is the first marks of the Indians that we have seen that have been made this season

July 8th Slepte badly not on account of Indians but musketoes. Make an early start. Strike East a little north to a point of timber perceptible to us yesterday from the high hills on the, from where we took the bearing knowing we could not see it from the vally 12 miles strike S.W. arm of a handsome lake it stretches round after running 2 miles East to where there is an outlet south 20 feet wide & 2 feet deep flowing out rapidly probably on account of a heavy N. wind. This outlet we followed down until we concluded from its south course it must flow either into the East or West branch of the des Moines. We then returned & followed the lake round further N.E. for one mile and there took our course East for a body of timber about 5 miles where we arrived at sun down and which proved to be a lake extending for several miles in a direction nearly N. & S. with points putting in from the East covered with a good growth of oak timber and generally elevated. The prairie passed over today was generally of a fine quality & is not full of knobs & slues as some we have travelled over Soil of the richest quality. I do not recolect of passing any portion of prairie of a similar character that is better adapted to cultivation as far as soil and handsome locality is concerned.

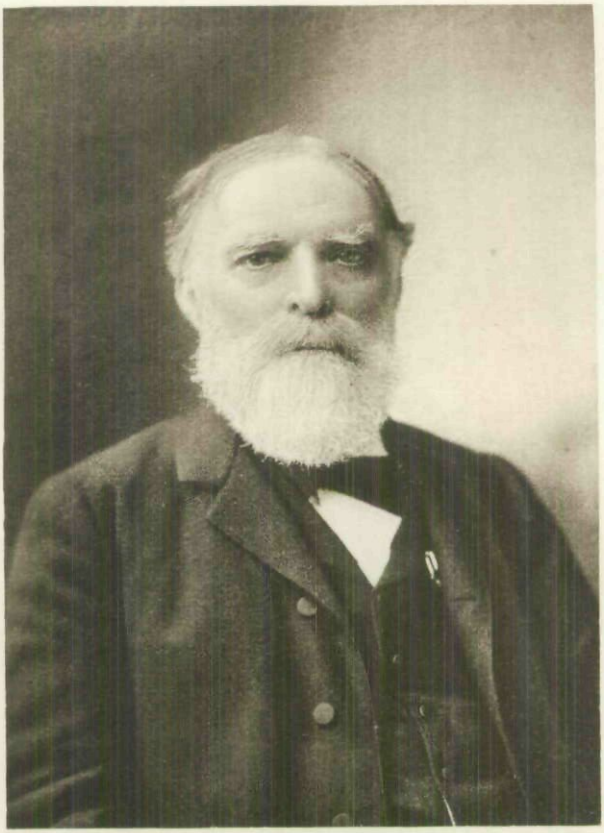
JUDGE JOHN F. DILLON.[1]

BY EDWARD H. STILES.

The retirement of Judge Dillon from the bench was the occasion of profound regret; so strikingly and spontaneously profound that I cannot omit some of its public expressions, as they will serve to throw light upon his character as a man, upon his fitness as a Judge, and strongly tend to establish proper estimates of both, as well as to confirm what I have already said or may hereafter say in that behalf.

His letter to the president tendering his resignation was dated May 26th, 1879. By its terms it was not to take effect until the first day of the following September, in order that in the meantime he might dispose of the unfinished business, and his successor be enabled, if nominated and confirmed be-

[1] The first instalment of Mr. Stiles' article appeared in the April ANNALS. The portrait accompanying that part of the article was made about the time of his removal from Iowa (1879). The one which appears in this number represents him at the present time.



John F. Dillon.

fore the adjournment of congress, to qualify in time for the fall terms. He was notified that his resignation had been accepted, on the eleventh of June, through a letter expressing the regret of the president and that of the attorney-general for the loss the judicial service of the government would sustain by his retirement.

The bar of every State embraced in his circuit took prompt action through meetings, resolutions, addresses, and other testimonials to show their personal affection and their ardent appreciation of his rare qualities and valuable services. They were of no ordinary character, and from some of them I make brief excerpts. The following are from an address presented by Mr. A. L. Williams, late Attorney-General of Kansas, on behalf of the Kansas bar at the opening of the June, 1879, term of the United States Circuit Court at Leavenworth, Mr. Justice Miller of the United States Supreme Court, presiding:

It is seldom, we believe, that there is mingled in so great a degree the respect and admiration due to an able and upright Judge with the tender regard which only characterizes sincere and intimate friendship as may be found in the case of the bar of your Circuit towards yourself.

We can not hope to add by this tribute anything to your great fame as a Chancellor and Judge. Neither can we extend your reputation as a philosophic student and writer upon the law, already firmly established amongst all Anglo-Saxon people.

The bar of your Circuit owe you a debt of gratitude for many things, and not the least for the uniform help and encouragement you have ever extended to young practitioners. Your unfailing patience, the stimulus of your approving smile, your genial obliviousness of the crudities of the young lawyer struggling for a place with his abler fellows, have endeared you to both young and old, and taught us all lessons of charity and forbearance.

You have taught us not only that there is no excellence without great labor, but how marvelous a degree of excellence labor united to probity of conduct may attain. We behold in you one who owes nothing to fortune, and but little to preferment: one who has risen by force of merit alone. No envy or detraction can shadow any honor you have received, or any fortune with which you may be endowed, for it must be admitted on all hands that every step in your ascending ladder has been fairly and industriously scaled. You have ever impressed upon the laity no less than the bar, by your clear and comprehensive judgments, that law is a rational and coherent science, the end of which is justice. Your decisions have

always been illustrated with clear and judicious expositions which satisfied the reason and convinced the judgment. Your practical intellect has always penetrated the husks of discussion to the kernel of controversy, and your conclusions have not only met the approval of the bar generally, but for the most part have been acquiesced in by counsel whom your judgments have defeated.

A term of this Court has not only been regarded by the oldest and most experienced of our practitioners as a school where the better parts of their profession were ably taught, but it has been a source of pride to us all that, as counselors here, we were assisting in as pure and efficient an administration of public justice as is possible anywhere.

Following the address remarks were made by several distinguished members of the bar. These extracts are from those of Mr. Geo. R. Peck, sometime President of the American Bar Association:

This is no time for praise, unless it comes from the heart. What I could wish to do is to impress upon this proceeding that it is a tribute, not to the Judge, but to the friend. As has been so well suggested by Mr. Williams, no motive for mere compliment exists. Whatever may be said here is the genuine and spontaneous feeling of the heart, or it is nothing.

Genius may inspire admiration, but it is only the kind and sympathetic heart that can win affection. Judge Dillon's crowning glory is that goodness and greatness which have endeared him to all, and especially to those who, by reason of their professional duties, know him best.

