

Councils, would be the judges of the facts in any complaint brought before them, framed upon the by-laws, specifying the offences. They would be judges under a code of laws framed to give them jurisdiction, and thereupon any party considering himself aggrieved by their judgments, would have no other recourse save an appeal to the General Council.

"The complaint in such case would require a specification of facts constituting the offence as defined by the By-law. The form prescribed for voting guilty or not guilty, is peculiarly applicable as going to show the intention of the law.

"In the present instance there is a specification of facts, but there is no law to constitute these facts an offence. Mr. O'Farrell very naturally says: 'I was not warned that acting as a constable, or assisting a constable in arresting a person accused of crime, would be considered an offence, and up to the bringing of the complaint against me I considered it not only a proper but a laudable act, and I had this security that I knew there was no law against it; but had the Bar promulgated a By-law declaring it an infraction of discipline, or a degradation of its honor, to assist a common bailiff or constable, I should have been forewarned, and have avoided doing so. As matters stand, I feel that I have done no wrong, have broken no law.' It has been argued that he might have been compelled to act as constable. I concede that the Bar could make no law to punish him for acting by compulsion, but I can see no reason to prevent them from making a By-law to visit with their displeasure members of their Body who may volunteer to assume the lower-class duties of constable, particularly in cases where the same party had acted as attorney or advocate, and to prescribe that such conduct would be held derogatory to the honor of their body. I think that such a By-law would be perfectly within their powers; but without such forewarning prescribed in a legal manner, if to-day they can make a crime of acting as a constable, they may on any future occasion, without rule, and according to caprice, decree some other state of facts to constitute a like offence. If they can do so in regard to a constable, without previous warning, they might as well without such previous warning decree that Mr. O'Farrell should be suspended for acting as Colonel to a Regiment of volunteers.

"I think an analogy may be drawn from the practice in the Courts Martial, and the principles by which these tribunals are guided in their decisions. By reference to Simmons on Courts Martial, I find that Her Majesty was empowered by the Mutiny Act to make articles of war, under certain limitations, for the maintenance of discipline in the army, but there is no such thing as a prosecution for infraction of discipline generally. On the contrary, the articles of war carefully specify what shall be considered infractions of discipline, and prosecutions are required to specify the facts which bring each particular case within the article, of which the facts constitute an infraction; and cases are given where the findings were set aside for want of such specification; as, for instance, the case of Lieut. Imlack, found guilty of ungentlemanly conduct. Thus, the charge has to be supported by a statement of facts, and these facts must bring the case within one of the articles of war, defining the offence. In the present case we have a state of facts, but we have no article or By-law declaring any offence to which the state of facts can apply.

"I apprehend the customs prevailing in England or France, do not much assist by way of precedent. The associations of the Bar there were voluntary organizations and I believe in France, the decrees involved no consequences that could be enforced by compulsion, save that the association struck from their roll whom they chose. This they could do without being accountable to anybody. The Courts, if they chose, being the actual power, could recognise the acts of the Bar, and through courtesy probably did, although not bound to do so. But as a person might be expelled from the society simply because he might have made himself disagreeable to the majority, and was consequently struck off their roll, there was really no power in the Courts to restore him, but the Courts themselves, possessing the power over the Advocates or Barristers, probably, and I believe did, always recognise the discretion exercised by the Bar in excluding those they had disapproved of, provided they deemed the discretion reasonably exercised. Nor is it likely they would without very strong reasons interfere between the Bar and a member they had excluded to permit him to practise against their decision. The difference here seems to be