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CURRENT TOPICS AND CASES.

The Queen's Bench Division, Ontario, in *R.* v. *Plowman*, 19 November, 1894, quashed a conviction for bigamy where the second marriage took place in a foreign country, and there was evidence that the defendant, who was a British subject, resident in Canada, left Canada with the intent to commit the offence. The provisions of sect. 275 of the Criminal Code make such a marriage an offence, the first clause reading as follows:—" Bigamy is (*a*) the act of a person who, being married, goes through a form of marriage with any other person *in any part of the world.*" This is modified by Sub-sect. 4: " No person shall be liable to be convicted of bigamy in respect of having gone through a form of marriage in a place *not in Canada*, unless such person, being a British subject resident in Canada, leaves Canada with intent to go through such form of marriage." The Court held that the provisions of the Code are *ultra vires* of the Parliament of Canada. The case of *Macleod* v. *Atty. General for New South Wales* [1891] A. C. 455; 14 L. N. 402, was followed. See also the authorities cited in Taschereau on the Criminal Code, p. 280; Crankshaw, p. 211.

The constitutionality of Sunday laws has been contested in several States of the Union. A body small in numbers but active in supporting their creed, called Seventh Day Adventists, take the ground that there is no scriptural authority for the substitution of Sunday for the Jewish Sabbath. They declare the observance of the latter to be still binding on their conscience, and they deny the right of states and governments to make laws compelling the observance of a different day. This question has been decided adversely to their pretentions in two recent cases, *People* v. *Bellet*, 22 L. R. A. 696, and *Judefind* v. *State*, ib. 721, the former by a Michigan Court and the latter by a Maryland Court. From a note to this case it appears that the former decisions on the subject, with the exception of one or two early cases which have been overruled, are unanimous in supporting the constitutionality of the Sunday laws.

Our Court of Appeal, in the November term, heard appeals in ordinary course, from decisions which had been delivered on the last day before the long vacation. This shows that the arrears which have existed in this court for twenty years have actually disappeared, and there is little doubt but that in future the Court will clear the roll every term. This change in the condition of things may make it necessary for the Court to adopt a rule requiring one factum at least to be filed before the cases are put on the list for the term, as at present considerable confusion results from the fact that the list is encumbered with many cases in which there is no intention to proceed during the term. Thus, in November, there were so few cases ready that on the first day of the term, the thirty-second and thirty-third cases on the list were heard.

"*The Barrister*" is the name of a new law journal published at Toronto, of which the first number appears

in December. The contents are of a more general character than usually found in professional journals, even the department of "sports" not being overlooked. Several of the articles are interesting,

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COLONIAL JUDGES AND THE PRIVY COUNCIL.

We cordially assent to the proposal, which is now receiving considerable attention in legal circles, that our great Australasian, American, and African colonies should no longer remain unrepresented in the Judicial Committee of the Privy Council. That in the colonies to which we have referred the decisions of the Judicial Committee as at present constituted are regarded with anything but the respect to which they are entitled we do not for one moment believe. Nor is there any ground for the allegation which some in their haste have made, that the admission of colonial judges to the Privy Council ought to have been conceded long ago. Indian jurisprudence was so technical and peculiar in character that the presence of experts with local knowledge of it in what was to be the Supreme Court for Indian appeals was obviously indispensable. But the various systems of colonial jurisprudence that the Privy Council had to administer stood on an entirely different footing. The development of colonial law closely followed the development of our own law, and its departures from the English standard were not of serious importance. Moreover, the great fundamental *genera* of which all systems of jurisprudence are species have long been fully represented in the Judicial Committee. Our Indian judges supplied the board with the knowledge of Hindu and Mohammedan law necessary to enable it to determine appeals not only from India, but in later times from Cyprus and our various consular Courts in the Levant. The Scotch legal members of the Judicial Committee—foremost among whom stands the commanding figure of Lord Watson—represented the French and Roman-Dutch colonies with great fidelity; while colonial legal systems of strictly English descent had their representatives in the English judges, of whom the majority of the Judicial Committee is composed. The time, however, has now come when the constitution of the Judicial Committee needs to be revised from the colonial standpoint. In Canada, in Australasia, in South Africa, problems are arising, and legislative departures are being taken for which

