Special Address
Recollections of the Illinois Bench and Bar
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I appear before you as the representative of those who once filled the places you now occupy. It is a source of extreme satisfaction to be assured, by your kind invitation, that amid the cares, the duties, and the responsibilities of an arduous profession, I am not forgotten by those who have come up in later years to fill the places, and bear the burdens, which were once filled and once borne by those who, with rare exceptions, have been called to appear before a higher bar, where no errors are committed, and no rehearings can be asked for.

Sixty years is a long time for any individual to have acted upon the stage of life, and the changes which have taken place during that time, in almost every branch of human thought, are very great, and in them our profession has largely participated. Within the last fifty years, the different modes of doing business and the means of accomplishing desired ends have been more marked than in any previous thousand years, and so have been compelled alterations in the laws and in the modes of administering them.

Many of these apparent changes were possible by the courts, under the flexibility of the common law, simply because the principles of that law were founded upon the reason of things and the results of human experience.

Old rules, which had been adopted by the courts to meet conditions which had previously existed, had to be changed, or even abrogated, as new emergencies demanded, as reason and experience dictated. As all the changes in the law, which altered conditions seemed to require, could not be made by the courts under the plea of construction, legislative enactments were in some cases demanded, and the legislatures of the various States early addressed themselves to the task of passing statutes which they supposed were required by the altered modes of conducting human affairs. Many of these were wise and necessary, while others it would have been better had the subjects of them been left to the courts, which were better qualified to deal with them.

From long experience and observation, I am compelled to say that legislative bodies more frequently legislate too much then too little. This is by no means a new evil.

Even the Romans, during the imperial period, indulged their mania for legislation to such an extent, that finally it was admitted that no man knew what the law was.

And hence, under the reign of Justinian the Great Tribonian, with his associates, prepared the Justinian Code, which, by the imperial fiat, was made the law of the land, and the precedents, or decisions, of the court were carefully digested in what is called the Pandects, to aid in the interpretation of the Code; and from these grew up the civil law of the continent of Europe, to which even the common law is indebted for those great principles of right and wrong which the consciousness of wise and enlightened men recognizes as just. And this, in its broadest sense, should be the basis of all law for the protection of individual rights and the rights of organized communities.

The courts, compelled by emergencies, have, under the plea of construction, introduced apparent changes of the law to meet the demands in the changes of the modes of doing business; and in general, I may say, these changes have been quite as salutary as those made by the legislatures.

These rules of law have been made by able men, deeply learned in the science of government, with no special interest to subserve after receiving the advice of the gentlemen of the bar, who present to their considerations the fruits of deep study and the observations of experience.

They act under the sense of responsibility to the whole community and to civilization, knowing that their decisions will be scrutinized and criticized by the ablest men who shall come after them, and who must pass a final judgment upon what they do.

Many more safeguards are thrown around the judicial tribunals, to secure wise and impartial action, than can surround legislatures.

The former have no constituency whose special interest they feel called upon to subserve; while the latter have varied constituencies, who may have conflicting interests to protect or promote, for which representatives may feel called upon to exert themselves. But legislative bodies cannot be dispensed with in free governments. They are the very bulwark of liberty, and whatever conflicting interests they may represent, as affecting their immediate constituents, whenever great interests of state become involved, they rise above the petty considerations of local interest, and answer to the demands of patriotism which will uphold and insure the paramount welfare of the State.

Precedents, or previous decisions, involving the same principles, have, among the ancients as well as moderns, constituted the great body of the laws in all civilized countries, and so they will continue to do, so long as the advancement of civilization shall continue. When the exigencies of society shall require important changes in principles, they must be brought about by legislation; but the infirmities of human language, in which those changes must be expressed, are such that the courts of law, whose duty it is to enforce them, must give them construction, and so declare their meaning, and give them practical application to the affairs of men. Wise legislation is of little value without wise

construction and administration, and in this, an able bar is of not less importance than an able bench. The members of the bar are the legitimate advisers of the courts, and I can say from personal experience that such advice is anxiously listened to and most attentively considered. It is a staff upon which the courts lean, while traveling the path which they are pursuing, when seeking the ends of justice and equity. Every member of the bar should appreciate, that while his duty requires that he should defend and protect the interest of his client, he also owes a duty to the courts, and aid them to arrive at proper results. This does not imply that the lawyers engaged on opposite sides of a case should always maintain the same positions, or defend the same principles, for that would be misleading to the bench. To arrive at sound conclusions, it is important that controverted questions should be presented in various aspects, for that is indispensable to enable a court properly to balance the reasons which may be urged on either side, and which are necessary to arrive at correct decisions.

