

YALE LAW JOURNAL

VOL. XVII

JUNE, 1908

No. 8

CHANCELLOR KENT AT YALE

PART II

We have seen in the March number of the Journal¹ with what simple and genuine enthusiasm the great Chancellor wrote of his visit to New Haven on the occasion of the fiftieth anniversary reunion of his class in 1831. On this occasion he delivered the now celebrated Phi Beta Kappa oration in the Old North Church, as appears from the illustration of the New Haven "green" of that day, and the Chancellor's manuscript note regarding it on page 553 of this number. In commenting further upon this visit the distinguished orator in his diary records that "the excitement of writing and delivering my oration rendered this Commencement, and the two or three weeks in anticipation of it, deeply interesting." He then proceeds to add some notes about some of the friends he met, about the old New Haven cemetery, and about his college room and college room-mates, which are full of interest to the Yale man of to-day.²

1. *Yale Law Journal*, March, 1908, Vol. XVII, No. 5, pp. 336-7.

2. "The Revd. Mr. Robbins of Stratford is a public spirited man & a great antiquarian in New-England History & a collector of its historical documents & sermons.

"Mr. Augur is a self-taught Sculptor, & his marble specimens of Jephtha & her daughter are admirable. The Revd. Mr. Bacon is one of the most animated and spirited of the public speakers.

"I was treated with great hospitality & kindness by Mr. & Mrs. Silliman. Their eldest daughter is on the eve of marriage with Mr. Church of Alleghany. Their 2d daughter is a rosy, lovely girl named Faith.

"I saw (& he returned with me in the Steam Boat to N. York) Wm. A. Thompson of Thompson in Sullivan County. He was a class-mate with

But this, as we have seen, and as the Chancellor intimates, was by no means his only journey to New Haven for such a purpose of which he has left us an account. In 1813, when 50 years of age and 32 years out of college his diary tells of a trip in the following words:

Tuesday, Aug. 24. We arrived at New Haven by 11 o'clock. It was extremely dusty and hot as we passed the E. end of the West Rock and entered on the sandy plains of N. Haven. We stayed and lodged at Ogden's on the S. side of the green, and here I enjoyed for the better part of two days the luxury of retracing the footsteps and recalling the images of the years of my collegiate life. Here I had passed 4 years of innocence and simplicity and sanguine hopes of youth, and I eagerly dwelt with fond and tender and melancholy recollection on every spot consecrated by my youthful sports and tread. I was chastened into sober reflections under the consideration that it was thirty-two years since I left those delightful abodes of the Muses, and that more than a whole generation and the best part of my life had in the interval passed away. My old classmates, Baldwin & Perkins went with me to prayers in the chapel and I visited Dr. Dwight and the magnificent collection of stones and minerals presented by Col. Gibbs and superintended by Professor Silliman. With Mr. Daggett we visited Whitney's gun factory under the E. Rock, and I visited the cemetery so celebrated by the novelty and elegance of its arrangement. We also called on Mr. Goodrich, Mr. Woolsey, &c., and left the town in the afternoon of Wednesday, August 25th, with the highest respect for its literary institutions and the interesting character of the several gentlemen who had favored us with their attentions.¹

What could be more beautifully and sweetly appreciative and loyal than these words! Ah "those delightful abodes of the Muses!" What one of us does not cherish those very sentiments to-day!

Again, in 1817, he tells us:

Wednesday, July 9th, 1817. I left N. York at 7 o'clock a. m. in the Steamboat *Connecticut* (Captain Bunker) in company with my brother and my daughter Eliza and Miss Henshaw, and we arrived at New Haven about

the Revd. James Noyes who lodged with me at Mr. Silliman's. He has been for 2 or 3 years in England, & is a gentleman of 65 & of the look of a generous & hearty English-gentleman.

"The Cemetery is much enlarged, & the number & taste & splendor of the spulchral monuments attracts reverence & thrilling interest. The Patrone was with me when I ascended & visited the Room in the 4th Story in the College in which I resided with my Room Mates Noyes & Wright the last two years of my collegiate life.

"My Room Mates when I was Sophomore were Isaacs & Tomlinson, & when I was Senior they were Noyes & Wright, & they are all alive." (*Kent Manuscripts*, Journal No. 10, 1829-31.)

1. *Kent Manuscripts*, Journal 1803-1816.

dusk. The day was cool with a N. W. wind and we had a remarkably pleasant sail up the Sound. We lodged at Butler's hotel.

Thursday, July 10th. We rambled about N. Haven, visited the cemetery and ascended the steeple of one of the new churches, and visited the mineralogical collection in college, and drank tea at Judge Baldwin's in company with President Day, Professor Silliman, Mr. Daggett, Mr. McCracken, etc. *The town was clean and quiet and the rows of elms and buttonwood and the three new Churches, rendered the avenues exceedingly beautiful.*

Friday, July 11th. I parted with my Friends at N. Haven and rode to Hartford by the way of Middletown in company with Mr. and Mrs. Pierpont of Brooklyn.²

Again in 1824, when in his sixty-first year, and forty-three years after the graduation of his class, the Chancellor once more attended the commencement, we have his memorandum of his visit in the following words:

Tuesday, September 7, 1824. I sailed in the Steam Boat U. States (Captain Beecher) to New Haven. We started at 8 o'clock a. m. Prof. Nott, the Patron,³ Dr. Smith of Brunswick and his wife, Prof. Silliman, Mr. Boardman of N. H., and I were on board. It rained all the latter part of the day. We kept near the Connecticut coast and I saw all the farms, (Greenwich, Stamford, Norwalk, Fairfield, &c.) as we passed. We arrived about 5 p. m. and landed at the end of the long wharf in the rain. I lodged with my friend, S. Baldwin, Esq.

