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JUDGES AND ADVOCATES OF KENTUCKY.*

E. J. McDERMOTT.

Goethe said that the fittest word makes no impression, if the hearer "*ein Schiefohr ist*"—a man with a crooked or dull ear. If I may adopt the style which we are accustomed to use when representing some grievously wronged or basely persecuted man, woman or corporation before a jury, I may say that, in such an assembly as this of wits, scholars and wise men, I must be fortunate if I can always hit upon the words or phrases deemed fit by such a select and splendid jury of my peers. Coleridge, who was not satisfied with the reputation of being only a scholar and poet, once said to Lamb: "Charles, did you ever hear me preach?" To which Lamb replied: "I never heard you do anything else."

Since historical records became reasonably clear, fair and full, it seems that the men of every nation or age have been easily persuaded that they were wiser and more civilized than any of their predecessors anywhere in the world. Most men believe what a few shrewder men, for some reason, good or bad, desire others to believe. As Cardinal Newman said, most men, especially in matters outside the ordinary affairs of life, are persuaded to adopt an opinion, not so much by reason or argument as by dogmatic teaching from those they respect.

Great changes are going on in the opinions, customs and laws of our own country and of other countries. Man is a very imitative animal. Imitation goes on more rapidly and over greater areas than ever before, because of the great increase in newspapers, magazines and books, in travel, trade and inventions. A well-organized, unknown literary-bureau, with abundant money, can, without arousing opposition, accomplish greater, and sometimes more dangerous, re-

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sults than the old-fashioned demagogue whose power for evil was finally diminished as his characteristics, methods and record became well known.

In Blackstone's Commentaries, where the origin of the jury system is discussed, its origin is traced either to King Alfred or to the customs of the Germanic nations. In Blackstone's time, on religious and political grounds, it was thought best to find the origin of all good things in North of Europe; and, for several centuries—in fact, until the late war—it was customary to read and hear in England and America expressions of great contempt for the Latin nations. This war has turned the current the other way. Hallam, in 1848, in his notes to his View of the Middle Ages, said that the English jury-system, as we know it, arose in the time of Henry the Second, who reigned from 1154 to 1199. In one of his notes, he hurls his just contempt at "that preposterous relic of barbarism, the requirement of unanimity." In 1891, when we were making a new Constitution for Kentucky, a few of us in the Convention succeeded in the effort to provide thereafter for majority verdicts in civil cases. In 1876 our Legislature adopted the Civil Code based in part on the old English system of technical pleading and procedure, though England had discarded that ingenious but archaic system three years before.

On November 4, 1912, the Supreme Court of the United States wisely revised the old rules of pleading and practice in courts of equity of the United States, adopted in 1842, and threw aside some ancient absurdities. A busy lawyer is no longer compelled to puzzle his brain over the "practice of the High Court of Chancery in England," as modified by the General Orders of Lords Cottenham and Langsdale in 1841 and as expounded in Daniel's Chancery Pleading and Practice published in 1837, which edition (not the later editions) was long held to be "high authority" for those who could patiently follow its intricate and escape its pitfalls. (Thomas v. Wooster, 114 U. S. 112, decided March, 1885). I sometimes wished that this Daniel had been hurled into a den of fiercer lions than those that spared his biblical ancestor. Like the dude who turned up the legs of his trousers on a beautiful day in New York because it might be raining in London, we clung to some absurdities in English equity practice long after England had discarded them.

What is occurring in one of our states is usually occurring in others. On February 4, 1920, the total number of cases on the dockets of the two chancellors in Louisville was 97. Of that number 56 were divorce cases, a majority of 15. Today one of the chancellors granted 40 divorces, about half white and half black. I believe the chancellor said that not one of them was defended. That would have been startling to a prior generation; but a danger signal rarely means much to the blind or the deaf.

About thirty years or more ago there were, I believe, about 400 lawyers at our bar. Then Louisville's population was half what it is now. The representative of a law-book company here told me lately that there were 500 lawyers in Louisville in June, 1912; in November, 1919, we had only 343 lawyers and they were gathered together in 184 offices. Since March, 1918, seventy lawyers have died in the State; since June, 1918, only 17 lawyers were admitted to the bar here; but immediately prior to June, 1918, at which time the new act regulating admission to the bar went into effect, many men in Eastern Kentucky, it is said, were admitted. During the war two Louisville lawyers were killed. Seven died in the service. Mr. C. A. Gardner, my secretary, while I was Lieutenant Governor, was killed at the front in France; Mr. Alex. P. Humphrey, Jr., lost his life on an Aviation Field in Texas. It is clear that the practice is changing; that the business of the courts and the number of the law's votaries have not increased in proportion to the growth of our population; that something still remains to be done to make the Temple of Justice a safe and comfortable abode for those who, after a little study of the law, would like to win quickly a laurel crown and live like Solomon in all his glory.

There is a great difference between the learning and talents required of a judge and those required of an advocate. Both, of course, need literary and thorough legal training, but patient, kindly attention and a calm, well-balanced, impartial judgment are more important for a judge; suavity, shrewdness, tact, imagination, and the gift of eloquence are more important to the advocate. An excellent bar is necessary to produce good judge; good judges have a great influence in creating an excellent bar. It is noticed in all nations and in all ages that great men encourage and stimulate others around them, and so we notice in history that great artists, authors,

scientists, lawyers and physicians appear in groups. It was so in classic times; it has been so since the birth of Christ.