Seventy-five years have elapsed since the organization of our State government. But fifteen of these years had passed, when I came to the State, and identified my interests with its people. A great many of those who had lived here during this time and in the territory previously, and had helped to make the history of this State thus far, were upon the active stage of life, still comparatively young, and in the full vigor of manhood. If they did not write history as they made it, they could tell it most charmingly and impressively. Many of these had helped form the constitution of the State, and, as the population was small, nearly all the prominent men knew each other, and knew what each had done that was worthy to be remembered.

As is usual and might be expected, members of our own profession were among the most prominent and most widely known throughout the State, and among these I formed my first acquaintances and my first friendships. I was the junior of them all, and so was largely dependent upon their kindness and friendship to help me in the difficulties which must always beset a young lawyer commencing the practice of his profession, where the habits of the people and the mode of proceeding differ widely from those in the state whence he came; and I now wish to bear my testimony to the large-hearted generosity and kindness of those who then constituted the bar of the State. Instead of throwing obstacles in the way of the new-comer, they extended to him a fraternal hand, and took genuine please in helping him along over the rough places.

At that time, what may be called the circuit practice necessarily prevailed, and in each circuit in the State there was a class of lawyers who attended most of the courts in their own circuits, and very frequently attended the courts in other circuits, mostly to try important causes, where their special reputations had caused them to be retained. This circuit practice was a special school, unequaled in its way, and in it these circuit lawyers

acquired qualifications which could be learned in no other school.

They had but few books to study, but these they studied to a purpose. Blackstone, and Coke upon Littleton, were their favorite books, and from them they learned the fundamental principles of the law, and the reasons why the law was so; and I may be permitted to say here, that one may learn to state the rules of law as they are laid down in the books, till he can repeat them like the alphabet, yet he is not a lawyer unless he fully comprehends why they are the law; what are the reasons which have made them the law. This and this alone will enable him to apply the law in every emergency, and to new states of facts, as they must constantly arise. As in traveling the circuit few books could be carried, and but rarely were books to be found at the county seats, excepting the statutes, this sort of legal qualification was indispensable for both judges and lawyers and the character of their work was such as to train them to think quickly and accurately, and to change the thoughts rapidly from one subject to another.

In passing from one county seat to another, the judges and lawyers always rode on horseback, with saddlebags, very frequently traversing uninhabited prairies of from ten to twenty miles or more across. Indeed, at that early time, all the settlers lived in cabins along the skirts of the timber, with inclosures in the adjoining prairies in which they cultivated fields, their stock ranging in the groves or grazing on the prairies. Nearly every cabin entertained travelers, who stopped for meals or to stay overnight. Ham and eggs, fried chicken and warm biscuit, with good coffee constituted the menu at nearly every cabin. If the position was such that the approach of the traveler could be seen some distance away, and it was about meal time, it did not require very attentive listening for him to distinguish the outcry of the chickens from the hen-coop as one or more were being immolated, which he knew was to satisfy the cravings of his inner man. If a boy was about to take his horse, he might go into the house at once; if not, he would have to stable and feed his own horse, which many preferred to do, to make sure that they were well cared for. If he went into the house soon, he might see the good lady pull from under the bed a bread-tray, which was kept constantly supplied with dough; and in a trice the biscuits would be molded and placed in the bake-pan; chickens were placed in the frying pan; the coffee pot was set to brewing; the table was set, and in an incredibly short time he was seated at the table with a meal before him as inviting as was ever set before a guest in the most fashionable hotel, with the most modern conveniences. The food was plain but substantial, and was always cooked to a turn. It was not smothered up in rich condiments, but its flavor was most appetizing. Even now, I fondly remember the feasts which I have enjoyed in those log cabins.

In riding from one county seat to another, the judges and lawyers generally traveled in a band together, although not always in a compact body. Usually, the gait was a fast walk or a slow trot, and frequently the band

would be separated into little squads of from two to four, when the monotony of the ride was relieved by conversation and the relation of anecdotes, or story-telling, as it was called, though ordinarily these last were reserved for the evening, when the whole party would be assembled. Then it was that the delights of the circuit riding were most appreciated. All were good story-tellers, and with rare exceptions each one added somewhat to his store since the last meeting, either from having heard a good story from somebody else, or inventing one; and a new story, if it were only a good one, was always received in a way that showed that it was fully appreciated. Frequently a quite ordinary incident would be dressed up and so embellished as to be exceedingly ludicrous and amusing.