Wed., Sep. 8th. A steady rainy day. *The bells all rang at sunrise, it being Commencement day, and I admired the melody of the sounds.* I walked before breakfast over the cemetery and read many of the inscriptions on the marble monuments in that solemn, picturesque and highly decorated Land of Silence. After breakfast I called on Governor Walcott and went to the College Lyceum and joined the procession to the church and attended all the Exercises of the day amid a crowded and gay audience. The stage where I sat was crowded with academical dignitaries. There were President Davis of Hamilton College, President Griffin of Williams Town, President ——— of Dartmouth, Dr. Stewart, Professor of Theology at Andover, etc. I was particularly pleased with the music in the gallery and with the valedictory oration of Mr. Hall. And I walked through the old college where I lived in 1780. I drank Tea at Mr. J. Hillhouse's and embarked on board the Steam Boat at 7 p. m. and was back to New York on Thursday, Sep. 9th.³

Six years later, in 1830, the Chancellor again attended commencement, and of this he says:

Tuesday at 5 p. m., Sep. 7, 1830, I went on board the Steam Boat *Hudson* (Captain Sanford) and I had a beautiful sail up the East River. By dusk we were at Throg's Neck. We raced up the East River with the Steam Boat *Flushing*. The weather was very hot and lightning and clouds

1. *Kent Manuscripts*, Journal 1817-1820.

2. See Part I of this paper, Journal Vol. XVII, No. 5, p. 337 note.

3. *Kent Manuscripts*, Journal 1821-1824.

to the S. We had passed the lighthouse at Sand's Point before we went to bed. Mr. Townsend of the printing firm of Dwight, T. & Walker, was on board. I had a very oppressively hot berth in the cabin and it rained hard all night. When I left home the weather was bright. I left my brother and N. Howell, Esq., at my house. We arrived at the dock in New Haven by 2 o'clock in the night.

Wednesday, September 8th. I arose by sunrise. It still rained, and I went up in a coach to Bulford's Inn. It is an old house which stood when I was at College in 1780. It stands across the creek E. of the Head of the Long Wharf. Here I got breakfast, and called on Judge Baldwin and Judge Daggett and walked in procession to the church at 9 o'clock under the protection of Professor Silliman. I was honored with a seat on the stage aside of Judge Daggett. I heard 10 orations, 1 dialogue, and one dramatic composition of the tragic kind in five acts. The forenoon Exercises lasted until half after one. I dined in College Hall with the faculty and Corporation and sat adjoining President Day, Governor Tomlinson, Lieut. Gov. Peters, Bishop Brownell, etc. I visited the old College where I roomed and walked around it and recalled ancient recollections. The middle of the day was pleasant and the assemblage of gentlemen large and selected, and I was cheered and delighted. I visited in the forenoon Professor Silliman, walked with my classmate Stebbins. Drank tea at Judge Baldwin's and reembarked on board of same Steam Boat at 8 p. m. in the rain attended with sharp lightning, and after a very disagreeable night (for it rained Torrents) in a hot crowded cabin I arrived at New York dock before day *and was home at sunrise much invigorated in Health and Spirits by my fatiguing tour. The whole expense did not exceed \$5.42.*¹

What son of Yale to-day could say more as to the invigoration brought to "health and spirits" by a visit to commencement than did this fine old man! And what one of them could get through so pleasantly on \$5.42!

Of the great anniversary of 1831 we have already learned; and, although we have no detailed account of the Chancellor's visit to the college in the next year, 1832, it is evident that he was there from his own manuscript note appended to the picture of West Rock which forms the frontispiece of this number. The Chancellor climbed West Rock for the first time when a Freshman in college in 1778, and he climbed it again fifty-four years later, when in the seventieth year of his age. What one of us would not be proud to do the same!

Nor was even this his last visit. Again ten years later, in 1842, when the distinguished graduate had attained the eightieth year of his age, we find him again at the commencement—the sixty-first anniversary of the graduation of his class! And of this, which he terms "a delightful visit and full of charming reminiscences," he gives us the following account:

1. *Kent Manuscripts*, Journal 1829-1833.

Tuesday, Aug. 16, 1842. At 6 a. m. I went on board the Steam Boat *New York* (Captain Hinman) for New Haven. Mr. Ch. Chauncey, Mr. Heister, President of the Senate of Pennsylvania, etc., were on board. We arrived before 12 o'clock and I dined and lodged with my classmate, the Hon. Simeon Baldwin. I called and drank tea with Mr. Noah Webster, who looked hale and sound. I saw Mr. Goodrich, who was a tutor when I was in college. I attended a gay evening party at the house of R. S. Baldwin, Esq. Very warm day. *New Haven looked gloriously with its avenues of elms. We rode in the afternoon all around the City and admired the beautiful streets and buildings denoting wealth and Taste.*

Wed. 17th. I attended a great and most respectable meeting of the Alumni of Yale College in the Philosophical Hall and presided as Chairman. We then walked in procession to the N. Brick Church where I ascended the pulpit and presided as chairman. Prof. Silliman delivered an oration on the History of New Haven and the College and their progressive improvement. I dined with Mrs. Salisbury where I met Mr. Chauncey, Prof. Woolsey, who married the daughter of Mrs. S., the Revd. Cortlandt Van Rensselaer, Professor Silliman and Judge Sherman. I called on my wife's niece, Cath. Woolsey, and Mrs. Silliman, and attended a splendid evg. party at Mrs. Street's where Judge Baldwin went with me, and here I saw the Misses Gerry, [?] Mr. Skinner and his very pretty wife (once Miss Whitney), Mrs. R. S. Baldwin (the daughter of my classmate Perkins), and here I met Mr. Th. Dunlap of Philadelphia and of the United States Bank, and several other gentlemen. Very warm day.

Thursday, 18th. Very warm day. My classmate Baldwin and I went to the college at 8 a. m. and joined the procession of the College faculty and Students, etc., to the W. meeting house and I heard part of the morning exercises and speeches of the seniors, and then withdrew and left N. Haven at 1 p. m. on my return to N. York, where I returned before sundown. *A delightful visit and full of charming reminiscences.* I was exceedingly well and active, and far more so than my contemporaries.

Total of expenses of the excursion \$6.44.¹

This was within six years of the Chancellor's death. He died at his home in New York City, Dec. 12, 1847, in the eighty-fifth year of his age.

Who was this simple and unassuming gentleman who year after year was going back to meet his friends and class-mates under the elms of his beloved alma mater in this quiet and genial manner, keeping an account of expenditures, which it would be well for us amid the extravagant tendencies of the present day to pause and consider? During all this time, while he had been indulging in and enjoying these wholesome associations of his college days, he had been steadily ascending to the highest pinnacle of an enduring fame. He had impressed his learning and his judgment upon the jurisprudence of his country and of the world, both upon the common law and the equity side, as perhaps no other man ever has.

1. *Kent Manuscripts*, Journal 1842-47.