I ought to speak of his learning, known and recognized by jurists and lawyers everywhere; of his legal writings, which are cited as authority in the rude court-room of the frontier and in the classic walls of Westminster Hall; of his industry, that devotion to the laborious duties of his station which has enabled him to do what I believe no other circuit judge has done—to hold two terms of court in each district of his circuit during every year of his administration of the judicial office; and when we remember that his circuit is an empire extending from the British possessions to Louisiana, from the Mississippi to the mountains and beyond, it seems almost marvelous. I ought to speak of that high sense of duty which governed all his judgments, and by which he measured all rights in the just and even balances of the law; of that clearness of vision which guided him straight through all our fallacies and all our argumentation to the very heart and truth of the matter; of that dignity mingled with human sympathy, which made it plain to all men that here was a man who never forgot that he was a

judge, a judge who never forgot that he was a man; of that strong sense of justice and equity, that hatred of wrong and oppression, which were so marked in his judicial character, that I have thought if, like Sir Matthew Hale, he should enter unheralded the court-room of the unjust judge, robed only in a miller's coat and hat, all heads would bow and tongues exclaim, "This is a judge"! I ought to speak of our pardonable pride that when that venerable institution of learning, seated at the commercial gateway of the continent, with wealth and power at its command, sought to find the one man who could fill a most important chair, she reached her hand across the prairies and plucked this flower of our western civilization. But I have no heart to speak of these things at this parting moment. I can think only of his goodness, his kindness, and his sympathy. I know not whether a lawyer's prayer can avail anything in the chancery above, but, speaking for all my brethren of the bar, if I would take him by the hand—that hand which has led us all so long—I would say, good bye, and may God give you peace, health, strength, and happiness, always.

And these from the remarks of Mr. Robert Crozier, Chief Justice of the Supreme Court of Kansas, on behalf of the State judiciary:

Before the advent of Judge Dillon, as Judge of the Eighth Circuit, we were prepared, looking to his former reputation as a jurist, with which we were to a considerable extent acquainted, to welcome him with glad faces and hearts, and we did so. We have all looked to the recurrence of his terms as seasons when we might be enlightened by his luminous exposition of the laws and the acknowledged justness of the decisions he made. After an experience of ten years, I can now say, for the judiciary of the State, that our highest expectations have been more than satisfied; and now that the fates have decreed there shall be a final separation, our admiration is as glowing as at the beginning.

Mr. Justice Miller then said:

The Court is in full sympathy with the bar in the sentiments which have just been expressed in regard to the retirement of one of its members. Judge Dillon's resignation is a loss which must be felt by the bar of the Eighth Circuit, by the people among whom he has administered justice so long and so well, and by his associates on the bench of which he is about to take leave. This loss, however, is not equal to its effects upon all these classes. His brethren in the courts, who have co-operated with him in the arduous duties of a judge, who have received his aid, who have been with him in council and shared his labors, are the heaviest losers. It is,

therefore, eminently appropriate tnat they should join in testifying to their appreciation of the man and his services by directing that the communication from the bar be spread upon the records of the court.

If I may be permitted, as the presiding justice for the circuit for a period including the entire time of Judge Dillon's service in the court, to indulge in a suggestion of my own special misfortune in the matter, I must say that it is greater than that of others; for he whom I had hoped, as he came later, might remain longer in this court than I, and to whom would have fallen the duty of making the sad comments appropriate to the severance of our official relations, is the first to leave our common sphere of official duty.

Though in his case the cause is one which carries him to a less laborious, a more profitable, and let us hope a more agreeable and perhaps useful field of labor, and though this must, as it ought, mitigate the pains of separation, it remains true, as regards myself, that I cannot hope in any successor, however talented by nature or accomplished by learning, the same assistance in the performance of my own judicial duties, and the same relief from unnecessary responsibility as presiding justice, which have made my relations with him so pleasant.

When you add to this the interruption, more or less, of our social relations—relations which are imperfectly expressed by the strongest terms of affectionate friendship and unlimited confidence—it will be seen with what emphasis I unite with the bar and other members of the court throughout the circuit in this cordial tribute of respect and expression of regret at the retirement of Judge Dillon from the bench.

The following excerpts are from an address on behalf of the Minnesota bar, prepared by its committee consisting of former Chief Justice Charles E. Flandrau, General John B. Sanborn, George L. Otis, Judge George B. Young, Harvey Officer, and presented at the opening of the June, 1879, term of the United States Circuit Court, at St. Paul, Judges Dillon and Nelson being on the bench:

On this occasion nothing could induce us to give expression to what we did not conscientiously believe. Let the value of our views, then, be measured by their sincerity.

We recognize in you a man of extraordinary learning in all the branches of knowledge that combine to make a thoroughly good Judge. We also concede to you all those qualities of temperament which are essential to the same end. You have been patient when we have been tedious; you have been amiable when we have been irritable; you have always been clear when we have been in doubt.

It has been an edifying pleasure to us to listen to your lucid expositions of the many difficult questions which we have, in the discharge of our professional duties, so often submitted to you for solution. The varied interests that have been referred to your decision have involved the welfare of the greatest enterprises of the northwest, and these contests have arrayed in antagonism forces of corresponding magnitude; yet your wisdom and impartial justice have enabled you to satisfy all interests and make your judgments respected by all parties.

We have, by our long and intimate association with you, not only respected and venerated you as a judge, but also have learned to love you as a friend.

The loss to the bench may be supplied, and the wheels of the law revolve as before, but the severance of the closer ties which unite us is irreparable.

The following are from the remarks of Mr. District Attorney Billson:

I only give voice to the common experience of our bar, when I say that the opportunities we have enjoyed of observing your ample learning and your skillful methods in the dispatch of business have been the most stimulating and highly prized of our professional privileges.

The patience and circumspection with which you have been cheerful to listen and inquire; the rapidity with which you have grasped, and the tenacity with which you have remembered the most intricate statements of facts; your quickness to apprehend an argument of counsel, and to further illustrate its correctness, or to expose its fallacy; your happy combination of capacities for the widest generalization and for the most detailed and discriminating analysis; above all, the benevolent solicitude, the consummate skill, the sound discretion, and the splendid success with which you have ever striven to avert that sometimes inevitable, but always deplorable catastrophe, an incompatibility between fixed principles of law and the equities of a particular case—all these are salient features of your official character, as we have learned it and loved it during ten years of professional contact, and as we shall bear it in perpetual remembrance.

Your decisions upon the grave and often novel questions presented to you, have been perused by the profession throughout the country, and with a gratifying degree of confidence, are everywhere cited as authority by bench and bar alike.

In a word, you have made solid and fame-worthy contributions to the noble science of the law, upon which have labored the closest thinkers of many ages.

And this from the remarks of Mr. Gordon E. Cole:

The patience and painstaking with which you have ever sought to solve the most difficult problems of both law and fact; the wisdom with which, under your administration, the harshest and most technical rules of the common law have been attempered by equity; the ripe legal learning and felicitous language which has adorned your judicial decisions; the uniform kindness and courtesy which has characterized the intercourse of the bench with the bar, have endeared you to the bar of this district in a vastly more than common degree. Every country and state has, or has had, its golden age of the law, to which the profession loves to recur. The era of Marshall in the nation, of Kent in New York, of Shaw in Massachusetts, of Gibson in Pennsylvania, of Mansfield in England, and of your honor's administration in the eighth circuit, were all such periods, and will alike be remembered as luminous epochs of judicial history.

And this from those of Governor, afterwards United States Senator C. K. Davis:

The bar of this State received the announcement of your resignation with expressions of regret more touchingly eulogistic than words can here express with due regard to the formality of this proceeding.

It so happened that we urged your appointment as Circuit Judge, many years ago. Of the many eminent names which were under consideration for that nomination, your own was preferred by us, not for any personal reasons, because few of us then enjoyed your acquaintance. We had, however, become familiarized with your judicial character by a frequent application in our courts of your decisions as Judge of the Supreme Court of Iowa, and we were guided to our preference by them. We found in them learning always more than sufficient for the case; intellectual vigor, to which that learning was an armor, not an incumbrance; mental independence creative in its character, a judicial conscience which dealt with the case and not with its consequences. With these prepossessions you came to us, and there is not a member of this bar in whom they have not passed into convictions which are adorned and made forever beautiful by an abiding love and esteem for those personal traits which experience can only teach, and which absence can not destroy or even dim.