The early circuit riders, for the purpose of illustrating certain characteristics of the human mind, used to tell a story of Judge Harlan (a name suggestive of the ermine) when he was circuit judge. They state that when he had closed his court at a little town in the southern part of the State, and nearly all were ready to mount their horses and proceed to the next county; and just as he was putting his foot in the stirrup, a lawyer rushed up with a paper in his hand, and asked him to sign a bill of exceptions. With evident marks of impatience, he dropped the reins of his bridle, and hastened back into the log tavern and called for pen and ink, which were shown him in the little counter in the barroom. Goose quills, then, only were used for pens. He seized one and hammed it into the inkstand with such force as to spoil it. He only appreciated this when he attempted to sign his name. And this crushing process he repeated several times before he succeeded in writing his name, and then it was hardly legible; when he threw down the pen and paper, evidently in bad humor, and bolted from the house, mounted his horse, applied a whip, and took the lead upon the trial which led across a ten-mile prairie to a cabin in a grove of timber.

The rest followed as best they could; but none could succeed in eliciting from him even a word of recognition during the ride. When he reached the cabin, he accosted a woman, who stood at the front of the house, and asked her for a drink of water. This she brought him in a gourd from the well, of which he drank heartily, and when he returned the gourd to the good lady, he remarked, "That is good water, and I tell you, madam, they do keep the infernalest pens back in this little onery town that we just left, that you ever saw," and he again took the lead, apparently still brooding over those pens.

Euchre parties were frequently formed, and so was time pleasantly passed; and sometimes a dance was gotten up, when an old fiddle could be found, and some one was capable of using it. Judge Young himself was deemed the best fiddler on the circuit, and so contributed much to the hilarity of such occasions.

Sometimes a mock trial was instituted, when an indictment was presented against some member of the bar, accusing him of most ridiculous crimes, embellished with laughable incidents.

On such occasions, the judge, the lawyers, and the witnesses fairly overflowed with wit; and boisterous laughter was not considered a breach of decorum in that court, and the verdict of the jury partook of the character of the previous doings. A verdict of "guilty" was almost a foregone conclusion, and the penalties inflicted were frequently the most ludicrous and amusing of all the proceedings. If the wit was keen, it was frequently deeply penetrating, but the subject of it must bear it good-naturedly, and console his irritated feelings with the reflection that he would get his revenge on some future occasion. To show irritation at hard rubs was the worst thing a man could do, but to turn them off in some witty way enhanced his popularity for the time.

But the first few days of the term could not be given up to amusement; all thoughts must be bent on business. Before the cavalcade of judges and lawyers had arrived, suitors and their friends, witnesses and sightseers, had already appeared, and were awaiting this important arrival; and scarcely had the advocates dismounted--generally covered with dust or mud--when they were surrounded by clients, eagerly seeking to engage their favorite counsel, and as soon as their leggings and dusters, or overcoats, could be discarded, they gave ear to those who sought their services, and listened to brief accounts of the cases in which their services were sought. One man wanted a suit defended; another wanted a case tried; another a suit commenced, and soon everything was bustle and excitement. Special pleas must be prepared in one case; in another, a demurrer must be filed; in a third, a bill in chancery must be drawn, or an answer prepared; and in another, preparations for a trial which might come off immediately; and finally, some poor fellow was in jail for horse-stealing, or counterfeiting, or perhaps for murder, who wanted a lawyer to defend him; and all this heterogeneous mass of business was rushed in upon them in a manner which would have confused any mind not well trained to that mode of particular law. Not infrequently, men were called in to take part in a trial when the jury was already being called, and they must learn the case during the trial itself, and it was astonishing to see how rapidly they could see the salient points of a case, and methodically arrange and present them.