By his plain, plodding and highly instructed industry he had reduced to system and order our administration of the common law, and he had laid deep and everlasting the foundations upon which have been built up the great, merciful and life-giving system of American equity jurisprudence; and he had at the same time given to the world a statement of and a commentary upon American law which had already challenged the admiration of men not only in his own country but the world over, and which has since become daily more and more recognized as an immortal monument.

As we have seen, Chancellor Kent had been appointed an Associate Justice of the Supreme Court of the State of New York on February 6, 1798, when of the age of only thirty-five years.¹ From that time, for more than 25 years, until July 31, 1823, he continued his distinguished service upon the Bench. In 1804, he was promoted to the position of Chief Justice of the Supreme Court,² and ten years later, in 1814, he was appointed Chancellor, a station which Chancellor Walworth afterwards said was "at the head of the Judiciary of the State,"³ and continued in that high office for nine years until in 1823, when as we already know, having reached the age of sixty years, he was, by operation of the then existing constitution of the State, compelled to lay down the duties he had performed so well.⁴

One incident of Judge Kent's promotion to the Chief Justiceship of the Supreme Court is well worth dwelling upon. The vacancy in the Chief Justiceship was created by the nomination of the Chief Justice himself, the Honorable Morgan Lewis, to the office of Governor of the State. Justice Lewis was the nominee of the anti-Federalist party. Political passions were running high in the year 1804, and both parties were putting forth their best efforts to carry this election. Judge Lewis was himself a strong anti-Federalist while Judge Kent was a Federalist of a very ardent kind. The story is that on the eve of the election these two gentlemen met and fell into a discussion of the probable result of the election. In the course of the conversation Lewis said to Kent: "Judge Kent, if you will vote for me I will make you Chief Justice if I am elected Governor," to which Kent, recognizing, of course, the true spirit of the remark, promptly replied, "No, sir, personally

1. *Supra*, Vol. XVII, No. 5, p. 331 note.

2. *Supra*, Vol. XVII, No. 5, p. 331 note.

3. *1 Paige's Chancery Reports*, address of Chancellor Watworth at the beginning of the Volume.

4. Constitution of the State of New York, adopted 1821, ratified by the people, January 17, 1822. Article V. Section 3.

I admire and respect your character and attainments; but I utterly detest your political principles!" Judge Lewis was elected, and one of his first acts as Governor was the appointment of Judge Kent to be Chief Justice.¹ Would that more of this spirit in judicial appointments by the Executive might be abroad among us at this time!

Of his work upon the Bench of the Supreme Court Judge Kent himself has given us an account from which the following is an extract:

In February, 1798, I was offered by Governor Jay, and accepted, the office of youngest judge of the Supreme Court. This was the summit of my ambition. My object was to return back to Poughkeepsie and resume my studies and ride the circuits and inhale country air and enjoy *otium cum dignitate*. I never dreamed of volumes of reports and written opinions. Such things were not then thought of. I retired back to Poughkeepsie, in the spring of 1798, and in that summer rode all over the western wilderness and was delighted. I returned home and began my Greek, and Latin, and French, and English, and law classics as formerly, and made wonderful progress in books that year. In 1799 I was obliged to remove to Albany in order that I might not be too much from home, and there I remained stationary for twenty-four years.

When I came to the Bench there were no reports or State precedents. The opinions from the Bench were delivered *ore tenus*. We had no law of our own, and nobody knew what it was. I first introduced a thorough examination of cases and written opinions. In January, T. 1799, the second case reported in first Johnson's cases, of Ludlow v. Dale, is a sample of the earliest. The judges, when we met, all assumed that foreign sentences were only good *prima facie*. I presented and read my written opinion that they were conclusive, and they all gave up to me, and so I read it in court as it stands. This was the commencement of a new plan, and then was laid the first stone in the subsequently erected temple of our jurisprudence.

Between that time and 1804 I rode my share of circuits, attended all the terms, and was never absent, and was always ready in every case by the day. I read in that time Valin and Emerigon, and completely abridged the latter, and made copious digests of all the English new reports and treatises as they came out. I made much use of the *Corpus Juris* and as the judges (Livingston excepted) knew nothing of French or civil law, I had immense advantage over them. I could generally put my Brethren to rout and carry my point by my mysterious wand of French and civil law. The judges were Republicans and very kindly disposed to everything that was French, and this enabled me, without exciting any alarm or jealousy, to make free use of such authorities and thereby enrich our commercial law. * * * * Many of the cases decided during the sixteen years I was in the Supreme Court were labored by me most unmercifully, but it was necessary under the circumstances, in order to subdue opposition.²

1. *Memoirs*, p. 121.

2. A most interesting letter of Chancellor Kent to Thomas Washington, a lawyer of Nashville, Tennessee, dated Oct. 6, 1828. A copy of this letter in full may be found in the Green Bag for May, 1897, being Vol. IX, No. 5, page 207.

That this rather amusing sketch presents not an unfair estimate of the real condition of the Supreme Court at the time is not now lacking of ample corroboration. The Honorable John Duer in an address upon the life, character and public services of Chancellor Kent, has this to say of the condition of the Supreme Court at the time in question: "The condition of the Supreme Court at the time of his [Judge Kent's] accession to the Bench, was probably much the same as it had been, with little variation, from the close of the Revolution. It was not a condition that reflected credit on the jurisprudence of the State; it was not such as the character and the honor of the State and the interests of the public demanded." He then proceeds to show with what marked celerity and effectiveness this unhappy condition was remedied, largely by the labors of Judge Kent.¹