there are no counterparts or prototypes in English legal or social life; and these great possessions of the English Crown are entitled to claim a voice in the ultimate decision of the issues to which they give rise. The bold and statesmanlike precedent set by Lord Rosebery of appointing a colonial clergyman to an English bishopric ought to be followed on the earliest possible occasion by the transfer of an Australian judge to the Privy Council. The Australasian colonies have the first claim to an appointment of this kind. But the turn of Canada and South Africa will come next. It is to be hoped that this desirable reform will not be prejudiced by the foolish suggestion that colonial judges should occasionally be promoted to the Bench of the English Supreme Court. It will be time enough to embark on an enterprise of this kind when colonial lawyers are willing to see their English brethren appointed over their heads to vacancies on the colonial Bench. And apart altogether from such considerations, English practice is too technical a science to be mastered by a judge after his elevation to the Bench. There is, however, an unanswerable case for the main demand which our greater colonies are now putting forward; and while the reform of the Privy Council is in the air, we hope that the need for a revision of the absurd practice by which one member of the Judicial Committee pronounces the decision of the whole body, and no corroborating or dissenting voices are heard, will not be ignored. The effect of this procedure is to detract from the authority of the Judicial Committee without adding anything to its dignity.—*Law Journal* (*London.*)

QUEEN'S BENCH DIVISION.

LONDON, Oct. 29, 1894.

TAYLOR v. REGINAM (IN ERROR.) 29 L. J.

Writ of Error—Indictment for Obtaining Goods by False Pretences Counts for Receiving the Same—Omission of Particulars of False Pretences—7 & 8 Geo. IV. c. 29, *s.* 55; 24 & 25 *Vict. c.* 96, *s.* 95.

A writ of error having been issued in this case, on the application of Taylor to the Recorder of the borough of Portsmouth, a return was made from which it appeared that at the borough quarter sessions, held in January, 1894, an indictment had been found against one Farrell for obtaining certain pieces of meat

from one Joshua Clarke and George Walter Peel by false pretences which were duly set out in the first and second counts. In the third and fourth counts Taylor was charged with receiving similarly specified pieces of meat 'well knowing the same to have been unlawfully, &c., obtained from the said Joshua Clarke by false pretences,' but no further particulars of the false pretences were set out. The fourth count repeated the charge in the same form, merely substituting George Walter Peel for Joshua Clarke. Farrell pleaded 'Not guilty,' but Taylor demurred to the counts of the indictment as against himself for receiving. The Recorder overruled the demurrer, and, Taylor having refused to plead, ordered a plea of 'Not guilty' to be entered. Both defendants were convicted. The Recorder postponed judgment in regard to Taylor until the April quarter sessions, when he sentenced him to three years' penal servitude.

Error was assigned on the ground that in the third and fourth counts of the indictment the false pretences were not set out, and that the false pretences, by means of which the goods were alleged in these counts to have been unlawfully obtained, were not stated to be those by which Farrell in the first and second counts was alleged to have obtained the goods, and, therefore, that the indictment was not sufficient to warrant the judgment. The master of the Crown Office joined issue on the errors assigned.

C. W. Mathews and *Guy Stephenson* appeared for the plaintiff in error. They relied on *Regina* v. *Hill* and *Regina* v. *Wilson*, cited in 'Russell on Crime,' vol. ii. (4th edit.), 554; and *Regina* v. *Goldsmitt*, 42 Law J. Rep. M. C. 94; L. R. 2 C.C.R. 74.

Temple Cooke and *G. T. Warry* appeared for the Crown. They cited *Regina* v. *Rynes*, C. & K. 326; *Regina* v. *Gill*, 2 B. & Ald. 204; and *Regina* v. *Aspinall*, 46 Law J. Rep. M. C. 145.