In the spring of 1835, for the first time, I attended the circuit court at Hennepin, in Putnam County, which was held by Judge Breese, and there I first met him. Everybody was talking of the case of one Pierce; he was in jail on the charge of larceny, and it was said that he had not only confessed that he stole the goods, but that a witness named Thompson had sworn before the committing magistrate that he saw him steal them. As I was entirely unknown, I took little interest in the matter, only I was struck with the frequent expressions of sympathy for the prisoner which I heard, and some even expressed doubts of his guilt, after all. Judge Breese opened the court the next morning, organized the grand jury, who, in the course of an hour, brought in an indictment against Pierce, who

was directly brought into court. When he was asked if he had counsel, he replied he had not, and had nothing with which to pay counsel, and, in answer to a question by the court, expressed a desire that counsel might be appointed to defend him. The judge then asked me if I would undertake his defense, assisted by Mr. Atwater, a young man just admitted to the bar, and very lately settled in the town--the first lawyer there. We accepted the appointment, of course. It was not unusual at that time, when a new lawyer appeared at the opening of a circuit, for the judge, as a mode of introducing him to the people, to ask him to defend a criminal, or to charge the grand jury, or the like, and we appreciated this appointment as an act of kindness on the part of the judge. We took our client out, and sat down on the grass in the corner of a rail fence to learn from him what we could of the case, still supposing it was one of those desperate cases where no defense is possible. We requested Pierce to tell us the exact truth, for if he were guilty, we could make a better defense by knowing all the circumstances of the case, than to go into trial ignorant of the real facts. He said he was perfectly innocent, that Thompson and his own wife had stolen the goods, and he had confessed he stole them in order to let her escape; and that he was so sick on the night of the larceny that he could not leave his bed, and that attended by a nurse and a doctor. After a searching investigation, we were convinced of his innocence. Pierce also stated that Thompson was a ruffian and a terror to the whole people, and that everybody was afraid to say a word against him. The court gave us till next morning to prepare for trial. As I was going to my dinner, a man crossed the street quickly, and spoke to me in a low voice, saying that Mr. and Mrs. Fitzgerald, who lived two miles across the river in a log cabin, knew something that would help Pierce, if they could be got to tell it, and disappeared as if in alarm.

I scarcely waited for dinner, when I mounted my horse, and was on my way to the Fitzgerald's cabin. After I had exhausted every effort to allay their manifest fear of Thompson, they finally consented to tell me what they knew of the case, which was, that they had slept in the house on the night of the larceny, and had seen Thompson and Pierce's wife take the goods from a box, about midnight, and put them in Pierce's trunk; and they promised to appear in court the next morning and testify to what they knew. I galloped back, even faster than I had come, and found that Atwater had seen the nurse and doctor, who had corroborated Pierce's statement about his sickness. Of course, we kept all this a profound secret even from Pierce. On the trial, the next morning, Thompson swore that he saw Pierce steal the goods, and in my cross-examination I directed my efforts to make him swear to this in the strongest way possible, and thus apparently injuring my case. In the defense we first brought the doctor and the nurse, and then Mr. and Mrs. Fitzgerald, who seemed to have lost all terrors for Thompson, and told the whole story.

Here was a great chance for a speech before a new audience--not for Pierce, for he needed none, but for myself--in

which I pictured Thompson as a ruffian, a thief, perjurer, and as a lecherous scoundrel generally, in words which I had been all the night before recalling; and before I was dune he slunk away out of the room, and made for the bush. After a verdict of acquittal, the court adjourned, and before I had reached my hotel I was retained in every cause then pending in that court, and in some very important causes to be commenced, and never after did I want for clients, so long as I attended that court.

It was at the Putnam circuit court that I first met Judge David Davis, and it is with great satisfaction that I state that we were ever after warm personal friends.

When John York Sawyer was circuit judge, it was said that in the administration of criminal justice he did not always adhere to the conventional rules of practice. Once Gen. Turney was defending a man for horse-stealing. At that time the punishment for that crime was at the whipping-post. Just before noon the jury brought in a verdict of guilty, when the General moved for a new trial. Then it was that the dinner-bell was heard at the little tavern where they all stopped, when the judge remarked, "General Turney, I heard the dinner-bell ringing now; we will adjourn court till after dinner, when I will hear you on this motion." When the sheriff had adjourned the court, the judge motioned him up while he still sat on the bench, and whispered, "While I am gone to dinner, you take this rascal out and give him thirty lashes, and see that they are well laid on; I am bound to break up horse-stealing in this circuit."

When the court opened after dinner, the judge told Gen. Turney he could go on with his motion for a new trial, and he did so. In the meantime, the sheriff had obeyed orders, and after the whipping had delivered the culprit over to his friends, who washed off his lacerated back, to which they applied a lotion, and then put on his clothes, after which he went limping down the street. As he passed the court-house door, he heard his counsel's voice, and, upon listening, discovered that he was earnestly pleading for a new trial in the case, whereupon he rushed into the court house, and cried out, "For God's sake, Gen. Turney, don't get a new trial; if they try me again, they will convict me again, and then they will ship me to death." The General, of course, was dumbfounded, and appealed to the court to know what this all meant. The judge quietly remarked that that was all right; that in order to make sure that no horse-thief should escape punishment in his circuit, he had ordered the sheriff to whip the rascal while they were gone to dinner, and he supposed he had done so.