In the winning of jury cases, a lawyer's knowledge of the law and his preparation of his cases and his skill in the handling of witnesses, advantages which even mediocre men may acquire by much practice, are generally more important than his speeches; but without ability in debate, fine judgment, real scholarship, genuine culture, and the rare gift of imagination, he cannot hope to become a distinguished advocate. Really great advocates are as rare as great poets, great historians, or great military leaders. No man has ever won lasting fame as an orator unless by hard study, constant *writing* and frequent practice, he has thoroughly mastered his own language and acquired at least a moderate degree of familiarity with the world's history and the masterpieces of its literature. Patrick Henry was a rare exception, but his fame rests mainly on one short, bold, inspiring speech delivered at a critical, historical period on a burning theme, which he expounded as only a man of extraordinary gifts could. In Wirt's *Life of Henry* (1817) is a concise review of the chief difference between the Federalists and the Democrats, then called Republicans. The Democratic leaders in Virginia, Jefferson and Henry, were said by Wirt to have "declared themselves the friends of liberty and the people, and the firm advocates of a *government of the people by the people*," a phrase slightly altered by Lincoln in his Gettysburg speech by the addition of the words "for the people," without any material alteration of the thought.

Eloquence is the art of clearly, vividly expressing, in spoken or written words, virile, tender or noble thoughts and emotions that excite responsive thoughts and emotions in others. Oratory, a branch of eloquence, is the art of persuading and stirring others by apt words and fit action and of inducing them to do what the orator desires. Eloquence, whether written or oral, can appear only when the man, the theme, and the occasion are fit and come together. The ancients said: "*Pectus est quod disertos facit, et vis mentis.*" It is the heart and the power of the mind that make a man eloquent. The greatest advocate, orator and political leader of the past century, in the opinion of Wendell Phillips, himself a stirring, scholarly, and popular orator, was Daniel O'Connell, for thirty years the practical

ruler of an enslaved, high-spirited nation eager to be free. The greatest political philosopher and orator of the eighteenth century was Edmund Burke, another Irishman. Sir William Temple said: "That cause seems commonly the better that has the better advocate."

In Burke's immortal speech on American Taxation in 1774, he, referring to Mr. Greenville, said: "He was bred to the law, which is, in my opinion, one of the first and noblest of human sciences; a science which does more to quicken and invigorate the understanding than all the other kinds of learning put together; but it is not apt, except in persons very happily born, to open and liberalize the mind exactly in the same proportion." Charles Sumner once wrote to a friend at the Harvard Law School: "A lawyer must know everything. He must know law, history, philosophy, human nature, and, if he covets the fame of an advocate, he must drink of all the springs of literature, giving ease and elegance to the mind and illustration to whatever subject he touches."

Cicero said: "He is the eloquent man who can treat subjects of an humble nature with delicacy, great things impressively, and moderate things temperately . . . Eloquence is the companion of peace, the associate of a life of leisure, and the pupil, as we may say, of a State that is properly constituted. . . . *Nescire autem, quid antea quam natus sis, acciderit, id est semper esse puerum.*" Not to know what happened before you were born is always to be a boy. Only a thorough student of history and philosophy and literature can be a great orator.

A lawyer has less to do with logic than with dialectic, the art of controversy, the art of intellectual fencing, which enables one to get the best of an adversary in a debate. However shrewd or skillful we may be, we are surer of success when we are on the right side; but, though on the right side, we may be overthrown by one more skillful in dialectic. Which is the right side is often in grave doubt until adversaries, with all their strength, have fought over the case with zeal and skill.

The pursuits, interests, virtues, and vices of men differ little in one age from those of another, when the people have about the same grade of civilization. I have said that Blackstone and Hallam, when discussing the origin of the jury in England, gave no hint that juries had been used in classic times. In Athens, about four hun-

dred years before the birth of Christ, and later in Rome, the jury system resembled ours in many important respects, and majority verdicts were allowed in both civil and criminal cases. Of course, there were differences; but anybody familiar with Roman trials in the century before Christ knows that a jury trial then was, in many important particulars, like a jury trial here. Anyone that ever read Quintillian on the Education of an Orator knows that his rules for the preliminary handling of a client, on the examination of witnesses and the making of speeches to the jury, and even his warning against the little tricks used in jury trials, are useful now; that, with a few changes that part of his work would seem modern to a reader today. Quintillian, for example, warned his students to beware lest a volunteer witness be an enemy in disguise. Some years ago in this city a murderer was acquitted by the testimony of a witness who had evidently been sent to the Commonwealth's Attorney as one eager to convict the accused, who was put on the stand as a witness for the Commonwealth, and who caused the ruin of the Commonwealth's case and the acquittal of the accused.

Ordinarily, the fame of the lawyer is ephemeral. Most of his efforts are spent in attacking or defending some private citizen or corporation. In a case of that sort, the public has only a feeble or temporary interest. The law questions involved and the evidence introduced must be fairly well known to the hearer or reader of a fine argument before a court or jury to enable him to understand the skill and talent of the advocate. Few lawyers have made a great and enduring reputation unless they made their best effort on some case of historical or political importance. Only orations of that kind—on a great historic occasion—written with great literary skill—can win instant applause and remain famous for generations. They appeal to all classes and all times. Hence, the orations of Demosthenes, Cicero, Burke, Erskine, Grattan, Curran, Daniel Webster and Patrick Henry have long found ardent, admiring readers. They were masterpieces of literature. Such was the oration of Sir Charles Russell, afterwards Lord Russell of Killowen and Lord Chief Justice of England, the first Catholic Lord Chief Justice of England after the Reformation, when he triumphantly defended Charles Stewart Parnell and his associates against the London Times, and exposed the forged letters of Pigott who had sold them to the Times when it was

trying to ruin Parnell and his cause. Such an oration was that of Demosthenes in defense of his public life and of the Crown conferred on him and Cicero's defense of Milo; John Philpot Curran's defense of Archibald Hamilton Rowan for a libel, in the Court of King's Bench, Ireland, in November, 1794; the defense of Thomas Erskine, afterward Lord Chancellor of England, in behalf of Stockdale on a charge of libel before the King's Bench of England on December 9, 1789.