The Court (MATHEW, J., and CHARLES, J.) held that the gist of the offence charged was the receiving of the articles with a guilty knowledge that they had been unlawfully obtained by some false pretence; that it was not necessary, therefore, to set out the particulars of the false pretence any more than it would be in a count for conspiring to obtain goods by false pretences, as was laid down in *Regina* v. *Gill*; and that so long as all the ingredients of the offence necessary to be proved were set out, as they were in these counts, the indictment was good.

Judgment for the Crown.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

LONDON, November 17th, 1894.

Present:—LORD HOBHOUSE, LORD MACNAGHTEN, and SIR RICHARD COUCH.

THE QUEBEC CENTRAL RAILWAY CO. v. ROBERTSON.

Agreement—Interpretation of.

This was an appeal from a judgment of the Court of Queen's Bench for Lower Canada, in the Province of Quebec, of April 26, 1893, reversing a decision of Mr. Justice Brooks. (1)

The arguments were heard prior to the vacation before a Board consisting of Lord Watson, Lord Hobhouse, Lord Macnaghten, and Sir Richard Couch, when their Lordships reserved judgment.

Mr. Finlay, Q.C., and *Mr. Gore*, appeared for the appellants; *Sir Edward Clarke, Q.C.*, and *Mr. J. Elden Bankes*, for respondent.

SIR RICHARD COUCH:—By an Act 49-50 Vict., c. 82, of the Legislature of the Province of Quebec, passed on June 21, 1886, the charter of the Quebec Central Railway Company was amended by authorizing the provisional directors of the company to issue 3,000 prior lien bonds of £100 sterling each, payable in 20 years, to be a first charge on the property of the company, and providing that upon the coming into force of the Act the powers of the directors should cease and the affairs of the company be administered by a board of provisional directors, consisting of the persons named therein, until a permanent board of directors should be elected as was provided. The Act was to come into force by proclamation of the Lieutenant-Governor, to be issued on a declaration of the company that it was assented to by two thirds of the shareholders to be given before June 1, 1888. In order to ascertain the condition of the company prior to the passing of the Act, Mr. Thomas Swinyard had been employed to examine the books of the company, as well as the railroad, and to report thereon. In December, 1885, he made a report, in which he showed that the direct liabilities of the company, apart

(1) The judgment of Mr. Justice Brooks is reported in 14 L. N. 354, and the judgment of the Court of Queen's Bench in R. J. Q., 2 B. R. 273.

from the bonded debt of which the interest had been guaranteed by the Provincial Government, but which guarantee had expired or was about to expire, were $113,285.66; of which $50,000 were estimated to be due on a claim of the Ontario Car Company for the price of rolling stock for which the railway had been attached on a judgment in favor of the Ontario Car Company; $22,677 as due to James Ross and company on what might be termed the locomotive account, being the price of locomotives bought by James Ross and held by him but used by the company; and $40,608.66, other liabilities, as per balance-sheet of August, 1885, accompanying Mr. Swinyard's report, and certified to by Mr. Power, accountant, being accounts due to tradesmen for supplies, advertising and amounts due to other railroads on traffic account. Negotiations were entered into for a settlement of those claims, with a view of obtaining legislation and possession of the railway, of which the Honorable Mr. Robertson, who was a large shareholder and had control of the stock, was then president, and a Mr. Woodward was the manager. On October 9, 1885, pending the investigation by Swinyard, Woodward made in England a statement of the affairs of the railway. The negotiations were between Mr. Hall, one of the provisional directors in Canada, and Mr. Robertson, and were communicated by Mr. Hall to the directors who were in England, on March 27, 1886, with a view to prevent legal proceedings by which the bond-holders in England would endeavour to foreclose the mortgage and take possession of the railway. After the lapse of a considerable time, on April 2, 1887, an agreement was made in England between Mr. Robertson and his co-directors, of whom the majority were in England, of the one part, and Mr. Robertson individually of the other part, represented by Mr. Hall, who was then in England. The agreement was provisionally signed by Hall for Robertson, and was afterwards ratified by Robertson. The question in appeal arises upon that agreement.