I was informed that horse thieves did become scarce in Judge Sawyer's circuit.

Judge Ford, who related this event to me, often expressed the opinion that whipping was a much more deterrent punishment for crime than imprisonment; that he never saw a criminal sentenced to be whipped who did not cringe at the sentence; while he had rarely seen a prisoner manifest emotion at being sentenced to a long term.

In 1829 an act was passed which, as the State was but eleven years old, may be justly ranked among our legal antiquities. That act provided that in the absence of the circuit judge (Judge Young) the circuit court of Jo Daviess county might be held by three justices of the peace of the county, and under this law the first circuit court of that county was so held, and Judge Young related to me some amusing incidents of that court, then held by the three justices, in their austere efforts to maintain the dignity of the court. I have failed to find any subsequent act repealing that statute, and if it has not been repealed directly, or by implication, that circuit may still be held by justices of the peace, by reason of which, such magistrates in Jo Daviess county may claim to occupy a higher plane of dignity and jurisdiction than the justices of the peace in other counties.

But those happy days of circuit practice, and jolly nights, and warm and sympathetic friendships, begotten of such associations, are now gone forever, I fear, in this State; and necessarily so, for the conditions which made them possible--yes, which necessitated them--have passed away never to return. But it may be well that a record of them should be preserved, so that they may not be entirely forgotten.

I may mention a few men who rode the circuit, before my day, whose names, and of whose abilities, I heard from the lips of others, though for very few of these can space be spared to illuminate this page. All practiced in the southern counties of the State. There were Hubbard and Harlan, Kent, Cook Reynolds, Semple, Forquer, and Sawyer.

Of those whom I met and knew personally, the list would be long; though only a part of these did I ever meet upon the circuit, and some of them I only knew as judges, and not as practicing lawyers. There were four judges of the Supreme Court when I came to the State--Wilson, Brown, Lockwood and Smith--and Young, who was judge of the fifth circuit. With all of these, except Smith, I sat upon the bench of the Supreme Court. Logan, Hardin, Stewart, and Stone I met at the first circuit court I ever attended in the State, at Pekin, in 1833. Young, Ford, Mills, May, and Strode I first met, in 1834, at the first circuit court ever held in Cook county. Breese I first met when he held the circuit court in Putnam County, to which I have already referred. I may be allowed to mention a few others of the lawyers who traveled the circuit, more or less, forty years ago. Snyder, Gillespie, Browning, Williams, David J. Baker, Edward Baker, Shields, Koerner, Trumbull, Morrison, Grimshaw, Campbell, Wheat, McRoberts, Field, Peters, Purple, Dickey, Jesse B. Thomas, William Thomas, Whitney (Lord Coke), McConnell, Martin, l.inder, B.C. Cook, Fridley, Thompson Campbell, Marshall, John A. Logan, Gridley, Minchell, Joshua Allen, and Lincoln, who it is scarcely necessary to state, was always the very soul of hilarity and amusement on the circuit. His capacity for illustrating either wit or argument, whether upon a trial in court or in our social gatherings, always distinguished

him from other men. His very presence was a joy to all.

The law of chancery jurisdiction have neer been exercised by the same courts; and the common law and English chancery system of pleading have ever prevailed in this State, with very few statutory modifications. The first modification, for the purpose of simplifying pleadings, was made by a very early statute, which authorized actions to be commenced on promissory notes by petitioner and summons, which, it was through, would so simplify matters that every one could be his own lawyer; but its use was never general, or even common, and I have never, during all my experience, known more than two actions to be brought under it, and those not with very economical results. Another important change was early made in chancery by authorizing the complainant in his bill to waive the oath to the answer, when the answer should not be evidence; and another change, authorizing a defendant to attach to his answer interrogatories, which the complainant must answer under oath. Under this last provision, the courts had been in the habit of granting affirmative relief to the defendant, and this question happened to be presented in the case of *Ballance vs. Underhill*, which was the first case ever assigned to me in which to write an opinion, and I wrote it, reversing that part of the decree which gave to the defendant affirmative relief, affirming all the rest; and on this point I had my first struggle with my associates, who said it had been the uniform practice to grant such relief in similar cases.