Thomas Noon Talfourd, in a speech after the death of Sir William Follett, said:

“What remains? A name dear to the affections of a few friends; the waning image of a modest and earnest speaker, though decidedly the head of the common law bar, and the splendid example of a success embodied in a fortune of two hundred thousand pounds, acquired in ten years, the labors of which hastened the extinction of his life. These are all the world possesses of Sir William Follett. To mankind, to his country, to his profession, he left nothing; not a measure conceived, not a danger averted, not a principle vindicated, not a speech intrinsically worth preservation, not a striking image nor an affecting sentiment; in his death the power of mortality is supreme. How sadly strange that a course so splendid should end in darkness so obscure.”

In Rome, about the time of Christ, jurors were usually taken from the list of Senators and Knights, as, in former times in Louisville, jurors were usually taken from lists composed of prominent men engaged in business and prosperous farmers. The Praetor, who directed the trials between citizens in Rome, was guided as to the law by learned lawyers known as Juris-consults, men who also prepared cases for men like Cicero, just as attorneys in England now prepare cases for the barristers. Only the latter conduct cases in court. In our city and State, lawyers have been accustomed to conduct all sorts of cases and to do the work of both an English attorney and an English barrister; but the tendency toward concentration here will probably bring out finally a system something like that in England. Sir Charles Russell was perhaps the only ‘attorney’ who ever qualified himself as a barrister and then rose to distinction. Lord Chief Justice Coleridge said: “Russell is the biggest advocate of the century.” It has been well said that “it was his striking per-

sonality, added to his skill and adroitness, which seemed to give him his overwhelming influence over the witnesses whom he cross-examined:" that he and Curran, O'Connell and Rufus Choate were "great actors."

We have had little trouble from the corruption of jurors, but jurors here, as elsewhere, are generally governed by public sentiment, and reflect that sentiment, consciously or unconsciously, in their verdicts. That is the reason it is so hard to convict a murderer in this or any other State. The jurors get their impressions not only from their neighbors but also from the press, which, in England, is not allowed by the courts to abuse its privilege by sensational, inaccurate or biased reports of pending cases. When Cato, Pompey's father-in-law, was to be tried in Rome, 350 jurors were summoned, and most of them went to Pompey's home before they went to court on the morning of the trial. When the prosecutor heard that, he abandoned the case.

When Clodius was prosecuted by Milo, there were 57 jurors sworn to try the case. During the trial, they requested a body-guard of the Senate. Clodius was acquitted by a vote of 32 to 25. Catullus, a Senator, after the verdict, said to one of the jurors; "Why did you ask for a guard? Were you afraid your money would be taken from you?" Cicero was one of the witnesses against Clodius. Later, in the debate in the Senate, Clodius said to Cicero: "The jury in my case gave you no credit." Cicero replied: "Twenty-five of the jury gave me credit, but thirty-two gave you no credit, for they made you pay them in advance." In the trial of Milo later for killing Clodius on a highway near Rome, there were 51 jurors; 38 voted for conviction, 13 for acquittal. The jurors could vote for acquittal, for conviction, or that the charge was "not proven."

Curran and Mr. Fitzgibbon, later Lord Chancellor Clare in Dublin, were long bitter enemies on political grounds, and fought a duel while they were both members of the Irish House of Commons. That was before the union of England and Ireland had been obtained by wholesale corruption with money and titles, a scheme carried out by Lord Castlereagh under the guidance of William Pitt. At that time no Catholic in Ireland could vote. Probably not one-fifth, or even one-tenth, of the people could vote for the members of the Irish House of Commons. Lord Byron said, in the English House

of Lords, that this union was "the union of the shark with its prey." An Irish noble, who had been a member of the Irish House of Lords before the union, once said to Curran, pointing to the old Parliament House in Dublin: "What do they mean to do with that useless building? For myself, I hate even the sight of it?" "I don't wonder at it, my lord," said Curran; "I never yet heard of a *murderer* who was not afraid of a *ghost*."

On one occasion, when Curran was making an argument before his old enemy, Lord Clare, the latter was plainly paying very scant attention, and, a part of the time, was stooping over and fondling his dog. When Curran observed that, he stopped and remained silent a few moments. Lord Clare looked up and said, "Go on, Mr. Curran, go on," Curran replied: "I beg pardon, my Lord, I thought your Lordship was employed in consultation."