There are limitations to all endeavor and ambition, and surely the administration of the laws of seven commonwealths, which hold six millions of people, which present diverse institutions, codes which, though perhaps analogous, are yet so different as to perplex; where civilization and empire are so visibly over-spreading, where Terminus has not yet set up his land mark; where a legal system

must be created in a few years which will survive when the erasing finger of time has made illegible the decrees which establish it; surely these are boundaries which circumscribe the greatest capacity and resolution.

It was for you, and not for us, to say when you should pause. It is our gain and your glory that so much of the vast work has been done. It will not pass away. It will endure in precedents, guiding human concerns when all recollection of us is lost.

I will not stop to mark the like proceedings in the other States of the circuit. The foregoing will suffice to confirm my statements in the outset, respecting the universal affection in which Judge Dillon was held by his contemporaries, and the exalted opinion they entertained of his abilities. There is no mistaking the sincerity and depth of the common voice in which they speak. They clearly reveal a character of superlative traits.

And since I have so far touched upon his personal side, I feel justified in further illustrating its lovable qualities by the production of two rare letters which twenty-four years afterwards passed between Judge U. M. Rose, of Little Rock, Arkansas, and himself. Both were then over three score and ten. Who U. M. Rose was, it is unnecessary to explain, further than to say that he was the President of the American Bar Association, our representative at the Hague Peace Conference, a finished scholar, and one of the most accomplished lawyers of the American bar.

Judge Rose to Judge Dillon:

TERMINAL, CALIFORNIA, Sept. 21. 1903.

DEAR JUDGE: As one gets older he is more prone to think of absent friends; accordingly I have been thinking of you much and often of late, wondering how you were, and in what manner you were spending the summer, and finally I am impelled to trespass on your time by sending you a note, and thus putting an end to a long silence.

As I do not know how you have passed these last months, I must fall back on myself and tell you what I have been doing of late. You may remember that I have a married daughter, Mrs. Gibbon, living in Los Angeles. She has two very bright, lovely boys of nine and three years respectively, and she and the family occupy a cottage here by the sea. I and my wife left home on the 13th of July, and have been here ever since, staying in the cottage with

them, and all of us boarding at a hotel. On the whole I have never spent a summer more pleasantly; and I might well compare the days thus spent to those we passed in Paris years ago, fishing for books in the Rue Soufflot and on the Quai Voltaire. Men's capacity for happiness is certainly varied, since I have found equal pleasure in the busy city and here in the seclusion of a small watering place, listening to the incessant moaning of the disconsolate sea, with but little companionship, but plenty of good books to read. All summer the weather has been superb; and not a drop of rain or a cloudy day have I seen since leaving home. The sea bathing has proved unusually pleasant, and now we are about to start for home with feelings of joy mingled with sentiments of regret to think that we are leaving so pleasant a spot; remembering also that in the nature of things we may be going away for the last time.

I suppose you may have been in this part of the country, which is so full of interest of many kinds. I know of no part of America that seems to be so highly advanced in civilization; and to the traveler it is a striking revelation. When I was first here, 19 years ago, Los Angeles had about 20,000 inhabitants; now it has about 130,000 and the evidences of prosperity are everywhere visible. The aspect of the country, with its mountains and fruitful plains, is extremely attractive; but it is perhaps the climate that is the greatest factor in the universal progress. My health has greatly improved since I came out here, and my wife is quite as well as ever she was in her life. I do not think of coming here to live; but I should be glad of an opportunity of spending other summers here like that just closing, engaged in the genial occupation of Lotus eating, and rejoicing in the ebb and flow of the sea, shimmering in the triumphant and unvarying sunshine. And this brings me to another theme. Is it not time that you and I were leaving off the courts and the law, with all of the turmoil of this weary and unintelligible world, forever incorrigible, both to precept and example? I am beginning to think so; and to long for rest like the overworked steer. Still the future is as yet not quite clear to me; perhaps it will never be.

Wishing you, my dear sir, health and contentment and long life, with some rest from the arduous labors, so well performed, of many years, I remain, Sincerely yours,

U. M. Rose.

Hon Jno. F. Dillon.

Judge Dillon to Judge Rose:

New York, October 19th, 1903.

My Dear Judge Rose: I am doubly indebted to you. It filled me with pleasure to receive your delightful letter from Terminal, California, giving me a relation of your pleasant summer in the companionship of wife, children and grandchildren, and in communion

with nature and with that unfailing resource at all times and in all situations,—plenty of good books. No possessions or treasures are more secure or of more value than your unextinguishable love of study and reading. I have read and re-read your letter, so replete with interesting suggestions and thoughts, and which reflects throughout that contentment and tranquil serenity of mind which befits, but unhappily does not always accompany age.

I am also under obligations for the valued invitation of Mrs. Rose and yourself to attend your golden wedding anniversary next week. Let me with all my heart felicitate you, your wife and family, on an event which so many hope for, but alas! so few realize. I note your interdict, but I hope I do not disobey it in sending to Mrs. Rose not a "present", but a slight souvenir or memorial, which I hope may remind her and possibly those who survive her of my warm friendship and regard, deeply regretting that the wide distance will deprive me of the pleasure of being present in person.

Answering your inquiry, I am glad to say that my health remains very good, even better than when I saw you at Saratoga last year. I have spent the summer here at my country place with all of my children and their families. My son Hiram and family were with me and have just returned home to Topeka to celebrate their silver wedding next month.

The closing inquiry in your letter, whether it is not time for us to leave off courts, the law and the turmoil and burden of professional life, opens a question which constantly recurs, seriously demanding solution, but one which is too large to enter upon here. I hardly know what it is best to do. I sometimes gloomily think that old age is almost an unmixed misfortune, and that there is nothing for one of my years to do but to keep drifting on and on till Fate settles what the man cannot himself decide. Idleness to me would be intolerable, and as much as I love books, I fear if left with them only, I should feel as Gibbon expressed it, that I would be "alone in Paradise."

And having referred to Gibbon perhaps the conclusion of his delightful Autobiography best expresses my own feelings. I enjoy the "autumnal felicity" of life, "but reluctantly have to observe that two causes, the abbreviation of time and the failure of hope (with me the former rather than the latter) tinge with a browner shade the evening of life." But I am not unhappy and have no dread of the future, and as Landor says of Pericles, I am ready when the time comes to "extend my hand to the urn, and take without reluctance or hesitation what is the lot of all".

Wishing you and Mrs. Rose many, many years of health and happiness, I am, as ever, Most sincerely yours,

JOHN F. DILLON.

Hon. U. M. Rose, Little Rock, Arkansas.

A copy of this correspondence was sent by his son, Hiram P. Dillon, to Judge John F. Philips of the United States District Court for the Western Division of the Western District of Missouri, one of the most learned and distinguished Judges of the Federal Court and an active practitioner in the United States Court when Judge Dillon was upon the bench. As apropos to the subject, I feel constrained to here give his reply:

KANSAS CITY, MO., Dec. 30, 1908.