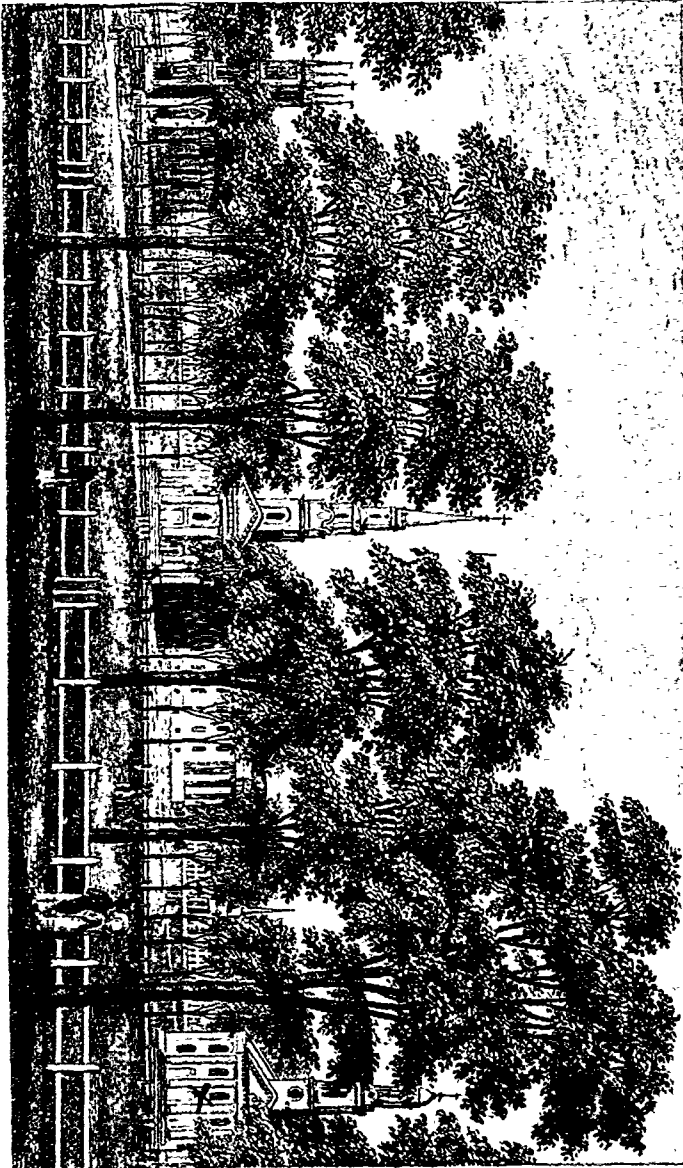
But amid all these labors Judge Kent thoroughly enjoyed his work upon the Supreme Court Bench, and it was with reluctance that he left it to become Chancellor. The Court of Chancery in the State of New York at that time had not acquired the high authority which it afterwards attained, mainly, it may be said, through the work of Chancellor Kent himself, and the Chancellor was apprehensive that he would not be able to bring the Court up to the standard of authority and reputation which he had set for himself. How abundantly he was in error in this apprehension all the world now knows. As to Kent's work as Chancellor, the following is the estimate of Mr. Justice Story:

It required such a man with such a mind, at once liberal, comprehensive, exact and methodical; always reverencing authorities and bound by decisions; true to the spirit yet more true to the letter of the law; pursuing principles with a severe and scrupulous logic, yet blending with them the most persuasive equity; it required such a man, with such a mind, to unfold the doctrines of chancery in our country and to settle them upon immovable foundations.²

The temptation here to review some of the immortal and controlling decisions of Chancellor Kent is very great, but it must be withstood and overcome because the confines of this article will

1. A/Discourse/on the/Life, Character and Public Services/of/James Kent/Late Chancellor of the State of New York/Delivered by request/before the Judiciary and Bar of the City and State/of New York, April 12, 1848/by/John Duer/New York/D. Appleton & Company, 200 Broadway/p. 33.

2. Article by Mr. Justice Story upon Johnson's Reports, written for the North American Review, in 1820. Life and Letters of Joseph Story, edited by his son, William W. Story, London, 1851. Vol. I, p. 232.



E. VIEW OF THE PUBLIC SQUARE OR GREEN, IN NEW HAVEN CON.

Facsimile from Chancellor Kent's copy of Barber's New Haven, 1831¹

Original in the possession of Mr. William Kent
of Tuxedo Park, New York

¹ See note page 320 ante.

** Sketch in which I delineated.
my Th. B. K. oration, September
1831 —*

not permit of any such thing, howsoever instructive and interesting such an examination could not fail to be. The subject, albeit all too briefly, has been treated with marked ability and discrimination by Judge Duer in the address to which reference has just been made, by William J. Curtis, Esq., of the New York Bar,¹ as also by Dr. James Brown Scott, the Solicitor of the Department of State at Washington, Professor of International Law in the George Washington University, and lately technical delegate of the United States to the second Peace Conference at The Hague.²

That the learned Chancellor keenly regretted the necessity of retiring from his judicial labors at the comparatively early age of sixty years was abundantly manifest. He had enjoyed his judicial work, and he made no secret of his dread of a return to the field of active practice. He said somewhere that he would rather saw wood than go back to the practice of the law.

Most fortunately, however,—I will not say for himself but certainly for his country and the world,—it did not become necessary for the learned Chancellor to re-enter the ranks of the practitioners. Immediately after leaving the Bench he was appointed, or rather reappointed, to the honorable position of Professor of Law at Columbia College. To that appointment all mankind is indebted for the Commentaries. Judge Duer in the address already alluded to spoke of this occasion (page 70) as follows: "As a Judge and as Chancellor he had done enough for his own fame and for the interests and honor of his own State. It was to the whole Union that his services were now due, and were soon to be rendered."

This was not the first time that Columbia University had sought the services of the distinguished Yalensian in the guidance of her School of Law. In December, 1793, thirty years before, it had appointed "James Kent Esquire" Professor of Law. Even in those early days he had entered upon the discharge of his duties with his accustomed zeal and thoroughness. A year was to intervene

1. James Kent/the Father of American Jurisprudence/An address/delivered before the Alabama State Bar Association/at Montgomery/June 15, 1900/by/William J. Curtis/of New York/New York/The Evening Post Job Printing House, 156 Fulton St./1900/Privately Printed,/New York City Bar Association Pamphlets, Vol. 141, No. 6.

2. Great American Lawyers/A History of the Legal Profession/in America/edited by/William Draper Lewis/Dean of the Law Department/of the University of Pennsylvania/Philadelphia/The John C. Winston Company/1907/ Vol. II, page 491. James Kent by Dr. James Brown Scott, Solicitor of the State Department, Professor of International Law in the George-Washington University, Editor of Scott's Cases on International Law and Managing Editor of the American Journal of International Law.

between his appointment and the beginning of his lectures, and in this interval he prepared with the greatest care an "Introductory lecture" for the use of his prospective students.¹ The whole lecture is interesting and charming in a high degree, but we can give only a short excerpt:

This is a sketch of the outlines of the course of lectures which are before me. The anxieties which are felt for the execution, are in some measure proportioned to the impressions which result from the dignity of the subject, and the interesting nature of this institution. The science of law, has expressly for its object the advancement of social happiness and security. It reaches to every tie which is endearing to the affections, and has a concern on every action which takes place in the extensive circles of public and private life. According to the lively expression of Lord Bacon, it may justly be said to *come home to every man's business and bosom*.