It recited the Act and the power to issue the 3,000 prior lien bonds and that certain debts set forth in the first and second parts of the first schedule to it were due or claimed from the company, and proceeded as follows:—"And whereas the Hon. J. G. Robertson, who is the chairman of the company, has agreed to settle and discharge all the said debts for the sum of $250,000 to be provided in the manner hereinafter mentioned, and whereas the parties of the first part are mentioned in said Act as the

board of provisional directors of said company upon the coming into force of said Act, it is deemed necessary that formal declaration and agreement should be made on their part that they will take the necessary steps to provide the said sum of $250,000, and subject to the conditions hereinafter named will provide or pay over the same to the said J. G. Robertson as follows: 1st. That they will with all possible despatch after the coming into force of the said Act cause the prior lien bonds designated in said Act to be executed in the form of the second schedule hereunder written and deliver 588 thereof to the Hon. George Irvine, Judge of the Court of Vice-Admiralty, residing in the City and Province of Quebec, to be held by him under the conditions hereinafter expressed." 2nd. After providing for the payment or deposit of cash in lieu of the bonds, which was not done, the agreement said that the cash or bonds should be administered by Mr. Irvine as follows:—"Upon the said Hon. Joseph Gibb Robertson delivering to the said Hon. George Irvine, a statutory declaration made by himself, by James Robertson Woodward, and by the present auditor of the said Quebec Central Company, to the effect that the liabilities mentioned in a list to be annexed thereto and corresponding with the list contained in the said first schedule hereto comprise all the debts due and claimed from the said company (other than liabilities for working expenses of the railway incurred six months before the coming into operation of the Act), and all the liabilities of the contractors which arose from or were connected with their contracts for the construction and the equipment of the said railway, and stating whether, and, if any, what part of the receipts of the company have been used for the liquidation of any principal or interest in respect of the said debts enumerated in the second part in the said first schedule, then said Hon. George Irvine may pay over and deliver to the said Hon. Joseph Gibb Robertson the said cash or bonds, as the case may be, upon the said Hon. Joseph Gibb Robertson procuring and delivering up to said Hon. George Irvine, complete discharges from the said several debts due or claimed as mentioned in said schedule, or an amount of said cash or bonds from time to time in the proportion which the discharges produced shall bear to the total liabilities mentioned in the said schedule. Provided, however, that the said Hon. George Irvine shall retain and pay to the company, in cash or in bonds, a sum equal to so much of the receipts of the company as shall appear from the

said declaration, to have been used in liquidation of any principal or interest in respect of any of the debts enumerated in the second part of the said first schedule. 3rd. In consideration of the premises the said Hon. J. G. Robertson hereby indemnifies the company against all liabilities and claims upon the company other than (a) the bonded debt of the company, (b) the liabilities of the company for the satisfaction of which article 4 provides, and (c) liabilities for working expenses of the railway incurred within six months before the coming into operation of the Act."

The Act was proclaimed on November 3, 1887, Mr. Woodward remaining their manager. On November 14, 1888, Mr. Walsh, auditor of the company, made a statutory declaration that the $40,608.66 had been paid, except $54.18, but not stating by whom or when. It appeared that that payment had been made out of the earnings of the railway from time to time between August 31, 1885, and August 14, 1887, nearly all of it in 1885 and 1886. Statutory declarations were also made about the same time by Mr. Robertson, Mr. Woodward and Mr. Walsh, stating that the sums mentioned in the lists attached thereto comprised all the debts due and claimed from the company on August 31, 1885, other than the bonded debt and the debts excepted with it in the agreement, and that only $3,273 odd had been paid out of the earnings of the road on what were termed contractors' liabilities since April 2, 1887. On those declarations and certain vouchers as discharges being given to Mr. Irvine, he, in November and December, 1888, handed over to Mr. Robertson or to Mr. Woodward, who transacted his business, 534 bonds, retaining eight to cover the $3,273 odd paid from earnings on contractors' liabilities, and leaving 46 in his hands. On March 30, 1889, Mr. Robertson brought an action against Mr. Irvine, alleging that, in pursuance of the agreement, he had paid the larger portion of the outstanding debts referred to in it, and had delivered to the defendant the statutory declarations required by it, and had received from the defendant a number of bonds from time to time in the proportion which the discharges produced bore to the liabilities mentioned in the schedule; that in or about January, 1889, he delivered to the defendant discharges for an amount of the liabilities which would entitle him to recover and receive from the defendant 43 of the bonds, which the defendant refused to deliver, although duly requested to do so; that since January 31, he paid liabilities and delivered discharges

