

NEW YORK STATE BAR ASSOCIATION.

ing their farms. They cut the trees into large logs, which were then piled up and burnt. The piling, however, required more force than was at the demand of one farmer, and so the custom was for his neighbours to lend their help, while he, of course, was expected to do the same for them. The application of the metaphor to fraudulent combinations among members of legislative bodies is sufficiently obvious. Against this log-rolling system the efforts of the American people have been, for some time, directed. Amongst the earliest reforms in that direction was the transfer of the election of Judges from the Legislature to the people by popular vote; while, as to the tenure of office, the learned Judge informs us that public opinion has undergone, and is still going through, a very decided reaction, and he expresses his satisfaction that such should be the case. The present state of affairs, as regards the higher courts of the States, is given as follows:—

“There are seven States in which life tenure prevails. In one the term is twenty-one years, in another fifteen, in another fourteen, in three it is twelve, and in two it is ten. In the remainder it is six and eight years, with three or four exceptions. So in regard to the manner of appointment. Three States appoint by legislative election, seven by governors and senates, and twenty-eight by popular election.” The writer then proceeds to discuss the merits of the system of electing Judges by popular vote, remarking, however, that in America it has not yet been sufficiently long in operation to form a satisfactory opinion on it, and has, moreover, been adopted almost exclusively in connection with short terms of office “about the evil of which,” says he, “there can be no question.” He, however, clearly shows his own view to be that this system is a

dangerous one, especially in cities where the criminals against whom a Judge must enforce the law, if it is enforced at all, exert a very powerful influence. And, apart from abstract reasoning, he appeals to the mode in which the Federal Judiciary are appointed. These, under the Constitution of the United States, have always been appointed by the President, subject to approval by the Senate. And he expresses his opinion that very few American statesmen, however democratic their general views of government may be, have any wish to adopt for the Judges of the United States, the system of popular election. The way Mr. Justice Miller regards the matter is shown by the following passage:—

“The dependence of the judiciary on the appointing power is not dangerous only when the appointment is by a monarch. It is much to be doubted if dependence on the vote of the populace is any less so, if the power is exercised at short intervals. The passions, the prejudices, the hasty impulses of the people, when brought to bear on the judge, are as likely to be unfavourable to the defence of innocence in criminal prosecutions, and to the establishment of an unpopular claim of private right, as the occasional exercise of that influence by a king or governor.”

He, however, says he does not think the question of the source of their appointment so important as a means of securing honesty, capacity and independence among the judges, as stability in the tenure of office, and in the composition of the Court, and reasonable compensation of the judges. And, on the last point, he strongly expresses his disapproval of the niggardly salaries still paid to many of the judges in the States.

The strong leaning of an eminent American Judge, displayed in this address, towards the system existing in