In Kentucky two law suits caused the tragic death of two judges. Colonel Thomas Buford, on account of a decision of the Court of Appeals, murdered Judge John M. Elliott. John Elliott was born May 16, 1820, in Virginia, but moved to Eastern Kentucky. He had been a member of the Legislature and was in Congress from 1853 until 1859. In December, 1861, he was re-elected to Congress; but, after he was indicted in the U. S. District Court of Kentucky for joining the Confederacy, his name was stricken from the roll of the House. He was first a circuit judge and later a judge of the Court of Appeals. In *Buford v. Guthrie*, 14 Bush 677, the court decided against Col. Thomas Buford, who had an interest at stake, and the latter killed Judge Elliott on the steps of the Capital Hotel at Frankfort, March 26, 1879, with a double-barrel shotgun loaded with buckshot. Judge Hines had just left Judge Elliott a moment before. Judge Elliott was then about 59 years old. Buford was indicted in the Franklin Circuit Court, but was tried in Owen County. He pleaded insanity. The jury convicted him July 23, 1879, and fixed his punishment at imprisonment for life in the penitentiary. (Judge W. L. Jackson, Sr., of Louisville, presided at the trial.) There was the usual sort of absurd expert testimony on the question of insanity; and, after the verdict, Judge William L. Jackson, Sr., who presided at the trial, ordered the convict to be sent to the Anchorage Asylum; but, in a short time, Buford walked away from the asylum

and went to Indiana. That state, so kind to some of our criminals, would not return Buford to Kentucky, and so he went scot-free.

In *Howard v. Cornelison* (Feb., 1884), in the Superior Court, 5 Ky. L. Reporter 902, the court, in an opinion rendered by Judge A. E. Richards, held that Cornelison, the defendant's attorney, was a party to an attempt to defraud certain attaching creditors. Cornelison was a lawyer of Mount Sterling, and that was the home of Judge Reid of the Superior Court. Cornelison thought that Judge Reid was at least partly responsible for the decision of the case, though Judge Reid was really absent when the decision was reached and the opinion rendered. When Reid next came home, Cornelison asked him to come to his office, saying that he would show Judge Reid some papers there. Judge Reid went to the office, and, while not suspecting any trouble, was assaulted by Cornelison with a cane and cowhide. Judge Reid was unarmed and stunned and fled from the office. He was at the time a candidate for judge of the Court of Appeals. Later, at a public meeting at Mount Sterling, he explained the whole matter to the people, saying he was absent when the decision was rendered and that he was assaulted without warning and stunned by the blows he had received and hardly knew what he was doing when he retreated from the office; and he also said he would continue to prosecute his canvass as a candidate for a seat on the bench of the Court of Appeals; but, on May 15, 1884, he was found dead in the room over the law office of Judge Brock, with a pistol by his side. The coroner's jury said it was a case of suicide. The family said it was a murder. Cornelison was indicted for malicious assault and battery and was convicted. The jury fixed "his punishment at a fine of one cent and costs and imprisonment in the county jail for three years." He appealed first to the Superior Court (7 Ky. L. R. 344); and then to the Court of Appeals (84 Ky. 583) but the judgment was affirmed. Judge Reid was a cultivated, conscientious man and a good lawyer. After the shock of the assault, he was unwilling to engage in a duel with Cornelison or to shoot him at sight; but the public sentiment at the time was that he should have fought Cornelison at the time or later. The knowledge of this sentiment so tortured Judge Reid that he took his own life.

The resolutions often adopted at our bar meetings when a member of the bar has died, gradually became so fulsome and extravagant

and were entitled to so little respect that the Louisville Bar Association tried to abolish the custom. The effort succeeded for a while, but not long. When Judge I. W. Edwards died, the Hon. Isaac T. Woodson, a nervous but fine man, was appointed chairman of the committee to prepare the resolutions. Some of the foremost members of the bar were on the committee. When the judge presiding at the bar meeting called for a report and Mr. Woodson was about to offer it, he suddenly remembered that he must get the other members of the committee to sign it. He hurriedly sought them among the crowd at the meeting to get their signatures, but when he had read his report he discovered that the other members of the committee had signed, not the resolutions, but a judgment which he had prepared for one of the courts in a pending suit. The bar meeting had to be delayed until Mr. Woodson could find the members of the committee and get their signatures to the resolutions. They were willing, without reading, to sign anything.

When we read ordinary biographies, long or short, we usually realize that most of them are merely padded panegyrics and of little value. Books purporting to be local or State histories and published by speculators or book manufacturers are usually so fulsome and inaccurate as to be ridiculous to those who know. In them, as in affidavits, the truth seldom leaks out, except by accident. They generally convince the thoughtful reader that tombstones and funeral orators are not the only prevaricators in the world. In truth, it is not easy to be at the same time accurate and brief and yet interesting, discriminating and just.

When I came to the bar, one of its distinguished members was Judge William S. Bodley, who was born June 6, 1806, at Lexington, Kentucky, of a distinguished family. He received his literary education at Transylvania University, and studied law in the offices of eminent lawyers. He began the practice of law in Vicksburg, Mississippi, and later was elected circuit judge there. He was one of the organizers of the Vicksburg & Charleston Railroad; and, I believe, its first president. Suretyship for others ruined him financially early in his career; but he, nevertheless, out of later earnings, finally paid all those debts, when no longer legally bound. He was for many years the attorney of the city of Louisville, as for other

private clients, before the office of city attorney was permanently established.

When his son, Temple Bodley, and I were at the high school, I became acquainted with Judge Bodley. He was about 5 feet 5 inches high and weighed about 120 pounds. He was gentle, genial, polished and to me very entertaining, always taking a deep interest in our studies, games and hunting. Several times he gave me needed encouragement and very valuable advice. I always regarded him as a fine type of the good citizen, the able, honorable lawyer and the modest, well-bred gentleman. He died April 7, 1877.