to the defendant which would entitle him to three additional bonds, which the defendant also refused to deliver to him; and he prayed that the defendant might be ordered to deliver to him 46 of the bonds, or in default to be condemned as his debtor in the value thereof.

The defendant appeared but did not plead, and subsequently deposited the bonds in court. On April 30, 1889, the Quebec Central Railway Company filed a petition in intervention, and having been allowed to intervene, stated in their grounds of intervention that previously to April 2, 1887, the day of the execution of the agreement, the debts mentioned in the first part of the first schedule to it had been in a large measure settled and paid by the company out of its own revenues; that between April 2 and November 3, 1887, the company paid all its debts; and, after the coming into force of the Act, large sums, exceeding $30,000, were taken from the funds of the company and expended in the payment of debts which the plaintiff was bound to pay.

The summary of the plaintiff's answer to that was given in the reasons of Mr. Justice Brooks for the judgment in the Superior Court. He says: "Plaintiff, on the other hand, says, 'it is true a large amount was paid out of the earnings of the road, but I had a right to pay it so, and am entitled to the benefit of it. You were aware of it, and acquiesced in it and ratified it; your manager here, Mr. Hall, consented to it, and you cannot complain. It was a going concern. I as president had a right and was bound to pay from earnings, pending negotiations and during the long delays, on account. You knew it. I only agreed to procure discharges of these debts, and I agreed to indemnify you against all claims except certain claims mentioned in the agreement. I abide by my agreement, and there are now other claims—notably that of commercial taxes, amounting to upwards of $18,000—which you call upon me to pay."

A difficulty arose from the statement of Mr. Swinyard of liabilities on August 31, 1885, having been made the basis of the agreement in April, 1887; but that could not alter the meaning of the words in the agreement that Mr. Robertson had agreed to settle and discharge all the debts set forth in the first schedule, which was the consideration for his having the bonds delivered to him. The intention of the parties was that Mr. Robertson should take upon himself personally the settlement and discharge

of those debts. Payment with the funds of the company, and delivering to Mr. Irvine discharges obtained by such payments, was not performance by Mr. Robertson of his agreement or indemnifying the company against these debts, which he expressly agreed to do. The consent of Mr. R. N. Hall, the manager in Canada, would not make any difference, as he had no power to alter the agreement or dispense with the performance of it. Their lordships are of opinion that the plaintiff failed to show that he was entitled to the 46 bonds, and that the action was properly dismissed in the Superior Court by Mr. Justice Brooks; and, his judgment having been reversed by the Court of Queen's Bench for reasons with which their Lordships cannot agree, they will humbly advise her Majesty to reverse the judgment of that court, and order that the appeal to it be dismissed with costs, and to affirm the judgment of the Superior Court. The respondent will pay the costs of this appeal.

[In the Courts below the Attorneys were: Messrs Brown & Morris, for plaintiff; Messrs Hurd & Fraser, for intervenants, and Messrs Cook and Fitzpatrick, counsel.]

THE TRUE PROFESSIONAL IDEAL.

Mr. John F. Dillon, the well known author, read a paper bearing the above title, before the Section on Legal Education of the American Bar Association, in August last. The article deserves the careful perusal of all students as well as teachers of law.