At that time Judge Pope, of the United Stated District Court, at Springfield, was in the habit, when he had leisure, of dropping into the conference-room as freely as if he here a member of the court, without at all interrupting the deliberations then progressing; and he happened to come in while we were considering this controverted question. He seemed to listen attentively to the discussion, while I was trying to maintain my position against all the others.

At length, the conference adjourned without taking a vote, and we separated. When we were passing through the library on our way out, the judge came up to me and patted me on the back, saying, "My boy, you are right. Stick to them, and they will come to you at last. Come, go to my room, and smoke a pipe with me." I did stick to them, and they did come to me at last, and voted unanimously for the opinion; and the rule was then adopted requiring a cross-bill to be filed in order to authorize affirmative relief to be granted to the defendant, which has ever since prevailed, I think, with the general approval of the bar.

By practice sanctioned by courts and lawyers, much of the verbosity and formalities required in the English courts, in both the common law and chancery pleadings, was eliminated in early times, and, I think, with marked advantages; while all that was substantive, and necessary fairly to advise the opposite party of what he had to meet, was retained. In this way has gradually grown up a change in our system of pleadings which greatly

simplifies the work of the profession and the courts; and the system thus wrought out has tended to promote the ends of justice, as much, at least, as has been done by the adoption of codes in other states which were designed to accomplish the same end. Whether there has been a relapse of the old formalities and redundancy of words since my time, I can not say; on that subject you are the best informed. Almost from the beginning, it has ceased to be necessary for a bill in chancery to contain a thrice-told tale, as in the old forms containing the stating, the charging, and the interrogating parts, in each of which the facts had to be repeated. In my first bill, with great labor, I followed this rule; but ever since, I have deemed it better to simply state the facts upon which I relied for relief in the shortest and clearest manner possible. If an unnecessary fact be stated in a pleading, it may some time rise up to pester the pleader.

I early learned to appreciate the importance of understanding the reasons why certain rules of law had been adopted, not only from my circuit practice, but from my general practice as well. The reasons of the law are the soul and essence of the law.

During my time, that is, up to the time I resigned the chief justiceship of our supreme court, in 1864, the rules of practice, or modes of administering justice, to a large extent, remained unchanged. Since then, important changes have been made, with which I have not kept pace as a lawyer in active practice necessarily would have done. I was forcibly reminded of this, a number of years ago, when I went into the circuit court of Chicago, where a case was pending in which a corporation in which I had some interest was plaintiff, and two individual parties were defendants.

When I went in, a motion was being argued for a continuance by the defendants. As the plaintiff's case was conducted by a young lawyer, and I thought I saw some indications that he was getting the worst of it, I turned in to help him, and, in the course of my remarks, Judge Murphy, who presided, discovered that I was ignorant of a late statute, when he kindly suggested that a statute had changed the law; that we might take judgment against one of the two joint defendants, and not against the other. This astonished me, and I felt like exclaiming with an Indiana attorney long ago, as related by Chief Justice Wilson. He reported that a case was pending before an Illinois justice of the peace, down on the Wabash, in which an Illinois lawyer was engaged on one side and an Indiana lawyer on the other. In the course of the trial, the Illinois lawyer asserted a principle of law which was denied by the Hoosier, who denounced it as the most absurd proposition ever heard of in any civilized community, and that it never could be the law except among barbarians. Upon this, his opponent placed before him the Illinois statutes, which declared the disputed proposition to be the law of this State. After the Indianan recovered from the shock which this statute produced upon his nerve, he straightened himself up, and with great solemnity exclaimed, "May it please the court: When I hear of

the assembling of a legislature in one of these western states, it reminds me of a cry of fire in a populous city. No one knows when he is safe; no man can tell where the ruin will end." However, as the effect of the statute might be in my favor, I could not complain of it, and a little reflection convinced me that it might have been enacted in the interest of justice.

Perhaps the most important changes which have taken place since my time, by direct legislation, are in the law of evidence. During all the time when I was connected with the administration of the law, it was assumed that no one who had a direct pecuniary interest in the event of a trial could tell the truth when under oath; hence it was a settled rule that no one who had the slightest pecuniary interest in the result of the trial could be a witness, and for the reason that it was assumed that such interest would induce him to testify falsely. No position in life, no established character for rectitude, no confidence which all the members of the community might have in the uprightness of any man--earned by long years of integrity and probity--could relieve him from the suspicion which the law arbitrarily stamped upon him; while no one dreamed that this legal suspicion of unreliability cast the remotest reflection upon his integrity. We simply found the law to be so, and that it had been so, time out of mind, and no thought of the injustice of such a rule ever dawned upon us; no lawyer ever through of questioning its propriety, or even suggested a doubt that it was not the safest way for ascertainment of truth. No judge ever through of intimating, in an opinion, that a regret was felt that the sources of light which might develop the most important facts had been thus shut out, and that court or jury had been left in darkness where it was evident that the brightest light might have been thrown upon an important transaction, from sources of which the most skeptical could entertain no moral doubt.