But notwithstanding the care and pains with which the young lecturer prepared himself for his duty, the result was failure. He tells his own story of this undertaking on the fly leaf of his copy of these first law lectures in the following note:

I was appointed Professor of Law in Columbia College, December 24, 1793. On the 17th of November, 1794, I commenced the reading of a course of lectures in the College Hall and delivered the introductory lecture. I read that season 26 lectures (two a week) and was honored by the attendance throughout the course of seven students and thirty-six gentlemen, chiefly lawyers and law students, who did not belong to the college. During my second course, commencing November 1795, I read thirty-one lectures in my office and had only two students besides my clerks. The next season I attempted another course, but no students offering to attend, I dismissed the business, and in May 1797, sent a letter of resignation to the trustees.²

What a world of meaning and of encouragement there is in these lines to every student, practitioner or lecturer in the law!

It was therefore particularly and doubly gratifying to the Chancellor when, upon his retirement from the Bench, the trustees of the same University elevated him to the same responsible position, notwithstanding his apparent failure of thirty years before.

The Chancellor lost no time in beginning, now for the second time, his course of instruction, and he pursued it with the same

1. An introductory lecture to a course of law lectures, delivered November 17, 1794, by James Kent, Esquire, Professor of Law in Columbia College. Published at the request of the trustees. New York. Printed by Francis Childs, 1794. The original of this pamphlet is now in the possession of the trustees of Columbia College, at their office, 63 Wall street, New York City. A reprint of it has been published in the *Columbia Law Review*, Vol. III, p. 330 (1903).

2. *Memoirs*, p. 76.

thoroughness and care with which he did, and always had done, everything he laid his hand to. On November 9th, 1824, he wrote his brother Moss Kent on the subject as follows:

I have commenced my lectures and they give me a good deal of trouble and anxiety. I am compelled to study and write all the time, as if I was under the whip and spur. But I take early and regular and habitual exercise, and am very temperate, and on the whole am very healthy. I have no reason to complain, but on the contrary have the most persuasive motives of gratitude to God for his continuous goodness.¹

In 1826 he concluded to publish his lectures and the first volume appeared in that year. That he had no premeditation or preconception of the character of this work is manifest. In the letter to Mr. Washington, already referred to,² the Chancellor, referring to this subject, said:

* * * It was my son who pressed me to prepare a volume of the lectures for the press. I had no idea of publishing them when I delivered them. I wrote anew one volume and published it, as you know. This led me to remodel and enlarge, and now the third volume will be out in a few days, and I am obliged to write a fourth to complete my plan.³

His intention at first was to publish only one volume, although he suggests the need of a second. The result was four volumes. The second was published by the same publisher in 1827; the third in 1828, and the fourth and last in 1830.³ This monumental and immortal work flowed from the pen of this deeply and thoroughly learned author in the course of four short years. Such a thing would have been an utter impossibility but for the foundation that had been laid from the beginning, and but for his constant practice of doing everything he did with the utmost accuracy and thoroughness.

1. *Memoirs*, p. 192.

2. *Supra*, page 459, note.

3. Thus the first Edition of the Commentaries was published volume by volume from 1826 to 1830, all by the same publisher, W. O. Halsted. The title page of the first volume is as follows: Commentaries/on/American law/by James Kent/vol. I/New York/published by — O. Halsted/Corner/ of Wall & Broad Streets/1826. The Chancellor himself supervised the first four editions, including the first. Ten have been brought out since his death, the fourteenth and last in 1896. The title page of this is: Commentaries/on/American Law/by James Kent/ Twelfth Edition/Edited by/O. W. Holmes, Jr./Fourteenth Edition/ Edited by/John M. Gould, Ph. D./Author of/Law of Waters, joint author of Gould and Tucker's/Notes on the U. S. Revised Statutes, etc./Boston/ Little, Brown and Company/1896/

Volumes could be filled in merely setting forth the eulogistic comments which have from the beginning resounded through the civilized world with respect to this great work. It will only be possible in the space of this paper to give a very few. A perusal of them leaves no doubt whatsoever that the work, in all its various branches, is esteemed as of the highest authority by the leading specialists in all the departments of the law, public as well as private, international as well as municipal.

Mr. Justice Story expresses his view in the most solemn and public manner. As all know, in dedicating his own great work on the Conflict of Laws to Chancellor Kent, he wrote on Jan. 1, 1834, as follows:

It is now about thirty-six years since you began your judicial career on the bench of the Supreme Court of the State of New York. In the intervening period between that time and the present, you have successively occupied the offices of Chief Justice and of Chancellor of the same State. I speak but the common voice of the profession and the public when I say, that in each of these stations you have brought to its duties a maturity of judgment, a depth of learning, a fidelity of purpose, and an enthusiasm for justice, which have laid the solid foundations of an imperishable fame. In the full vigor of your intellectual powers, you left the bench only to engage in a new task, which of itself seemed to demand by its extent and magnitude a whole life of strenuous diligence. That task has been accomplished. The Commentaries on American Law have already acquired the reputation of a juridical classic, and have placed their author in the first rank of the benefactors of the profession. You have done for America what Mr. Justice Blackstone in his invaluable Commentaries has done for England. You have embodied the principles of our law in pages as attractive by the persuasive elegance of their style as they are instructive by the fulness and accuracy of their learning.

This was but Story's mature confirmation of the judgment he had expressed when first perusing the second volume of Kent's Commentaries on its appearance from the press. In a letter to the Chancellor on that occasion he wrote, among other expressions of approval, "It will become an American text-book, and range on the same shelf with the classical work of Blackstone in all our libraries," and then added:

To show you that I speak not at random, I have had occasion to read through your whole chapter as to the relation of husband and wife, and particularly what respects her power over her separate property, to hold as well as to dispose of it, on account of a very interesting case, recently argued before me, upon the effect of post-nuptial settlements to a large amount. I was happy to find that we had read the authorities alike, and

stood upon the same conclusions. In the opinion which I shall soon deliver, I shall rely upon your Commentaries with emphasis.¹

Calvo, in his dictionary of international law, speaking of Kent's Commentaries in relation to that topic, says, that the only cause of regret is that, following the method of his work, Judge Kent has limited himself to treating the subject summarily; but that, notwithstanding this, his work is justly considered as a veritable digest of American law, and the best source to consult on that subject.² And in his great work on international law, the same author quotes Chancellor Kent's opinion as authority on no less than twenty-three heads of international law, many of them the most important of the science.³

The distinguished German publicist and scholar, Robert von Mohl, expressed his appreciation of Kent's work and character, in the following terms:

1. Life and Letters/of/ Joseph Story/Associate Justice of the Supreme Court of the United States/and Dane Professor of Law at Harvard University/Edited by his son/William W. Story/Boston/Charles C. Little and James Brown/1851. Vol. I, p. 526.