Hiram P. Dillon, Esq., Attorney at Law, Topeka, Kansas.

MY DEAR SIR: I greatly appreciate your considerate act in sending me copies of the letters between your father and Hon. U. M. Rose. The sentimental intercourse and exchange of views on the philosophy of Old Age, between two such noble spirits and exalted minds is, to me, as beautiful as it is pleasing and instructive. Both are great lawyers and thinkers, whose wide experience and reading give them a wealth of information that enriches the universe of knowledge. Though looking at the sunset glow from somewhat different view-points, in reading their letters, in connection with my own reflections, I recall the statement of Steele:

"An healthy old fellow, that is not a fool, is the happiest creature living. It is at that time of life only that men enjoy their faculties with pleasure and satisfaction. It is then we have nothing to manage, as the phrase is; we speak the downright Truth, and whether the rest of the world will give us the privilege or not, we have so little to ask of them that we can take it".

To my thinking Judge Dillon was the most gracious, self-poised and best equipped presiding Judge of any court I ever appeared before; and the judiciary sustained an irreparable loss in the failure of the President to call him to the Supreme Court of the United States. For him I entertain the sincerest respect, unbounded admiration, and a feeling akin to affection. May he live long in honors, peace and happiness. Very truly your friend

JNO. F. PHILIPS.

As further apropos from the point of view under consideration, I cannot refrain from giving an excerpt from a letter of his son, Hiram, on the unveiling of his father's portrait in the court-house at Davenport, in 1900. I appreciate that a letter, coming from a son, would naturally speak well of his father, but there is in this one a spontaneous vein so graphically, as well as touchingly true, that it throws, as it were, a new light on the inner life and being of his father. The

letter was received by Mr. S. F. Smith, Chairman of the Committee of Arrangements on the occasion referred to, and the excerpt is as follows:

> You meet at this time to do my father honor as a lawyer, but I know him as a man. He is a great lawyer, but he is a greater man. In saying this my judgment is not warped by filial pride, but is the result of seeing and knowing him day in and day out for years. When I see him after years of experience, burdened with large interests and many cares, in a world that is as our world, dealing with each man as a fellow man, treating the tramp at his door with the same kindness that he would a president, giving him the consideration that he believes is due because he is in the likeness of his Maker, I forget the father and believe in the man.

In view of the length which this sketch has already reached and the limitations under which I am necessarily placed, it remains for me only to touch briefly some of the salient features of Judge Dillon's life after his removal to New York, and his matured views on the underlying principles of our government and laws.

On account of his rapidly increasing practice in New York he felt obliged to relinquish his professorship in Columbia College, which he had filled with eminent distinction. In a comparatively few years his clientage embraced some of the largest interests of the metropolis, and he came to be regarded as one of its ablest lawyers, and one of the most profound jurists of the American bar. By high authority he was ranked as its foremost leader, and, taken all in all—the depth and comprehensiveness of his learning, his distinction as a judge, the accuracy of his opinions, his strength of argument, his judicial aptness, his fame as an author, his felicity of speech, his general literary merit, in short, the *tout ensemble* of his varied accomplishments—he may justly be so regarded. The following instance will, I think, exemplify the general estimate: At the Annual Meeting of the State Bar Association of Rhode Island, in 1904, Josiah H. Benton, one of the leading lawyers of Boston, delivered the principal address. His subject was "The Qualifications of Judges." He strongly inculcated patience as an important one of them, and in illustrating this topic of his discourse, said: "Now, my friends, I remember

an incident about which I want to tell you. When lawyers, whom, with the exception of the one who speaks to you, I may designate as leaders of the bar in New England, had gone on for two hot June days in that miserable, stuffy Federal Court-House in Boston before Judge Colt, in a very important case, and the case was closed, Judge Dillon, whom I regard as, perhaps, in all respects the leader of the bar in the United States, who had himself held high judicial position, said, looking at our friend, Judge Colt, who had sat through those two hot days clothed in his judicial robe, and who had been most courteous and kind to us all: 'Your Honor has, in this cause, exemplified the highest and finest of judicial qualities—patience.' "

Like reference was made to Judge Dillon in the address of James A. C. Bond, a distinguished Maryland lawyer and President of the Bar Association of that State, at its Annual Meeting in 1905.

Judge Maxwell in delivering the opinion of the Supreme Court of Florida in Skinner vs. Henderson, 26 Florida, 122, uses this language: "A similar ruling in Iowa is valuable as coming from Judge Dillon, one of the most eminent American jurists and law authors now living."

Upon questions relating to the law of Municipal Corporations, especially, his opinions were relied upon as absolute authority. Many large cities, as did my own municipality of Kansas City, Missouri, when about to place an issue of bonds upon the market, submitted the question of their validity to his opinion. If this was favorable, his certificate never failed to furnish a ready sale of the bonds. It was as potent in that respect as Webster described the touch of Hamilton to have been on the "dead corpse of the Public Credit."

His work on Municipal Corporations is the most celebrated and generally useful legal production of the time. "Dillon on the Law of Municipal Corporations" stands supremely alone; a *chef d'oeuvre* that has carried the fame of its author to the remotest English-speaking people. Mr. Justice Bradley of the Supreme Court of the United States declared it to be "A Legal Classic," and so it is regarded. In the June number,

1908, of the "Bench and Bar," its editor, Archibald Robinson Watson, makes the following statement which shows how widely followed it is by the courts:

> It will interest the bar generally to know that a new edition of that famous legal classic, "Dillon on Municipal Corporations", is soon to be forthcoming . . . Judge Dillon's treatise, to a greater extent than most text-books, has, in its successive editions, moulded and served as a model for contemporary judicial decisions. Paragraph after paragraph of Judge Dillon's text will be found incorporated, bodily, into the law reports of the several states,—and occasionally we regret to say,—without the proper credit being given. The writer knows this, because he once essayed to monograph the "Law of Municipal Corporations" himself, and, during the course of his work, he was told by a law publisher of long and successful experience, that such a thing was impossible without infringing Dillon. But aside from the occasional instances in which judges have used without acknowledging, as a general thing one will find most judicial opinions, whether in the United States Supreme Court, or the State courts of last resort, in which the law of Municipal Corporations is discussed, liberally and approvingly punctuated with citations of "Dillon on Municipal Corporations."

We are naturally curious to know in view of his other absorbing duties, why and how he undertook and carried on this work, which he amplified from time to time through successive editions until the fifth was reached, which is now in press. This, the following excerpt from his address at the dedication of the Davenport Public Library, will show:

> It so chanced in the course of time that I found myself on the bench of the Supreme Court of the State, with an ambition not unnatural to write a work upon some subject that I hoped might be useful to the profession. The first indispensable requisite to such an undertaking was access to a full law library. That of Judge Grant, which was one of the largest private law libraries in this country, supplied this condition. The next requisite equally indispensable, was the needed leisure for study and research, and the only leisure possible to a judge was in the intervals of uncertain length between terms of court. The library being at hand in my own city, enabled me to do what otherwise I could not have done at all, that is, utilize my days, snatched from judicial labor, by working in the Grant library, collecting material for my projected book. I selected my subject—"Municipal Corporations"—and entered upon the work of thorough and systematic preparation. Without the aid of stenographer or typewriter, I began an examination,

one by one of the thousands of law reports, commencing with Vol. I of the state of Maine and continuing down through successive reports to date, and so on, in like manner, the reports of every one of the states, and of the Federal and English courts, occupying all of my available time for about six years. The result I have never had occasion to regret. It has profoundly affected my whole professional career.