In the important case of the City of Louisville v. the Trustees of the University of Louisville (1855), 15 B. Monr. 642 to 742 (cited as authority in Graded School, etc. v. Trustees of Bracken Academy (1894), 95 Ky. 436, and Elliott v. City of Louisville (1906), 123 Ky. 278), he and Messrs. Frye and Page represented the city. Messrs. S. S. Nicholas and Bland Ballard (later U. S. District Judge) were attorneys for the University. The attorneys for the appellant claimed that the University was a civil or public corporation; the appellees, that it was a private corporation. Both sides laid much stress on the decision and dicta in Dartmouth College v. Woodward, 4 Wheaton 640. The court, through Chief Justice Thomas A. Marshall, held that the University, though receiving property for education, was not such a public corporation as the legislature could control at pleasure, and affirmed the judgment; but Judge Hise dissented. Judge Bodley's argument, as summarized in the report, was strong; and I hear that lately a bookseller of New York advertised for a copy of his brief offering to pay \$7.50 for a copy.

Judge William F. Bullock, whose wife was the sister of Judge Bodley's wife, was born January 16, 1807, in Fayette County. He graduated at Transylvania University in 1824. When a youth, he was selected to deliver the welcome address to Henry Clay after his vote for President Adams. Judge Bullock began to practice law in 1828. While he was a member of the legislature, he introduced the bill to establish the common school system in this State. He was the leading promoter for the School for the Blind, and was later President of the American Printing House for the Blind, a Kentucky corporation. He was appointed circuit judge here in 1846; and, when judges had to be elected under the Constitution of 1850,

he was elected by the people. In 1849 he was a professor in the Law School of the University of Louisville. In 1835, he resigned his judgeship to practice at the bar.

He was a small, slender man, not exceeding five feet, five or six inches in height, very dignified and courtly in manner, with a beautiful, well modulated voice. In speaking, he was clear, forcible and eloquent. I heard him make a speech in the large criminal court room covering the western half of the third floor of the old court house. It was about 1875. This meeting had been called to denounce the act of General De Trobriand, who, with the approval of General Grant, drove the Democratic members of the Louisiana legislature from the State House. Judge Bullock's speech, apparently extemporaneous, received great, enthusiastic applause. It was considered far better than the speeches of those who had apparently prepared themselves for this important meeting.

Judge William L. Jackson, Sr., was born in Clarksburg, Virginia, in 1825. He was Commonwealth's Attorney there, a member of the legislature, Lieutenant Governor in 1856, and a circuit judge in 1860; but in 1861 he resigned his office to become a Colonel in the Confederate Infantry. He was a cousin of General Stonewall Jackson and, for a while, on his staff, but later commanded a brigade of cavalry. In 1861 he sent his family to Kentucky. Shortly after the war, he came to Louisville to join them and to practice law here. He was a tall, well proportioned, sociable man, with an impressive, military manner. Having ability and good address, he soon acquired clients, but most of his practice was in the criminal courts. In 1868 he formed a partnership with Edward Y. Parsons. In 1872 General Jackson was appointed circuit judge by Governor Leslie to fill a vacancy, and later was elected for a term. He continued as circuit judge until his death in 1890. On account of his special skill in the trial of criminal cases, he was selected to preside at the trial of Col. Thomas Buford, for the murder of Judge Elliott, and for other similar trials in various places in Kentucky.

William L. Jackson, Jr., was born in Virginia August 12, 1854. As boys, we were good friends, but later political differences, for a time, lessened our intimacy. He graduated at the high school with credit in 1874 and got his law degree at the University of Louisville in 1876. In 1881 he was elected to the legislature for that term

and for two succeeding terms. On the death of his father in 1890 he was given his father's place on the bench, and worthily filled that office till his death in January, 1896. Being at all times affable, frank and manly, he was very popular, and was a good lawyer. For some years before he died, he was a great sufferer from the lingering disease that finally caused his death. As long as he could sit on the bench, however, he performed his duties well, though suffering great pain all the time. Before he was raised to the bench, his firm was first Jackson & Phelps, and later O'Neal, Jackson & Phelps.

Mr. Zach Phelps, by tact, shrewdness and much experience, became very expert in the examination of witnesses and had considerable success. Mr. Joseph T. O'Neal was one of the best jury lawyers here in his time. He was popular with the lawyers and the public, and expert, not only in the examination of witnesses, but also in a closing argument. In the whole management of a jury trial, in civil or criminal cases, he was very efficient and successful. These men learned early the value of "suavity," in and out of court, and, believing "that it is easier to catch flies with sugar than with vinegar," they accomplished much by urbanity.

Edward Y. Parsons was born in Jefferson County December 12, 1842, a son of the Rev. C. D. Parsons, who was first an actor and then a Methodist minister. The son got his education at the male high school and in the law school of the University of Louisville. He was a partner of Judge W. L. Jackson, Sr., from 1868 to 1872 and later of Col. Marc Mundy, who had also been an actor. In 1874, Parsons was elected to Congress, and he died in Washington July 8, 1876, being succeeded by Col. Henry Watterson, the distinguished editor of Kentucky.

Mr. Parsons was a tall, handsome man, though one leg was slightly shorter than the other. He had a beautiful voice, and was very dramatic and popular as a speaker. His election to Congress was the result of the popularity he gained in defending Miss Ellen Goodwin, who had for years dogged the footsteps of Col. John W. Throckmorton, manager of the Galt House. She dressed in black, and would stand, for hours, silent and alone, like a voiceless sentinel, wherever Throckmorton was, whether at the hotel or in a store or in some private house. I believe she claimed that he had wronged her, but he stoutly denied it. Whether she kept up her vigilant

watching because she had some uncontrollable illusion, or because she was simply enamored with him, or because he had given her some reason, was long a matter of dispute. Finally, Throckmorton took some legal proceedings against her and Parsons defended her successfully, and thereby won great local fame.