2. *Dictionnaire/de/Droit International/Public et Privé/(1885) Vol. I, p. 420; II est seulement à regretter que, d'après la nature même de son ouvrage, le juge Kent n'ait fait qu'aborder sommairement ce sujet. Quoi qu'il en soit, son livre est à juste titre considéré comme un véritable digeste du droit américain et la meilleure source à consulter sur cette matière.*

3. *Le Droit/International/Théorique et Pratique/Précédé d'un Exposé Historique/des Progrès de la Science du Droit des gens/par/M. Charles Calvo/Envoyé Extraordinaire et Ministre Plénipotentiaire de la République Argentine/auprès de S. M. L'Empereur D'Allemagne Associé Étranger de l'Institut de France/, Membre d'Honneur de l'Institut de Droit International/, l'Académie des Sciences Morales et Politiques/de L'Académie Royale D'Histoire de Madrid, etc./Cinquième Edition. (Paris, Arthur Rousseau, Éditeur, 1896). The general index under the title Kent (vol. 5, page 563) gives the following references:*

Sa Définition du droit des gens, 1; Son opinion sur les sources du droit, 28; Son Digeste du droit américain, 120; Sa classification du domicile, 656; Son opinion sur l'extradition, 951; sur l'extradition des nationaux, 1028; sur le commerce entre belligérants, 1926; sur les prises maritimes, 2296; sur les commissions multiples, 2300; sur la propriété in transitu, 2361; sur la notification du blocus, 2849; Sa définition des sièges et blocus, 2827; Son opinion sur les traités de visite, 2946; sur le convoi, 2980; sur la nationalité des tribunaux des prises, 3041; sur le caractère des cours de prises, 3046; sur les prises neutres, 3055; sur le convoi, 2980; sur la destruction des prises, 3031; sur la nationalité des tribunaux de prises, 3041; sur le siège des cours de prises, 3056; sur les prises faites après la cessation des hostilités, 3157.

Handbuch des Völkerrechts/auf Grundlage Europäischer Staatspraxis /von Dr. Franz von Holtzendorff, Professor der Rechte/Berlin 1885/Vol. I, p. 500.

Ueberall tritt der ausgezeichnete Praktiker, der in Abwägung von Entscheidungsgründen geübte Richter, der mit den Präjudicien vertraute Anglo-Amerikanische Rechtsgelehrte auf eine eindruckmachende Weise entgegen. Es giebt nicht viele Bücher, welche für den Verfasser das Gefühl der persönlichen Achtung in gleichem Masse erweckten, oder in welchen der Stoff mit solcher Sicherheit und Meisterschaft gehandhabt würde * * * Wenn irgendwo das Wort 'praktisches' Völkerrecht an der Stelle ist so ist es hier.¹

Professor Abdy in his "Kent's Commentaries on International Law," in the preface to his first edition of 1866, writes as follows:

The Science of International Law has never lacked able and eloquent exponents from the times of Ayala and Alberic Gentili down to our own. But it must be acknowledged that, among modern authors at all events, there are three whose learning and labor as judges and writers, have shed glory over the legal literature of the United States and have earned the singular distinction of being recognized as authorities on International Law throughout Europe. I need scarcely say that I speak of the honored names of Story, Wheaton and Kent. * * * The third, Mr. Chancellor Kent, has given us the result of years of professional labor, and a life spent in study, in a work which, if small so far as International Law is concerned, contains within its pages wisdom, critical skill, and judicial acumen of the highest kind. For my part, I have so often derived pleasure as well as gain from Kent's Commentaries on Law, in every part of that treatise, that I feel a kind of veneration for his name; and I do most cordially assent to the language of praise in which a modern writer speaks of him as "the greatest jurist whom this age has produced, whose writings may safely be said to be never wrong."²

Mr. G. Vernon Harcourt, in his Famous Letters by Historicus in 1862, after taking exception to certain doctrines expressed by certain writers on international law, says:

Permit me while I am warning your readers against false lights to refer them to a guide who will never lead them astray—to the greatest jurist whom this age has produced—I mean the American, Chancellor Kent. Of his writings may safely be said that they are never wrong. The exposition

1. Above all we are impressed by the distinguished man, trained in practical affairs, by the judge skilled in the weighing of the grounds of judgment, and by the Anglo-American jurist armed with authorities in an impressive way. There are not many books which awaken for their author the feeling of personal respect in a like degree, or in which the material is handled with such sureness and mastership. If ever the word practical international law is applicable, it is so here.

2. Kent's Commentaries on International Law; edited by J. T. Abdy, LL. D., Judge of County Courts and Law Professor at Gresham College, late Regeis Professor of Law in the University of Cambridge. Second Edition, revised and brought down to the present time. London and Cambridge, 1878. Preface to the first edition.

of international law contained in the first volume of the Commentaries has but one fault—that of being too short.¹

And one of our most learned and distinguished judges in this country not long ago expressed the opinion that in his judgment the fourth volume of Kent's Commentaries is the best text-book we have to-day on the law of real property, really far better for the purposes of the schools than most of the modern text books on that subject, and also much the most useful work upon the subject for the guidance of the practitioner.²

Amid all of his engrossing labors the learned Chancellor was ever at the call of his fellow citizens to render any public service within his power. Thus in the spring of 1831, the country being greatly aroused by the great debate upon Foote's resolution, in which Webster and Hayne, of South Carolina, took so conspicuous a part, the citizens of New York tendered to Mr. Webster the compliment of a public dinner and Chancellor Kent was called upon to preside. His address on that occasion was a master piece. After alluding to the historic debate and the character of Mr. Webster's great speeches, especially that in reply to the second speech of Hayne, he spoke as follows:

The consequences of that discussion have been extremely beneficial. It turned the attention of the public to the great doctrines of national rights and national union. Constitutional law ceased to remain wrapped up in the breasts, and taught only by the responses, of the living oracles of the law. Socrates was said to have drawn down philosophy from the skies, and scattered it among the schools. It may with equal truth be said that constitutional law by means of those Senatorial discussions and a master genius that guided them was rescued from the archives of our tribunals and the libraries of our lawyers, and placed under the eye and submitted to the judgment of the American people. Their verdict is with us and from it there lies no appeal.³

In May, 1832, a public dinner was tendered to Washington Irving by his friends and admirers upon the occasion of his return home after a long sojourn abroad. This dinner was a famous one of the time. It was given at the City Hotel in New York, and

1. Letters by Historicus/on some questions/of/International Law/Reprinted from 'The Times'/with considerable additions/London and Cambridge/Macmillan & Co./1863/First letter on Neutral Trade in Contraband War, at p. 129.