I have been honored with an invitation to read before the section on Legal Education a paper on "The True Professional Ideal." with the implication, I presume, that it should have some relation to the subject of legal education in one or more of its many aspects.

The time-limit of thirty minutes will not enable me to do more than to glance hurriedly at one or two of the more important questions that might fitly be considered under the general title of "The True Professional Ideal." It can never, I think, be entirely out of place,—certainly, in my opinion, it is not out of place at the present time,—to impress upon the bar and society the essential dignity, worth, nobility and usefulness of the lawyer's calling. The true conception—ideal, if you please, of the lawyer, is that of one who worthily magnifies the nature and duties of his office, who scorns every form of meanness or disre-

putable practice, who by unwearied industry masters the vast and complex technical learning and details of his profession, but who, not satisfied with this, studies the eternal principles of justice as developed and illustrated in the history of the law and in the jurisprudence of other times and nations so earnestly that he falls in love with them, and is thenceforward not content unless he is endeavoring by every means in his power to be not only an ornament but a help unto the laws and jurisprudence of his State or nation. In his conception, every place where a judge sits, although the arena be a contentious one where debate runs high and warm, is yet over all a temple where faith, truth, honor and justice abide, and he one of its ministers. With what majestic port may not the lawyer approach that temple when he reflects that he enters there not by grace but of right, craving neither mercy nor favor, but demanding justice, to which demand the appointed judicial organs of the state must give heed under all circumstances and at all times.

There is, I fear, some decadence in the lofty ideals that have characterized the profession in former times. There is in our modern life a tendency—I have thought at times very strongly marked—to assimilate the practice of the law to the conduct of commercial business. Between great law firms with their separate departments and heads and subordinate bureaus and clerks with their staff of assistants, there is much resemblance to the business methods of the great mercantile and business establishments, situate close by. The true lawyer—not to say the ideal lawyer—is one who begrudges no time and toil, however great, needful to the thorough mastery of his case in its facts and legal principles; who takes the time and gives the labor necessary to go to its very bottom; and who will not cease his study until every detail stands distinct and luminous in the intellectual light with which he has surrounded it. The temptations and exigencies of a large practice make this very difficult, and the result too generally is that the case gets only the attention that is convenient instead of that which it truly requires. The head of a great firm in a metropolitan city, a learned and able man, was associated with another in a case of much complexity and moment. He expressed warm admiration of the printed argument of his associate counsel, which had cost the latter two months of laborious work, adding, however, that *he*

could not have given that much time to it because commercially regarded it would not have paid him to do so.

It is unquestionably the duty of the profession to preserve the traditions of the past—to maintain its lofty ideals--and to this end to guard against what I may perhaps truly describe by calling it the commercializing spirit of the age. The utterance of Him who spake with an authority greater than that of any lawyer or judge—"Man lives not by bread alone," should never be forgotten or unheeded by the lawyer, and will not be by any who comes within the category of what may be termed the "ideal lawyer."

Mr. J. H. Benton, jr., of the Boston bar, under the conviction that few persons even of the profession realized the full extent in which the bar has participated in the government of this country and given direction to its policies and public affairs, read before the Southern New Hampshire Bar Association, in February of the present year, a most instructive paper on the "Influence of the Bar in our State and Federal Government."

A few of the facts which he has laboriously ascertained and stated may be here briefly mentioned as bearing upon the subject of the present paper. Of the 56 signers of the Declaration of Independence, 25 were lawyers, and so were 30 out of 55 members of the convention which framed the Federal constitution. Of the 3,122 senators of the United States since 1787, 2,068 have been lawyers; of the 11,889 representatives, 5,832 have been lawyers. "The average membership of lawyers in both branches of Congress from the beginning has been 53 per cent." In the present constitutional convention of the State of New York, 133 out of 175 members are members of the bar. Lawyers constitute, as nearly as can be ascertained, one in every four hundred of the male population of the United States at the present time. The statistics show with one exception that in the legislatures of all the States, the legal profession has, and always has had, a membership excessively greater in proportion to its number in the population of the State.

