March 17, 1908.

*My Dear Judge Sherman:*

Having been in New York for several days, I am to-day simply disgusted that I did not know of the dinner to be given you by the Essex Bar. I arrived home yesterday, and, unhappily, my partner, Mr. Halloran, did not speak to me about it, because he supposed it was confined to the Essex Bar. After I left he found that he could get a place at the table, and attended the dinner. I cannot tell you how badly I felt about it, as there is no one on the bench in Massachusetts whom I hold in affection as I hold you. So I must give you my congratulations belated. No statement of your age is made in the press, and I am puzzled to understand how a child in arms could be admitted to the bar. Even now, however, it figures out, you are the youngest man on the Superior Bench. Many years of useful and vigorous life to you, is the wish of

Yours most sincerely,

GEO. FRED. WILLIAMS.

## LETTER OF SHERMAN L. WHIPPLE.

Boston, March 17, 1908.

HON. EDGAR J. SHERMAN, American House, Boston.

*My Dear Judge Sherman:*

I send you my greetings and congratulations on reaching the half century mark of your career as a lawyer. I

should have been glad to have been able to present them in person. I join with your many friends in hoping you may be spared for many years of usefulness in public service of the Commonwealth and happiness to yourself.

Sincerely yours,

SHERMAN L. WHIPPLE.

LETTER OF CHARLES U. BELL,

*of the Superior Court, who was a partner of Judge Sherman, under the style of "Sherman and Bell", for ten years prior to the time Judge Sherman went on to the Bench.*

*My Dear Judge:*

I do not want to omit to congratulate you on the completion of your fifty years service at the bar and on the bench. Every one agrees that it has been a very successful service and we all hope that it will continue many years more. It recalls to me your uniform kindness to me since we first did business together, thirty years ago, which I always hold in grateful remembrance.

Both you and Mrs. Sherman have my best wishes for long life and happiness.

Yours sincerely,

CHARLES U. BELL.

## APPENDIX.

---

### REGISTER OF MY CHILDREN AND GRANDCHILDREN.

---

1. Frederick Francis Sherman, son, born September 17, 1859. Died April 21, 1902. Married Jessie Sophia Goudge, June 10, 1884. Grant Simmons Sherman, grandson, born July 11, 1886. Elizabeth Sherman, granddaughter, born May 17, 1897.
2. Fannie May Sherman, daughter, born September 13, 1861. Married Henry Person Newcomb of Denver, Colorado, August 25, 1902.
3. Elizabeth Sherman, daughter, born September 22, 1865. Married Henry Souther, September 11, 1888. Now of Hartford, Connecticut. Catherine Souther, granddaughter, born June 30, 1889. Mary Souther, granddaughter, born April 28, 1897.
4. Malvina Sherman, daughter, born May 16, 1869. Married Frank Delbert Carney, November 1, 1892. Now of Steelton, Penn. Louise Carney, granddaughter, born July 15, 1896.

5. Roland Henry Sherman, son, born November 30, 1873. Now of Winchester, Massachusetts. Married Alma C. Hearle, April 5, 1898. Julia P. Sherman, granddaughter, born January 3, 1900. Edgar Jay Sherman, 2d, grandson, born August 24, 1902. Roger Sherman, grandson, born December 15, 1904.
  
6. Abbie Maude Sherman, daughter, born September 5, 1875. Married Fritz Henry Eaton, now of Lawrence, Massachusetts, August 24, 1897. James Henry Eaton, grandson, born November 29, 1898. Alma Sherman Eaton, granddaughter, born October 29, 1903. Elizabeth Frances Eaton, granddaughter, born December 1, 1907.