2. Hon. George C. Holt, (Yale 1866); one of the Judges of the United States District Court for the Southern District of New York.

3. The Writings and Speeches of Daniel Webster, National Edition in eighteen volumes. Boston/Little, Brown & Co./1903/Vol. 1, p. 92; Vol. 2, p. 43.

Chancellor Kent again presided. His charming and graceful address upon this occasion may be found at pages 231-235 of Mr. William Kent's Memoirs. Lack of space forbids my giving any portion of it here, but the following letter on the subject from Mr. Webster, found among the Kent manuscripts, is too interesting to be omitted:

MY DEAR SIR

WASHINGTON, JUNE 5, 1832.

I have just opened the newspaper and read the account of Mr. Irving's dinner, and your speech thereat; and I resolved forthwith to write you one line, for the purpose of saying that the speech is a delightful little thing, just, sweet, affectionate. When I read the paragraph in which you prefer what relates to the blue hills and mountain glens of our own country to sketches of foreign scenes and foreign countries, I wanted to seize your hand and give it a hearty shake of sympathy. Heaven bless this goodly land of our fathers! Its rulers and its people may commit a thousand follies, yet Heaven bless it! Next to the friends beloved of my heart, those same hills and glens, and native woods and native streams, will have my last earthly recollections! *Dulce et decorum est*, etc.¹

Mr. Webster held Chancellor Kent in very high regard. He keenly felt the loss to the country in the Chancellor's enforced retirement from the bench. Shortly before that event he recommended him for the Presidency of Dartmouth College, and shortly after it for appointment upon the Bench of the Supreme Court. In his letter with respect to Dartmouth College he suggests that the salary of the President should be two thousand dollars a year, that he should be given a long vacation in winter, and that he should be free "from all clerical labor, such as attending prayers, etc."² The vacancy for which he urged the Chancellor for the Supreme bench was that caused by the death of Mr. Justice Livingston. On April 16, 1823, he wrote a letter to Mr. Justice Story on the subject, in which he said in part as follows:³

You will naturally be anxious to know whether anything is done here as yet in relation to the appointment of your associate upon the Bench. No appointment has been made. Mr. Thompson will be appointed if he chooses to take the office, but he has not made up his mind, as I understand, as yet so to do. If called on *now* to decide, it is said he will *decline*. I cannot account for his hesitation, but on the supposition, which I have heard suggested, but cannot credit, that he thinks it *possible* events may throw another and a higher office in his way.

When a man finds himself in a situation he hardly ever dreamed of,

1. *Kent Manuscripts*, Vol. 6.

2. The Writings and Speeches of Daniel Webster. Little, Brown & Co., Boston, (1903). Vol. XVI, p. 66.

3. The Writings and Speeches of Daniel Webster. Little, Brown & Co., Boston, (1903). Vol. XVI, p. 75.

he is apt to take it for granted that he is a favorite of fortune, and to presume that his blind patroness may have yet greater things in reserve for him.

In the event of his finally declining, those now talked of as prominent candidates are James Kent and Ambrose Spencer. If a nomination were now to be made, I think it would be the former of these two names, although there are those who wish to give a decided rebuke to the Bucktails¹ of New York by appointing Mr. Spencer. What time may produce no one can say.

In this connection a petition dated April 22, 1823, was addressed to the Honorable William Wirt, then Attorney-General of the United States, by a number of the members of the New York Bar, also recommending Chancellor Kent for the appointment to this vacancy. This petition bears the names, among others, of Thomas Addis Emmet, John Wells, Samuel Jones, David B. Ogden, William Johnson, Peter Augustus Jay and John Anthon. In his letter to President Monroe transmitting the petition, the Attorney-General writes:

My messenger will wait to bring back Mr. Ogden's letter. Jones and Henry whom he mentions [doubtless as recommending the appointment of Chancellor Kent] both stand high in their profession—Wells very high—but I believe they are all Federalists—Wells certainly is. Whether they are rancorous and how they acted during the war I know not.²

On October 31, 1836, the organization known as "The Law Association of the City of New York," held a convention in that city, and on that occasion Chancellor Kent was called upon to deliver an address, which was so highly esteemed that it was afterwards published at the request of the Association. His topic was the responsibilities and duties of the legal profession, and this address is justly regarded as one of the loftiest utterances upon that important subject.³ Among other things, he said:

The cultivation and practice of the law is, and ought to be, a sure road to personal prosperity and to political eminence and fame, provided, the members of the bar render themselves worthy of public confidence by their skill and industry, their knowledge, integrity and honour, their public spirit and manly deportment, their purity, moderation and wisdom. There can be no competitors in the race to be drawn from the other classes of society that can compete with them if they will only diligently strive to acquire, and

1. A name given to a political party in New York opposed to De Witt Clinton and internal improvements.

2. Manuscript petition and letter in the possession of the Bar Association of the City of New York.

3. An Address/Delivered by/The Law Association/of the City of New York/October 21st, 1836/by/The Honorable James Kent/Published at the request of the Association/New York/G. & C. Carvill & Co./1836/(page 5.)

they will, in that case, be almost sure to attain, the solid, useful and ornamental qualifications which belong to their elevated calling. Legal learning is, in a very considerable degree, indispensable to all persons who are invited to administer any material portion of the authority of government, and especially if it becomes the province of their trust to make, amend, and digest the law of the land, or judicially to expound and apply its provisions to individual cases in the regular course of justice.