Judge Adolphus Edward Richards was born in Loudonn County, Virginia, May 26, 1844. He studied first in the Military Academy and later at Randolph Macon College, but when the Civil War began, he marched from the campus to the battlefield as a private in the Cavalry Troops of General Turner Ashby; but later served under General John S. Mosby; and, for repeated gallantry on the field, rose rapidly to the rank of Major before 21 years of age. After the war, he spent two years at the University of Virginia, one of those years being spent on law under the able and distinguished John B. Minor. He completed his education at the University of Louisville and entered the bar here in 1868. Not long afterward, he became the partner of General Basil W. Duke. In 1880 he was Democratic elector for the State at large and in August, 1882, was elected judge of the Superior Court, which was organized to help the Court of Appeals to clear its overburdened docket. Four years later he returned to the practice of the law in Louisville. He was attorney of the city of Louisville for four years or more. His rank as a lawyer was high.

Judge Richards, though not a brilliant man, had sterling qualities of great value. He was always courteous, refined, diligent and fearless. His good sense, modesty, studious habits, and careful consideration of any matter before him gave his opinions great weight. He had not only integrity, but a fine sense of honor. While other men made much of their war record, he was too well-bred to boast, and too conscientious to exploit his courage or his patriotism.

The judge of a police court in a big city has a hard task. He has to deal with the ignorant, the unfortunate poor, the wasted wrecks, and the vicious of all kinds. He must have some knowledge of law, but he must also be keen, shrewd, humane, and, to the vicious, firm and stern. A knowledge of human nature, in all its varied and puzzling aspect, in all its lights and shadows, must be the result of long, patient thought and wide experience. He will often hear puzzling lies and false complaints; he will see real hardships, vile

habits, dense ignorance, and unblushing, degraded vice. He must penetrate through innumerable shams. His heart must not allow him to be too hard on the frail, and he must try to save the helpless victims of idleness or crime, while sometimes holding back the hand of small or big political meddlers or petty tyrants, who like to bully the poor or the weak. We care too little what happens to the poor and friendless.

Judge J. Hop Price, who, for a long time, was our police judge, seemed to have many of the qualities for that difficult place. He was a man of moderate education but great shrewdenss, and had a good knowledge of criminal law. In early life he had sown some wild oats himself and he had many clients among the poor and the criminal classes; but he was an honest man and had a sound judgment. Few could fool him as to the merits of the cases he tried. He was gentle to the poor and the frail, but severe to the callous vagabond and hard as flint to the dangerous criminal. When a beginner, he bought some law books to read, and a veteran of the bar in the criminal courts of that day said to him: "Hop, don't you fool with those books. You have a good instinct and common sense judgment for the law. Those books will only confuse you."

I saw on Sunday in the Courier-Journal that a farmer of Indiana, who came to Jeffersonville and sold his beans on Saturday, without having license plates on both sides of his automobile, was fined \$1.00. The costs were \$10.00. In a different kind of case in Jefferson County lately there was a fine of \$2.00 and costs of \$10.00. Such a result is outrageous. Cases of this kind are often crushing blows to the poor, even to the honest poor in cases where there was no intentional violation of law. Our officers should be paid for their services in the administration of justice; but not in that way. We care too little what happens to the unknown poor or friendless, to whom an unexpected call for \$10.00 or \$12.00 or for a bond for one or two hundred dollars may mean a great sacrifice or a time in the jail or in the workhouse. A year or two ago, an honorable man here, who owned real estate worth \$10,000.00, who had never been hailed to court before as defendant, juror, or witness, was arrested late Saturday afternoon on a baseless charge of malicious assault. It was charged that, several days before, while he was driving a small automobile slowly along the street he had bumped against a woman who slipped down

on the street. His bond was fixed by some underling at \$300.00. He would have had to spend all Saturday night in jail for want of a bond, if an old, influential friend, on whom he happened to be calling in the nick of time, in fact at the very time of the arrest, had not been allowed to put up for him, by special indulgence, a good check for \$300.00 until a bondsman could be gotten Monday morning.

Mr. Byron Bacon once wrote for me, at my request, a report of the trial of his first case, a trial in a court of a justice of the peace. Dr. Dwyer, a dentist, was suing Mr. Schmidt for \$60.00, the price of a set of teeth for Mrs. Schmidt. When the case was called for trial, Mr. Bacon, attorney for the plaintiff, went to the front door of the office and, after looking up the street, came back and said that he was ready for trial; that his witness was coming. Mr. William F. Barrett, attorney for the other side, went to the door, looked up the street, and said his witness was coming. At that time, the litigants could not testify for themselves. The plaintiff had to rely entirely on a brother dentist's testimony. Mr. Bacon examined Dr. Wilson as follows:

“Q. What is your profession? A. Dentist, sir. Q. Are you acquainted with the parties, plaintiff and defendant? A. Well acquainted, sir. Q. What is Dr. Dwyer's profession? A. Dentist, sir. Q. How does he stand in his profession? A. At the top, sir, unexcelled. Q. What do you know of Dr. Dwyer's making a double set of teeth for Mrs. Schmidt? A. Mr. Schmidt came with his wife to my office and exhibited to me a double set of teeth, stating that they were made for his wife by Dr. Dwyer. Q. Did you examine the teeth? A. Yes, sir. Q. Will you describe them, and say what they were as to workmanship? A. They were mounted on gold plate, and were a most exquisite piece of workmanship, Mr. Bacon. Q. What is such a set of teeth worth, Doctor. A. Well worth \$60.00, sir.”