This serves to show what curious beings we are, and how firmly we are wedded to old customs and old modes of thought. We are inclined to look upon the ways of our ancestors as sacred, and, therefore, as just. The statute allowing parties in interest to testify in courts of justice caused a radical change in the administration of the law, and while it undoubtedly opened a wide door to the inducement to perjury, it was clearly afforded a new means for ascertainment of truth. It was a revolution, in fact, and when once started it swept over this and other countries with astonishing velocity. England, whence we derive most of the principles which have governed us in the administration of justice, and whose conservatism has prompted her to move slowly and cautiously in the adoption of reforms, cordially embraced this reform, with a general approbation of the courts and of the legal profession; and the gentlemen of this association can tell better than I can what has been its effect upon the administration of justice, though I am told that it has met with general approbation; but I presume that the change was more cordially accepted by the younger members of the bar of the courts than by the older ones, into whose very being the old system had

struck so deep a root by long practice and accustomed mode of thinking.

The change made in the criminal law which allowed a prisoner to testify in his own behalf upon his trial, I think, from what I heard about the time the change was made, did not meet with quite so ready an acceptance. I heard it characterized as a legislative device to promote the crime of perjury by offering a reward, often of inestimable value, for the commission of that crime. There may be, and probably is, some truth in this criticism. The inducement for a guilty man to testify in such a way as to shield him from the punishment to be inflicted for a crime committed, is undoubtedly very great, and that premium is no doubt very often offered to those on whose consciences the obligations of an oath would press very lightly. True, courts and juries might not feel themselves obliged to give the same credence to the testimony of a prisoner in his own behalf as they would to that of an indifferent person; but that could not remove the temptation to perjury or the danger from it. Again, it presents a danger which must ever menace him who has some conscience left, and so, we may presume, is not a hardened criminal, and who refuses to go upon the stand and commit perjury in order to escape punishment for crime. Although courts and counsel are forbidden to urge this fact in order to create a prejudice against the presumption of innocence, it would take something stronger than the mandate of a statute to prevent a jury from noticing it and thinking about it, and, in fact, from being influenced by it. In that way, it does undoubtedly have a prejudicial influence upon the cases of the least hardened criminals.

The passage of our statute which opened the doors of the learned professions and other occupations to females, was another change from the old modes of thought and proceeding in our profession. Of the thousands of applications, during my time, of candidates for admission to the bar, not one was a female. While we had no statute expressly forbidding this, it was so generally accepted as the law that women were ineligible to the profession, that no one seems to have thought of making such an application, no matter how eminent may have been her legal qualifications. But let not the present generation boast that it was the first to discover her fitness or capabilities to study or comprehend those principles which would qualify her for professional life. That was known and recognized and acted upon long ages ago.

The ancients were not destitute of distinguished women in the medical profession. Agnodice, an Athenian maiden, assumed the garb of a man to enable her to study medicine, in which profession she became famous. As her popularity and her practice greatly increased, the male physicians were filled with envy, and accused her of corruption before the tribunal to whom she confessed her sex; when a law was immediately made allowing all free-born women to study midwifery, to which branch of the practice she was most devoted. She was born 506 years B.C.

Hortense, not a Roman matron, but a young lady of the Roman Empire, was the most learned lawyer of her time, when the science of the law absorbed the thoughts and studies of the most learned and talented of that great people. At the age of twenty-one years, she had already acquired such fame that she was placed at the head of the most distinguished of the Roman law schools, and it was said of her that her beauty was so great that the beholder who gazed upon her could think of nothing else, until she opened her mouth to speak, when the charm of her eloquence dispelled all other thoughts, and her beauty was forgotten amid the fascinating influences of her address and the irresistible force of her reasoning.

She was the daughter of Quintus Hortensius, a great orator and lawyer. She was born 85 years B.C. The speech which she made in defense of the 1,400 Roman matrons against a special tax, proposed by the Triumvirs, has come down to us in the language in which it was uttered, and well sustains her reputation as an orator; and she succeeded so well that 1,000 of her clients were exempted from the tax.