He thus feelingly wrote of the edition now in press:

Forty years and over have elapsed since the preparation was begun, and more than thirty-five years since the publication of the first edition. The work is thus not only a child, but the companion, of the far larger part of a prolonged professional career. Any justifiable satisfaction I might feel in its success is somewhat subdued, if not saddened, by the reflection that in this edition I am taking my final leave of a work which is so intimately incorporated with the studies and labors of so many years. We must, however, accept, as I do, without murmur or regret, the inevitable. Every scientific work, like the present, can have but a limited period of existence. The progress of society and the corresponding development and changes in the laws that govern and regulate the interests of the people, never cease, and a work of this practical and technical character commences to become obsolete from the moment of its birth. Such a limitation and such a doom can neither be averted nor rationally regretted.

To me it is a wonder that with his manifold duties as an overworked judge, and then as a lawyer, with a clientage covering in its course, either as general or advisory counsel, such interests as those of the Union Pacific Railroad Company, the Missouri Pacific, the Texas Pacific, the Manhattan Elevated, the Western Union Telegraph Company, the estate of Jay Gould and of different members of that family, and the various other matters that came before him, he could have possibly found time to give to the world productions of his pen, so numerous and worthy, that they have strewn his entire pathway with a wealth of solid and useful literature.

I shall not attempt to enumerate productions not specifically mentioned in the outset of this sketch, but among them are:

The Inns of Court and Westminster Hall. (Before Iowa State Bar Association, 1876.)

Iowa's Contribution to the Constitutional Jurisprudence of the United States. (Before the Iowa Society of New York, March, 1908.)

Early Iowa Lawyers and Judges. (Judges Mason, Wright, Love, Miller. Before the same Society, 1906.)

Dedicatory Address Davenport Free Public Library. (Davenport, 1904.)

Chancellor Kent: His Career and Labors. (Before New York State Bar Association, Albany, 1903.)

Uncertainty in Our Laws. (Before South Carolina State Bar Association, Charleston, 1885.)

Law Reports and Law Reporting. (Before American Bar Association, New York, 1886.)

American Institutions and Laws. (Before American Bar Association, Saratoga, 1884.)

Commemoration Address on Chief Justice Marshall. (Before New York State Bar Association, Albany, 1901.)

Opening Address First General Meeting New York County Lawyers' Association. (New York, 1908.)

Address of Welcome at Banquet of New York County Lawyers' Association. (New York, 1909.)

Bentham and His School of Jurisprudence. (Before Ohio State Bar Association, 1890.)

Our Law: Its Essential Nature, Ethical Foundations and Relations. (Before Graduating Class of Law Department, Iowa State University, 1893.)

Bentham's Influence in the Reforms of the Nineteenth Century. (In Select Essays on Anglo-American Legal History, Boston. Little, Brown & Co., 1908.)

John Marshall: Life, Character and Judicial Services. (Three Vols. Chicago. Callaghan & Co., 1903.)

Laws and Jurisprudence of England and America. (Being a series of lectures delivered before Yale University. Boston. Little, Brown & Co., 1895.)

Anna Price Dillon: Memoir and Memorials. (Privately printed for distribution among relatives and friends.)

He also delivered an address before the Columbian Exposition at Chicago in 1893, and at the St. Louis Exposition in 1904.

An important work in his professional career was as a member of the Commission appointed under an act of the legislature of New York to prepare the charter for the greater City of New York; that is to say, the preparation of the charter uniting into one city, three existing cities (New York, Brooklyn, and Long Island City), each living to a considerable extent under local laws and each with different charters; and

that would also bring into the enlarged city a considerable area of territory, besides that still remaining under town and village government. These different communities to be consolidated into one, were located upon three different islands and upon the mainland, with distinct histories and antecedents. The problem was to form a charter which would combine these into one great municipality, with working machinery adapted to the whole and to the separate parts. He took an active and leading part in framing this charter of greater New York, which went into effect on the first of January, 1898. The difficult niceties of this work are apparent, and its vastness will be appreciated by referring to the charter which is embodied in the legislative act which vitalized and put it into effect. It consists of sixteen hundred and twenty sections and covers seven hundred and forty-two pages. The report of the Commissioners recommending the charter to the favorable consideration of the legislature, covered thirty-two pages. The consolidation thus effected remains, with certain minor changes, and I am authentically told that it is remarkable how little litigation has sprung out of the consolidation itself as respects the meaning and application of the different sections of the charter. I think this result may be largely traced to the clear vision, keen foresight and wide and varied legal experience of Judge Dillon, which enabled him to practically apply his thorough knowledge of the law relating to municipal corporations to the particular work in hand.

His "Laws and Jurisprudence of England and America," embracing the series of his lectures before Yale University, it seems to me cannot be too highly estimated. After reading and re-reading it many times, I do not hesitate to pronounce, that, to the serious reader who desires in the narrowest limit to gain at once the most interesting and instructive information respecting the fundamental principles of our government, and the prime objects of its administrative justice, it is the most valuable and philosophical collection that, in the same space, has ever been given to the public.

These lectures were delivered in 1891-2, and embody his mature views on many of the great practical topics of the

law. Upon them the author has bestowed the ripened powers of his mind. Every line teems with a warmth of interest that unmistakably reveals the infusion of his highest forces. They display the amplitude of his learning, not only in the field of law, but of the best literature. They are so replete with rare and forceful statement and are so strikingly illustrative of the man, that I cannot forbear making a few extracts:

It is natural for some minds to revere the past, to accept the present, and consciously or unconsciously to resist agitation and change. It is equally natural for other minds to question the wisdom of the past, to refuse to accept its lessons or results as final, to be discontented with them, and to welcome novelty as the means of effecting improvement.

When recently crossing the bay of New York, the Statue of Liberty with its uplifted torch enlightening the world, suggested to me that the true ideal of a modern judge was no longer a figure with bandaged eyes, but rather the figure of one who carries in his upraised hand the torch of truth lighted from on high, and who, throughout the arguments of counsel and in the maze and labyrinth of adjudged cases, walks ever with firm step in the illumination of its constant and steady flame.

Unadmonished and undeterred, I venture a timid forecast of some of the changes which our laws and jurisprudence will witness within the next century:

I predict that the rational practice of settling disputes between nations by arbitration, so successfully applied in recent years, will become general; that wars, the opprobrium of christian civilization, if they shall not wholly cease, will be comparatively infrequent.

I predict that the existing apathy of the public conscience will be aroused, and that the avarice of publishers will not be able to continue the present system of literary piracy, since all civilized nations will recognize the principle that an author has by the highest of all titles, that of creation, a right of property in his work, which treaties and legislation will protect on the basis of reciprocity.

I predict in view of the universality and increasing intimacy of commercial intercourse between nations, that substantial unity in the various departments of mercantile and maritime law on the great subjects of Bills of Exchange, Maritime Contracts, Marine Insurance, Marine Torts, etc., will replace the diversity and conflict which now exist.

The separation of what we call equity from law was originally accidental,—or at any rate was unnecessary; and the development of an independent system of equitable rights and remedies is anomo-

lous, and rests upon no principle. The continued existence of these two sets of rights and remedies is not only unnecessary, but its inevitable effect is to make confusion and conflict. The existing diversity of rights and remedies must disappear, and be replaced by a uniform system of rights as well as remedies,—what we call a legal right ceasing to exist if it is in conflict with what we now distinguish as the equitable right.