MR. BARRETT'S CROSS-EXAMINATION.

“Doctor, did you examine those teeth in connection with Mrs. Schmidt's mouth? A. Oh, yes. Q. Did they fit her? A. Not at all, sir. Q. Doctor, is not the object of an artificial set of teeth to enable the user to masticate? A. Yes, sir. Q. Could Mrs. Schmidt have masticated with hers? A. Oh, no, sir. She had better ‘gummed it.’

Q. What effect had these teeth upon Mrs. Schmidt? A. They made her sick, sir—brought on a spell of nervous prostration. Q. Well, Doctor, considering the fact that they did not fit her, and she could not masticate with them, and had better ‘gummed it,’ and that they induced a spell of nervous prostration, what are these teeth worth to her? A. Nothing, sir, nothing.”

MR. BACON’S REDIRECT EXAMINATION

“Q. Doctor, how were those teeth mounted? A. Mounted on a gold plate, sir—very heavy, sir. By utilizing that gold plate, I saved \$20.00 in the cost of making new teeth.”

MR. BARRETT’S RECROSS EXAMINATION

“Q. Doctor, in that conversation in your office with Mr. Schmidt, was anything said about that gold plate? A. Oh, yes, Mr. Schmidt stated that he furnished the gold plate to Dr. Dwyer.” . . . Judgment for defendant.

On the strength of “*an alfred david*” of Judge Thomas R. Gordon, I venture to relate what he heard one day in a court in Eastern Kentucky, where many Anglo-Saxon names are still heard. The court called the case of the Commonwealth v. Pigg. The accused was the supervisor of a county road, who had been indicted for not keeping the road in proper repair. When the case was called, a man of enormous size rose and said: “Judge, I ain’t ready yet. My witnesses are here, but my lawyer ain’t here. He will be here this evening.” “Who is your lawyer?” said the judge. Mr. Pigg replied; “My lawyer is Mr. Hogg.”

Mr. Frank P. Straus, early in his promising career at the bar in Shepherdsville, brought a suit for a young lady of the county against a young man of the same county for slander. The defendant had said to others that she had granted him favors that an unmarried woman is not allowed to grant. A big crowd gathered to hear the proceedings. Mr. Straus put his client on the stand and, after a few preliminary questions, said: “Miss Birdie, how long have you known the defendant?” “Several years,” she said. “Have you ever been alone in his company?” “Yes, sir; many times.” “Did you or not ever have any improper or immoral relations with him in all your life?” “No, sir; never.” Here, Mr. Straus, rose and, looking

over the crowd with a proud air, said impressively in a melodramatic manner and tone: "Did you ever do anything improper with him at any time or in any place?" "No, sir," said the witness. There was first a deep silence and then some indignant muttering in the crowd. "I will go further," said Mr. Straus. "Did you ever, at any time or in any place, have any improper relations with any man?" "No, sir; never—but once." "Call the next case," said the Judge of the court.

After Mr. Straus had moved to Louisville and had been a successful advocate, he was once defending the Louisville Railway Company in a dangerous suit for damages. The plaintiff was suing for a permanent injury to her shoulder, caused while she was a passenger on a street car. She charged that, as she was leaving the car, she was hurled to the street by the sudden start of the car. He had forgotten to request the court before the trial to select a physician or surgeon to examine the plaintiff's shoulder. When the case was called, he made that request, and the judge himself selected Dr. Cottell, who was notified and consented to come to court immediately. Meanwhile, the plaintiff was put on the stand as a witness. She testified that she had been hurt when leaving the car; that she had been greatly injured in her shoulder; that it had been sound before; that it had been permanently impaired by the accident and apparently never could be cured. Before her cross-examination had been concluded, Dr. Cottell appeared and was instructed by the court to go with the lady to the jury room and to examine her shoulder. When the doctor returned, the cross-examination was interrupted that he might be put on the stand at once to save his time. Both the plaintiff's lawyer and Mr. Straus were afraid to examine him, not knowing what he was going to say; but at last Mr. Straus undertook the examination. "Doctor, have you examined the plaintiff's shoulder?" "Yes, sir." "What is the condition of her shoulder?" "It is very bad." "Is the injury temporary or permanent, doctor?" "It is permanent; there is no cure for it. She can't lift her arm high." Mr. Straus was greatly discouraged, and proceeded reluctantly. "Doctor, do you know whether her injury is such as could have been produced by a fall from the step of a street car?" "Well, sir, it is strange but true that I treated that shoulder twenty years ago. Its condition now is the same as it was then. I told this lady it could

never be cured." When the doctor said this, the plaintiff gave a hysterical scream and fell on the floor. Her attorney dismissed the petition.

Judge John Watson Barr was born in Versailles, Ky., December 17, 1826. He got his diploma in law at Transylvania University in Lexington and began his practice in Versailles in 1847. Later he was elected county attorney, defeating his later partner, Mr. Goodloe. In 1854 Mr. Barr moved to Louisville. He was first a partner of Mr. Joseph B. Kinkead for eight years. Thereafter for several years, he had no partner. Then he and Col. John Kemp Goodloe became partners. In 1862 Mr. Barr was elected a member of the city council and prepared the law that established the Board of Sinking Fund Commissioners; he became its president; and planned and carried out the measures necessary to protect the credit and provide for the debt of the city. About 1871 Mr. Alexander P. Humphrey joined the firm of Barr and Goodloe and it thus continued until April 16, 1880, when Judge Barr, without any request from him, was appointed United States District Judge by President Hayes. At the bar, he was making about four times the salary of the judge; but the savings of past years had made him independent. After his appointment, he was sometimes called to sit as a member of the U. S. Circuit Court of Appeals.