And then follow some words and some sound precepts which seem singularly applicable to the conditions of the present day:

I am induced to press these considerations upon young and ardent minds, as I apprehend the tendency of things at present is to disenchant the profession of much of its attraction. We live in a period of uncommon excitement. The spirit of the age is restless, presumptuous, and revolutionary. The rapidly increasing appetite for wealth, the inordinate taste for luxury which it engenders, the vehement spirit of speculation and the selfish emulation which it creates, the growing contempt for slow and moderate gains, the ardent thirst for pleasure and amusement, the diminishing reverence for the wisdom of the past, the disregard of the lessons of experience, the authority of magistracy, and the venerable institutions of ancestral policy, are so many bad symptoms of a diseased state of the public mind. It will require a most determined perseverance and firmness of purpose, and the most devoted zeal in the rising members of the bar, to resist the contagion, and pursue triumphantly the rewards and honours of professional reputation. They must be constantly on their guard against an intemperate avidity for wealth, or too engrossing a love of pleasure or listening prematurely, and with too ready an ear, to the dangerous seductions of political ambition.

On reading this address, Charles Sumner, on January 1, 1837, wrote to the Chancellor regarding it as follows:

I gladly seize the opportunity of Judge Story's transit through New York to thank you for the present of your beautiful and instructive address delivered before the Law Association. I have read it with the greatest interest, and feel indebted to you for the elevated views which you have given of the study of the law, and the sketches of some of its expired lights in your own State. No lawyer or law student could quit it without feeling prouder than he was before of his chosen pursuit, and being stimulated to new labors, in short, without attaching himself with new zeal to the single talisman of success, study.

When I think of the good which you have done, in promoting the study of jurisprudence, by the publication of your Commentaries and of this address, and by your high example, I say nothing of the sweet influence of your social character and the important bearings of your long judicial life, I cannot but envy you the feeling which you must enjoy. The mighty tribute of gratitude is silently offered to you from every student of the law in our whole country. There is not one who has found his toilsome way cheered and delighted by the companionship of your labors, who would not speak as I do, if he had the privilege of addressing you.¹

1. *Memoirs*, p. 236.

Mr. William Allen Butler, in his learned and graceful address upon the Revision and the Revisers of the Statutes of the State of New York, has this to say of Chancellor Kent:

James Kent, whose name stood at the head of the Commission thus constituted, had retired July 31st, 1823, from the office of Chancellor. He had served the state as one of the puisne Judges of the Supreme Court, from his first appointment, Feb. 6, 1798, to July 2d, 1804, when he became chief justice and so remained until February 25th, 1814, the date of his appointment as Chancellor. His judicial career had placed him on the roll of great judges, and the wonderful revolution in the practice and administration of equity accomplished during the nine years of his service as Chancellor is attested by the tributes paid him by the Bar on his retirement and which occupy the concluding pages of the final volume of Johnson's Chancery Reports.

This brilliant career on the Bench was cut short at the age of sixty years by the operation of the provision in the Constitution of 1821, which perpetuated a similar provision in the Constitution of 1777, disqualifying the higher judicial officers from the exercise of their duties after attaining sixty years of age.¹

That Chancellor Kent was a very great judge and commentator is the common opinion of all mankind. That he was one of the three or four greatest American jurists, is the common opinion of the Profession throughout the world. He certainly ranked with Marshall and Story. As to which of them was the greatest is hard to tell and men will differ. They were all three so great, and have all contributed so much to the happiness and welfare of their countrymen, that a discussion of their respective abilities is not a topic upon which it would be fruitful to enter here. But that Kent stood abreast of the other two on the topmost pinnacle of our juridical temple there can be no doubt.

Dr. Scott, in the admirable article already referred to² gives a highly careful and analytical comparison between Marshall and Kent, at the conclusion of which he says:

If now we remember that Kent shone with a strong, if not an equal, light in these four fields of judicial activity [municipal, constitutional, international law and chancery], and that he is scarcely inferior in any one to the specialist, it necessarily follows that his versatility gives him an added claim to reverent admiration. The rare poise and balance is not less marked than the solidity and breadth of attainment. If to this rounded, universal

1. The Revision of the Statutes of the State of New York and the Revisors. An address delivered before the Association of the Bar of the City of New York, January 22, 1889, by William Allen Butler. Published for the Association, New York and Albany. Banks & Bros., Law Publishers, 1889.

2. *Supra*, page 461, note.

and almost perfect equipment, we add the very present and continuous claim of expounder of our law, the conclusion seems well nigh inevitable that Kent rightly assumes his place as the first figure in American jurisprudence.

One thing that strikes us with surprise in the study of Chancellor Kent, is the fact that, while a great deal has been written about him, no one yet has undertaken the great and comprehensive story of his life and writings, which ought to be, and some day will undoubtedly be, a monument to his fame. With the exception of the few permanent authorities referred to in the foregoing pages, all is of a fugitive character as compared with the records regarding his great confreres Marshall, Story and the others. Chancellor Kent has not yet had his due in this regard. In one sense this may not be regrettable, for the result may be all the more adequate for being delayed. The work will be a great one, requiring in its accomplishment great capacity, acquirement and devotion, but the proper accomplishment of it will not fail to bring high and lasting honor to him who shall achieve it. Who it shall be we cannot tell. But if we might respectfully venture a suggestion, it would be that we have in our own midst an honored professor and distinguished judge who possesses in such a high degree all the qualities of mind, and in addition such peculiar bonds of heredity and sympathy with the subject, that all things seem to point to him as pre-eminently qualified for this great task. But, who ever it shall be, if by these pages I shall have done even the least to forward it, I shall be profoundly grateful.

As I look back upon the pages of this paper I am reminded of the young lady who said that Hamlet and Othello were so full of quotations. I plead in extenuation, however, first, that it was best, wherever possible, that the Chancellor should tell his own story; and, secondly, that where others, so much better fitted than myself, have contributed to illustrate and adorn that story, it was best that they should do it here.

The situation may also remind us of the anecdote told of an aspiring member of the Yale class of 1866, who in his Freshman year was delivering his first oratorical effort. That effort, likewise, consisted mainly of a succession of extracts from the writings of one great man after another, with comparatively little of the Freshman's own work between; then finally, having thus borrowed from a number of the Fathers, he concluded with a long quotation, which, as he put it, was "from the pen of the great James Kent of the class of 1781, the famous Judge and Chancellor of the State of New York and the distinguished LINONIAN!"

Macgrane Coxe.