The forecast may be ventured, that while the law will in its development undoubtedly keep pace with the changing wants of society, yet the work of jurists and legislators during the next century will be pre-eminently the work of systematic restatement, probably in sections, of the body of our jurisprudence. Call it a code, or what you will, this work must be done; if not done from choice, the inexorable logic of necessity will compel its performance.

Scientific jurisprudence, already a necessity, will play a more important part in the future of our law than it has in the past. It is a mistake to suppose that the jurist, any more than the legislator must look only to the past. He must also study the present, and bring himself into actual contact with the existing conditions of society, its sentiments, its moral convictions, and its actual needs. This work, as important, as noble, as any that can engage the attention of men, will fall to the profession to do . . . It will not be performed by men whose sun, like mine, has passed the zenith, and whose faces are already turned to follow its setting, but by young men who are hailing the advance of their sun up the eastern sky, and who are full of the hopes, the aspirations, the generous illusions, the sublime audacity, which give to that interesting stage of life, when animated by high resolves, a present charm and a prophetic splendor all its own.

When the idea of legal education shall be the mastery of principles, so that the first impulse of the lawyer in cases not depending upon local legislation, will be to find the *principle*, and not some *case*, that governs the matter in hand; when arguments at the bar shall be directed to an ascertainment of the controlling facts of the case under consideration, and then to the principles of law, which apply to these facts; when the bench shall be constituted of the flower of the bar, and appellate judgments shall not be given without a previous conference of the judges, at which the grounds of judgment shall be agreed upon, before the record is alloted for the opinion to be written; when opinions shall be rigidly restricted, without unnecessary disquisition and essay-writing, to the precise points needful to the decision, we shall have an abler bar, better judgments, and an improved jurisprudence, in whch erroneous and conflicting decisions will be few.

As a means of eliciting the very truth of the matter both of law and fact, there is no substitute for oral argument. I distrust the

soundness of the decision of any court, in any novel or complex case, which has been submitted wholly upon briefs. Speaking from my own experience, I always felt a reasonable assurance in my own judgment when I had patiently heard all that opposing counsel could say to aid me; and a very diminished faith in any judgment given in a difficult cause not orally argued . . . The mischievous substitute of printers' ink for face-to-face argument, impoverishes our case-law at its very source, since it tends to prevent the growth of able lawyers, who are developed only in the conflicts of the bar, and of great judges, who can become great only by the aid of the bar that surrounds them.

Another practice which injuriously affects our case-law, is the practice of assigning the record of causes submitted on printed arguments to one of the judges to look into and write an opinion, without a previous examination of the record and arguments by the judges in consultation. This course ought to be forbidden, peremptorily forbidden, by statute. This most delicate and most important of all judicial duties, ought always to be performed by the judges in full conference *before* the record is delivered to one of their number to write the opinion of the court.

A stable and independent judiciary is the strongest hope of our country. A stable and permanent tenure secures that independence which is essential to a good judicial system and to the fearless administration of justice. Whenever we weaken the independence or degrade the dignity of the judicial office, either by the mode of selection, or by a restricted tenure, or by the inadequate compensation of the judges, or in any other way, we make a most serious mistake.

Trial by jury is an essential part of our judicial system . . . Its roots strike down deep into the experience, the life, and the nature of the people who have developed and perfected it. Its shortcomings are not inherent. If judges will do their full duty, jurors will do theirs. I have tried literally thousands of cases with juries, and the instances are few where I had reason to be dissatisfied with their verdicts . . . In the solemn act of passing upon the guilt of those charged with offences against the public, the jury represent the majesty of the people as a whole; and when acting under the guidance of a capable judge, their verdicts are almost always right. If the courts will clearly instruct juries, and will exercise when they ought to do so, the power to set aside verdicts and grant new trials, there will be less complaints about trial by jury and less agitation for a change in the law whereby verdicts may be rendered by a less number than the whole of the jury,—a change which I believe to be based upon no necessity and in the highest degree unwise.

I have made the jury the subject of much observation and reflection . . . In my judgment the jury is both a valuable and essential part of our judicial and political system . . . I protest against

the continentalization of our law. I invoke the conservative judgment of the profession against the iconoclast who in the name of reform, comes to destroy the jury; against the rash surgery which holds not a cautery to cure, but a knife to amputate. Twelve good and lawful men are better judges of disputed facts than twelve learned judges.

The absolutely unique feature of the political and legal institutions of the American republic, is its written constitutions, which are organic limitations whereby the people by an act of unprecedented wisdom have . . . protected themselves against themselves. The spectacle is that of the acknowledged possessors of political power voluntarily circumscribing and limiting the plenary and unrestrained use of it.

History affords many examples where the holders of political power have been *forced* to surrender or to curtail it for the general good; but the example of the people constituting the American political communities in limiting, by their own free will, the exercise of their own power, stood alone when this sublime sacrifice was made, and it has not been followed in any country in Europe, nor successfully put in operation elsewhere than in the United States.

The value of constitutional guarantees, wholly depends upon whether they are fairly interpreted, and justly and with even hand, fully and fearlessly enforced by the courts.

If there is any problem which can be said to be yet unsettled, it is whether the bench of this country, State and Federal, is able to bear the great burden of supporting under all circumstances the fundamental law against popular, or supposed popular, demands for enactments in conflict with it. It is the loftiest function and the most sacred duty of the judiciary, to support, maintain, and give full effect to the constitution against every act of the legislature, or of the executive, in violation of it . . .

The constitution is the final breakwater against the haste and passions of the people; against the tumultuous ocean of democracy. It must at all costs be maintained. This done, and all is safe; this omitted, and all is put in peril and may be lost.

Local self-government is the true and the only solid basis of our free institutions. A jealous state pride and watchfulness in all that justly belongs to the state, and a dominating national pride and concern in all that justly belongs to the nation, are the valid, healthful, and recognized sentiments of American citizenship and patriotism.

The great fundamental rights guaranteed by the constitution are life, liberty, contracts, and property . . . But we can not close our eyes to the fact that to some extent the inviolability of contracts, and especially of private property, is menaced both by open and covert attacks. Property is attacked openly by the advo-

cates of the various heresies that go under the general name of socialism or communism, who seek to array the body of the community against individual right to exclusive property, and in favor of the right of the community in some form to deprive the owner of it, or of its full and equal possession and enjoyment . . . Among the people of our race the era of the despotism of the monarch, or of an oligarchy has passed away. If we are not struck with judicial blindness, we cannot fail to see that what is now to be feared and guarded against is the despotism of the majority.

There may be some reason for the various forms of socialism, communism, anarchism, among the struggling and oppressed people of the Old World. They are the unreasoning and desperate remedies of caste, and hunger, and despair; but among us such ideas are baneful exotics.

Kant's philosophy is to me unprofitable enough in practical results; but there is one noble passage of his that has made on me an impression that years have never effaced or dimmed: "There are two things which, the more I contemplate them, the more they fill my mind with admiration—the starry heavens above me, and the moral law within me."

Ethical considerations can no more be excluded from the administration of justice, which is the end and purpose of all civil laws, than one can exclude the vital air from his room and live. A thousand times have I realized the force of this truth. I always felt, in the exercise of the Judicial office, irresistibly drawn to the intrinsic justice of the case, with the inclination, and if possible the determination, to rest the judgment upon the very right of the matter.