In early life, Judge Barr was a Whig, but when that party, in 1855, was absorbed by the Know-Nothing or American Party, he voted the Democratic ticket. During the war, he was a loyal Unionist. He took a prominent part in raising and organizing Union troops, and was an officer in the home guards. He was long the attorney and a director of the old and staunch Bank of Kentucky; but resigned his directorship when he was raised to the bench. After 19 years of faithful service, he retired from the bench February 21, 1899. In the summer of that year, in spite of his age, he consented, as a matter of duty, to act as one of the three election commissioners of the county, in order to prevent any fraud in the November election. It was a path of thorns, but he intelligently and diligently performed his task, in spite of disagreeable contentions and obstructions by his colleagues. His services were urgently needed and the people applauded his fairness, zeal and courage. He died January 1, 1908.

In his home and as a citizen, he was all that a man should be. What he was on the bench, the older members of the bar well know; but the testimony of ex-President William H. Taft, at the time Judge Barr retired, well expresses the opinion of those most capable of judging. Judge Taft, then on the bench of the United States Circuit Court of Appeals at Cincinnati, wrote to a committee of the Louisville lawyers, who had called a meeting of the bar to express their regret at the retirement of the judge, as follows:

"I have toward Judge Barr a mingled feeling of filial affection and comradeship. Take him for all in all, I do not expect to see his like again. In no other judge did I ever see the desire to put his mind in a condition exactly impartial between the parties so intense as in him. His nature is so gentle, his manner is so courteous, his treatment of opposing counsel so deferential, that his firmness in enforcing his views, once made up, and his just wrath, roused by trifling or chicanery or fraud clearly established, by their very contrast give them a quality best described as awe-inspiring. Judge Barr's colleagues have a genuine love for him, the same feeling which I know the Louisville bar have. I have noted the fact that so tender are you in bearing and respect for him that, in practically every case of an appeal from his decision, the appellant's counsel feels called upon to refer to his affection for the judge and his professional respect for his learning, ability and impartiality. His successor will have a most difficult task in filling his place."

Judge William S. Pryor, a Democrat, and on the Court of Appeals bench 25 years, wrote to the committee his regret that he could not come to the meeting, and said of Judge Barr: "With an honest mind and a purity of character unexcelled, connected with a legal ability of the highest order, *he made a model judge*. A mind free from bias, his decisions were always accepted as the offering of an honest conviction. Younger members of the profession should strive to emulate his goodness as a man and his greatness as a judge."

The resolutions of the bar, prepared and read by Mr. Temple Bodley, said:

"For nineteen years, the painstaking labor, the large learning, the perfect impartiality, the patient attention, the breadth of reflection, the justness of judgment, the inflexibility of doing the very right according to the law, the humanity, the considerate courtesy,

the gentleness of manner with which justice has been rendered upon this bench have caused the bar and the people of Kentucky with one accord to declare him *a model judge*."

Shortly after Judge Barr's death, when Judge Taft was Secretary of War, and a candidate for the Presidency, he spoke to a large audience in Louisville April 10, 1908, and, after paying a complimentary tribute to the bar of Louisville, said:

"It was my great good fortune, under those circumstances, to be acquainted with, to become a warm friend and a profound admirer of one who, since I was last in Louisville, has gone to his long home, a man who had in his nature a finer sense of judicial quality than any man I ever knew. Sweet-tempered, a profound lawyer, and industrious public servant, with whom conscience stood higher than anything else, a man whom it was an elevation to know—John Watson Barr."

The greatest Kentucky advocate and orator whom I have heard and known well enough to judge him fairly was my friend Col. William C. P. Breckinridge. I have heard him on various themes and under all sorts of conditions. His gift of eloquence was cultivated by study and constant practice. He was handsome in face and form; in bearing, courtly and deferential but manly. His tenor voice was clear, strong and musical; his enunciation, distinct; his gestures, graceful; his diction, elegant; his periods, well polished and rounded. He had diligently studied literature, history, political economy and law. On a platform or in court, he was suave, resourceful and persuasive, though, when necessary, sarcastic and bold. He had a delicate fancy, keen wit, and genuine humor. To scholarly men or plain farmers, he could speak entertainingly, forcibly and eloquently, nicely fitting his style to his theme and both to his audience. He had a vivid imagination and many of the qualities of a poet, as all genuine orators have. His well-used pen was as deft and powerful as his tongue. When he had appealed convincingly to the reason and judgment of his hearers, he could make their blood tingle by a tender appeal or a happy expression of noble and stirring sentiments.

Half educated, flowery declaimers and insincere, plausible demagogues are numerous. They win temporary applause from the dull or the vulgar; but such laurels soon wither. True orators and great advocates flourish only where enlightenment, justice and free-

dom reign. Public office and money and all its luxurious accompaniments, may sometimes be won without learning, sterling integrity, and the noble gift of eloquence; but, as Horace said of public honors, riches and all their coveted baubles—*Sunt qui non habeant; est qui non curat habere*—there are some who have them not and there is one who does not care to have them, if they must be gotten in the usual way; and yet true success in a noble calling is worth a lifetime of honorable toil. The upward path is steep; the summit, few can reach. The real devotee of the law, well-prepared, with a stout heart, a pure mind, and genuine talents, may, as he rises, by worth, enjoy independence, inward content and the gratifying esteem of good men. These are the golden fruits of a virtuous and useful life. They may be won in almost any calling, but only by those that are truly fit for the task.