These must serve as examples of women who acquired great distinction, and display great ability in professional life among the ancients.

While there have been many female sovereigns in the past who have illustrated their capacity to study and understand the sciences of statesmanship and of jurisprudence, public sentiment, begotten of prejudice and egotism, has practically closed against women the doors which lead to what are called the learned professions, until with the last few years; while their great abilities in the conduct of affairs in which they were permitted to engage has been a thousand times illustrated by the most pronounced success. When our own legislature passed a law authorizing women to engage in the different occupations on the same plane of right with men, many of the old school of thought anticipated that its effects might be calamitous. For myself, I did not participate in this apprehension. No doubt, early memories and associations may have had their influence upon me in this matter. I was born and brought up in the Society of Friends, a religious denomination in which the endowments and qualifications of women were always distinctly recognized. They not only took part in the business meetings of the society, but their right to preach in the religious meetings was recognized equally with that of men; and in my boyhood, when I was so situated that I could attend those religious meetings, I heard sermons preached by women, and prayers made by them, which made as lasting an impression upon my young mind as did ever of men. The neat, plain dress of such a speaker; her sweet, benign countenance; her charming gentleness of manners, her soft and winning persuasions, were calculated to win the heart of the hearer when the discourse of a man would have sounded harsh and almost repulsive. It seemed to me that she knew better how to touch those strings which vibrate from heart to heart, and especially those which reach

down deep into the youthful soul, than did the other sex; and this loving and benign influence was understood, appreciated, and utilized by that denomination of Christians; and I have no doubt that a memory of this had much to do with shaping not only my feelings but my judgment on the subject.

I presume numerically the medical profession has been augmented much more by lady practitioners than has the legal profession, and this may result from some peculiar endowments which they possess for the former. Their sympathetic nature, their natural gentleness, their quick perceptions, come to the aid of their judgment and their learning, and seem to endow them especially for the practice of the healing art; while the practice of the law seems to partake more of a belligerent character, and so may be thought to require a sterner nature and disposition. This, I say, may be one reason why fewer ladies devote themselves to the legal than to the medical profession. Why so few devote themselves to the care of souls, I will not attempt to say; but I may assert, without fear of contradiction, that a large proportion of those who have joined the clerical profession have met with marked success. But it is not in professional life alone that women have abundantly vindicated their right to the highest respect and consideration. The utility of their efforts in the moral world stands forth so conspicuously as to challenge the admiration of mankind, and I may be permitted to point with pride to their work and recognition in the Columbian Exposition, in connection with which their labors and their influence are felt in all civilized countries.

Gentlemen, I speak to you as from a former generation. We were once young, vigorous, and ambitious. We sought to fill the places to which fortune had assigned us, according to the best of our ability, so that the world might be better for our presence. We appreciated that we were members of a high and honorable profession, with corresponding responsibilities. History shows that lawyers are more frequently called upon by their fellow men than members of any other profession or calling to take part in the conduct of public affairs; and by this is the measure of their responsibility fixed. So it has been in the past, so it is now, and so will it be in the future. Whatever flippant expressions may be heard from the ignorant, the prejudiced, or the envious, to the contrary, this fact affords us the comforting assurance that the integrity, the ability, and the learning of the profession are fully appreciated and valued by the community at large all over the country; and this of itself should act as an inspiration to every member of the profession to strive with his utmost energy to maintain that high standard of morality and integrity which has secured the confidence of our fellow-men and enabled us to fill out the measure of usefulness which our place in society has rendered possible. Should the time every come when the profession of law shall be dragged down by its votaries from the position of a noble and an honorable profession to that of a venal trade, then the name of lawyer will become a title of reproach instead of an honorable appellation.

But few are now left who commenced the struggle of professional life with me, animated by hope and ambition, inspired by indomitable will and a fixed purpose to succeed. I have seen them drop out one by one as we traveled the road of life side by side, till now but isolated instances are left of those who can tell from memory the incidents of the distant past; but they have left, dotted along that way, beacons of brilliant light, which have served to guide their successors, and will serve to guide those who shall still come, later, to the goal of honorable distinction and usefulness. It is one of the happiest hopes that I can now entertain that honesty and honor, usefulness and learning, will be upheld in the future as in the past, and that the name of our profession may continue to be the synonym of all that is noble, useful, and energetic. The comforting hope of the past must rest in the future. So can the younger men who are just coming upon the stage of life most honor those who have gone before them.

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