In the practice of the profession, I always feel an abiding confidence that if my case is morally right and just it will succeed, whatever technical difficulties may appear to stand in the way; and the result usually justifies the confidence.

It is a most remarkable fact that if one casts his eye over the map of the enlightened world he will find, generically speaking, but two systems of law or jurisprudence—the one of England, the other of Rome. The legal systems of the nations of the continent of Europe and of the South American States are based upon the Roman law; but the Roman law never obtained controlling authority in or among any people who speak the tongue of England.

In respect to law reforms he took an active and leading, though an altogether sane and conservative part, and left along those lines a deep and lasting impression upon our jurisprudence. As a continuous member of the American Bar Association, for a time its President, and as an author, and

deliverer of occasional addresses before learned bodies, his opportunities were favorable to this end.

Probably the most important of law reforms, and the one that has most agitated, and continues to agitate, the professional and, as well, the public mind, is what is commonly known as "codification" of the law; its reduction to systematic arrangement, restatement, and rules, generally governing its principles. Although much of actual accomplishments has as yet not been reached, it is pretty clear that such results must be gained eventually, in order to relieve us from the thousands of law reports, that are continually piling up and multiplying with our rapidly increasing interests and consequent litigation, and which, by their conflicting decisions and overwhelming numbers, keep the law in confusion, and its ascertainment frequently impossible. To this work he has given much thought. His views thereon will be found at length in the work we have just been considering.

While giving all praise to Blackstone and Eldon for their work as conservatives, he gives to Bentham, the radical, the palm of being the initiator of this, as well as nearly every other law reform of the last century, quoting, with apparent approval, the following statement of Sir Henry Maine: "I do not know a single law reform effected since Bentham's day which cannot be traced to his influence." Bentham gave it the name by which it is now universally known, "codification." He also originated the common expression, "judge made law," as applied to the decisions of the judges and even the common law itself. "He meant," says Judge Dillon, "that a code should embrace all general legislation, not simply as it exists but as it ought to be amended and made to exist—that is, all legislation except local and special statutes; that it should also embody all of the principles of the common law which it were expedient to adopt; the whole to be systematically arranged, so that all possible cases would be expressly provided for by written rules; that the function of the court to make 'judge made law,' as he stigmatized it, should cease, and that thereafter all changes or additions to this complete body of law should be made by the lawmaking body and it alone."

To Judge Dillon this did not seem practical. "Bentham," said he, "believed it was possible to extract from the reports all that was valuable in them and to embody it in a code; whereupon he would have been willing, I fancy, to have burned the law reports, and himself to have applied the torch. Unfortunately there is no alchemy by which the value of the law reports can all be extracted and transmuted into statutory coin."

Judge Dillon thus expressed in epitome his own views on the subject:

> We have two great divisions of law—statute-law and case-law. The statutes are frequently fragmentary, superimposed one upon another. Case-law has to be sought in almost numberless reports and often among conflicting decisions. Our law is thus fairly open to the threefold objection of want of certainity, want of publicity, and want of convenience.
>
> Our laws will, I believe, even if codification be not adopted, become relatively more and more embodied in legislative forms. The greater certainty and convenience of a carefully considered enactment which covers the entire subject with which it deals, over the chaotic and unmethodized condition of the law when it has to be sought through volumes of reports and a variety of detached statutes, will constantly operate with no inconsiderable force in expanding the scope of legislative action.
>
> To me it has always seemed inexpedient, even if it were possible (which it is not), to attempt a scheme so ambitious as the embodying into a code or statutory form rules applicable to all the complicated transactions of modern business and society, with a view to supersede the reports.
>
> The judicial office will, at all times, under any possible code have to deal with and determine questions and cases not possible to be provided for by any express statutory provision. A well constructed code may, and doubtless will, lessen the number of such questions and cases; but no code can do more.
>
> The infinite details of this mountainous mass of case-law, no industry can master and no memory retain. I do not believe it is practicable to codify it all in the sense that the resulting code shall supersede for all purposes the law reports; but on many subjects, and to a very large extent in respect of all, codification is practicable, and so far as it is practicable, it is, *if well done*, desirable.
>
> A capital need of our law today is for some gifted expositor who shall perform upon it the same operation performed by Blackstone more than a hundred years ago; that is, an institutional work sys-

tematically arranging and expounding its great principles as they have been modified, expanded, and developed since Blackstone's day, so as to make it as faithful and complete a mirror of the law, as it now exists, as Blackstone's work was of the law as it existed when his commentaries were produced.

But I can no longer pursue these subjects. I both refer and recommend the reader to the book of lectures I have been speaking of. There he will find, not only clear disquisitions upon law reforms, but of the great actors that have lived along the lines of Bentham, Blackstone, Marshall, Kent, and Story; and constant evidence as well, of his wide reading and cultured mind.

In the outset of this sketch I referred to his love of books. This, or rather its result, is especially exemplified in these lectures, and in his address at the dedication of the Davenport Free Public Library. In the latter, he referred to this quality in Mr. Lincoln. Following this, Robert T. Lincoln wrote him a letter of appreciation, which, for its manifest interest in this connection I here give:

MY DEAR JUDGE DILLON: I have read with great pleasure your address at the opening of the library at Davenport. This must have been a very interesting occasion to you in your old relation. I noticed especially, of course, what you said about my father. You could not say too much of his love for books. I do not remember ever seeing him without a book in his hand. From my earliest recollections he was devoted to Shakespeare and Milton. Bunyan, of course, he had, and it was in consequence of his having it at hand, that it was one of the first large books that I myself ever read. In the latter years of his life, he always had a Bible and a set of Shakespeare very near him, and went to them for relief at all times.

Very sincerely yours,

ROBERT T. LINCOLN.

Jan. 5th, 1905.

This shows not only a parallel between Judge Dillon and Mr. Lincoln in the respect mentioned, but, as it seems to me, throws a new or added light on the latter.

Among the important labors of his latter years were those in connection with the work hereinbefore mentioned in the list of his productions, "John Marshall. Life, Character and Judicial Services," consisting of portrayals in the centenary memorial services that were held throughout the country on

what was known as "Marshall Day," in 1901, and his introduction to the three volumes composing them. In this movement he was a leading initiator, and in preserving its results the principal factor—at once, the collector, the compiler, the editor, and in a sense, the author. His introduction, as well as his address, is remarkably strong in all its features. He portrays with vivid force the personality of the "great Chief Justice," and demonstrates by successive steps, and particular cases in which certain provisions of the Constitution of the United States were construed by him, that his services to the Republic in its infancy, when the workings of its constitution and governmental machinery were experimental, were not only invaluable, but really furnished the preservatives of the nation in its subsequent perils. In these brief excerpts he characteristically summarizes the situation in a nutshell:

> Marshall has no parallel but himself, and like the Saladin in Dante's vivid picture of the immortals he stands by himself apart. The inquiry fitly comes, whether this veneration is a mistaken idolatry or whether it rests upon rational and enduring grounds.
>
> The nature and value of Marshall's judicial services can only be satisfactorily shown by selecting and briefly stating a few of his leading judgments which determine the boundaries and establish the vital and fundamental principles of our Constitution. This was his distinctive work. On this his fame chiefly rests.
>
> In the course of his long service as Chief Justice, he construed and expounded for the first time, nearly all of the leading provisions of the Constitution, and in this he performed an original work of the most transcendent importance, and one which it is the universal conviction no one else could have performed as well.
>
> It was the supreme work of Marshall that carried our Constitution successfully through its early and perilous stages and settled it on its present firm and immovable foundation.
>
> He had the golden opportunity, which he promptly took by the hand, the singular, the solitary felicity, of connecting his name and fame imperishably with the origin, development, and establishment of constitutional law and liberty in the great American Republic.
>
> Marshall belonged to one political school, and Jefferson was the leader of the other. Marshall was penetrated by the sentiment and spirit of nationality, and believed that the Constitution properly construed conferred upon the Union all the essential powers of national sovereignty. Jefferson believed that powers in the central government

in such amplitude as Marshall held them to exist, were dangerous to the existence of the state and to the liberties of the people. For this he should not be blamed, nor does it diminish our sentiments of respect and gratitude for his great public services. He will go down to posterity proudly holding in his hand the Declaration of Independence, and Marshall will go down holding in his the Federal Constitution.

Was the new government another confederation, and the Constitution simply the mechanical bond by which the States were for certain enumerated purposes, and for such only, loosely articulated? Or was it a new nation, instinct with life and clothed with all the powers and attributes of sovereignty necessary for its growth, development, preservation, protection and defense, against all hostile comers, foreign and domestic?

Each one of the cases which I have brought under review today, could have been decided the other way. Many lawyers and statesmen firmly believed and earnestly maintained at the time, that they ought to have been decided the other way. On all these subjects, Marshall's views have been finally accepted by the country as necessary to the integrity and welfare of the Union, and are no longer disputed or challenged.

When Marshall went upon the bench, the new government itself, and the Constitution as the only bond of union, were in the experimental stage of their existence. When he left it both were firmly established. Marshall's great service to the country was, that his celebrated judgments expounding the Constitution supported it and carried it safely through the feebleness and perils of its infancy, and placed it securely upon the foundations on which it has ever since rested.

In the past, coming down even to the present, States have passed many laws of a character that would have broken up the Union, had it not been for the limitations on their powers, which they disregarded, and which have only been made effectual by the judicial enforcement of Marshall's principles of nationality.

Of his numberless judicial opinions, I cannot further speak or particularize than I have in the first part of this sketch; nor can I of the arguments which he has from time to time delivered before the courts. His argument in the Mercantile Trust Company vs. The Texas and Pacific Railway Company et al., 154 U. S. Rep., in which were involved the constitutionality of the Texas Railroad Commission Act, and the rates of tariff fixed by the Texas Railroad Commission, in the course of which he reviewed the leading cases on the subject, is one of his ablest and most elaborate ones in the Supreme Court

of the United States. Its general views were sustained by the Court (pp. 362-420 of the report alluded to).

In spite of his accumulated years, of his long and exhausting labors, and the continuous sorrow that shrouded the remainder of his life in the loss of his wife and daughter at sea, he kept up his professional labors and his daily office rounds until a very advanced age. Without this, he once told me, it would have been impossible for him to have borne this affliction. In his seventy-eighth year, he made the journey and the forensic effort disclosed in the following letter to me, dated December 1, 1908, in response to the communications referred to by him:

"Your deeply esteemed favors of November 6th and November 7th, came to New York during my absence in West Virginia. On the 5th of November I left this city for Charleston, the capital of West Virginia, to argue an important case in the Supreme Court of Appeals of that State, involving some sixty thousand acres of coal lands. The court gave five days to the arguments, extending from the 9th to the 15th. I hesitated somewhat at my age to take the trip and undergo the exertion of such an argument, but I found after attending the court during the five days, that I was able to make a three hours' argument without being more than usually tired. I mention these circumstances to show that the delay in answering your letters was unavoidable."

In the "Memoirs and Memorials of Anna Price Dillon" he pays the noblest of tributes to the memory of his devoted wife. In this connection I must be pardoned for saying a word or two concerning her, as being a part of his own life, and from whom he drew constant inspiration in his multitudinous labors. She was the daughter of Hiram Price, for a long time one of Iowa's distinguished men. He was successively school fund commissioner (1847); registrar and treasurer of his county, Scott (1848-1856); president of the State Bank of Iowa from its organization, 1859 to 1866, when it was superseded by the National Bank; paymaster general of the State during the civil war; five times elected to Congress between 1862 and 1881, and Commissioner of Indian Affairs from 1881 to 1885.

She and John Dillon had been schoolmates. They had grown up in Davenport together. Their lives were closely intertwined from childhood. In Davenport they commenced their married life, and on one of its sightly bluffs built an attractive home. There their children were born and there they lived until their removal to New York. It was my good fortune on more than one occasion to sit at their table as a guest. In the home and house affairs she reigned supreme. This home in all of its features and surroundings displayed both exquisite taste of selection and family comfort. She was a bountiful hostess, and in appearance superb and queenly. She was preeminently a strong character, bounteously endowed with intellectual gifts and womanly graces. Her letters to her husband and personal friends written during her different sojourns in Europe, whither she went mostly on account of the lovely daughter who perished with her and who for some years had been a patient sufferer, are models of graphic and interesting descriptions of foreign countries, their people and ways.

His "Laws and Jurisprudence of England and America," composed of his Yale lectures, he dedicated to her. Why he did so he thus tells in the "Memoir and Memorials":

"Prior to 1875, and while she lived in Davenport, she gave considerable time to charitable and other work, as already stated, but during the years when her children were young it was to them that she devoted her paramount attention. She found time, however, to assist her husband, in 1872, in putting his book on "Municipal Corporations" through the press. He always realized that his itinerant professional and judicial life had thrown almost exclusively upon his wife the care and anxieties of the family; and years afterward, when, in 1894, his Yale University Law Lectures were published, he publicly recognized the obligation which it created, in the dedication of the volume to her in these words:

A. P. D.

The years of professional studies, circuit journeyings and judicial itinerancies whereof this book is in some measure the outcome, as well as the time required for its preparation, have been taken

from your society and companionship. The only reparation possible is to lay these imperfect fruits upon your lap. As to you, indeed, they justly belong, this formal dedication serves alike to accredit your title and to manifest my grateful sense of obligation and affectionate regard.

This inscription was pleasing to Mrs. Dillon, and on her return from Europe a friend called her attention to a review of the book in which the writer, speaking of dedications to wives, compared this not unfavorably with John Stuart Mill's, whereupon her husband said that his was as much inferior to Mill's as Mill's to Tennyson's.''*

I must now bring this narrative to a close. If I have not accomplished all I desired, I have at least massed or indicated the material on which some future biographer may do better.

I have spoken of Judge Dillon as if he were dead. He is still alive. Verging close to four score years, he calmly awaits the final summons. His setting sun will soon sink beyond the horizon, leaving behind it, like that of the day, the mellow influence of its departing rays.

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*Mrs. Tennyson, always seemingly fragile, outlived her husband, who died October 6, 1892; but, not long before his death, he signalized their long and felicitous union by dedicating to her, in these words, his last book:

"I thought to myself I would offer this book to you,
This and my love together,
To you that are seventy-seven,
With a faith as clear as the heights of the June-blue heaven
And a fancy as summer new
As the green of the bracken amid the gloom of the heather."