Not less marked is the influence of the bar in the executive departments of the Federal and State governments. Of the 24 presidents, 19 have been lawyers, and Mr. Benton states that "of the 1,157 governors of all the States, 578 of the 978 whose occupations I have been able to ascertain have been lawyers."

It is scarcely necessary to mention the fact that the entire

body of the other co-ordinate department of the national and State government—the judiciary—have been members of the profession. And in our polity the judiciary have a power and are clothed with a duty unique in the history of the governments, viz., the power and duty to declare legislative enactments and executive acts which are in conflict with our written constitution, to be for that reason void and of no effect. In this America has taught the world the greatest lesson in government and law it has ever learned, namely, that law is not binding alone upon the subject and that the conception of law never reaches its full development until it attains complete supremacy in the form of written constitutions, which are the supreme law of the land, since their provisions are obligatory both upon the state and upon those subjected toits rule, and equally enforceable against both, and therefore *law* in the strictest sense of the term.

Two forces in society are in constant operation and are necessary to its welfare, if not to its very existence: the conservative force, to preserve what is worth preserving; the progressive, without which we would have stagnation and death. The character and state of the law as well as the social condition of any people is the result of the conflict between these healthful although antagonistic forces. As the ocean keeps itself pure by the constant movement and freedom of its waters, so the like movement and freedom are necessary to preserve what is good in existing conditions and to remedy what is either bad or inadequate.

Changes in the law of any living and progressive society are, therefore, absolutely necessary in order to make the law answer the current state and necessities of the social organism. So far as law is expressed in written form, whether in constitution or statutes, it is crystallized and almost although perhaps never quite, stationary. Owing to the doctrine of judicial precedent as it exists in our system, this theoretically makes what is adjudged to be law almost, although in practice not quite, as stationary as law in written form. True wisdom requires that law shall from time to time and with all convenient speed be made to harmonize with existing social needs. This makes law amendment or reform a constant, continuing and ever existing necessity.

It is pertinent here to observe that nothing is more difficult than the work of law improvement. It requires a knowledge of the law both theoretical and practical; theoretical, so as to know

the relation of each department of the law to every other department; practical, so as to appreciate existing defects and the needed remedy. Doctrinaires, jurists, and legal scholars may see, indeed are often the first to see, or to suggest and urge the required changes, but are, generally speaking, incapable of wisely effecting them. With the notable exception of the changes wrought in the law of evidence, Bentham's vast labors bore almost no direct fruit. Austin filled for many years a large space in the field of jurisprudence. My own judgment is that his legal theories have proved to have little intrinsic or permanent value. Though feeling constrained to say this, I must also add that, in my opinion, the world is much indebted to these eminent men for their bold and free criticisms of our laws and for arousing the attention of the bar to the need of amending them, and especially for making some portion at least of the profession in England and this country feel the need of a more scientific jurisprudence. Brougham, Mackintosh, Romilly and Langdale were in a way the disciples of Bentham and Austin, and labored faithfully in the cause of law reform in England. But they went about it in the conservative and timid manner so characteristic of the English mind. Their efforts were confined to single, sporadic, specific ameliorations of certain felt grievances, but their labors proceeded upon no scientific plan to effect comprehensive reforms of either substantive law or of the law of procedure.

Such, roughly sketched, was the general condition of law reform when the late David Dudley Field entered upon the work of law amendment in this country. It seems to me that the career of Mr. Field illustrates several phases of the subject under discussion. For this reason as well as because it is proper that some notice should be taken in this body of the labors of this eminent man, at one time the president of this association, I shall refer for a few moments to the main work of his life and endeavor to draw from it the lessons it teaches. In my judgment, no mere doctrinaire or closet student of our technical system of law is capable of wise and well-directed efforts to amend it. This must be the work of practical lawyers. Mr. Field had this needed qualification for he was throughout his long career at the bar a busy and active practitioner.

When Mr. Field commenced his work of law improvement, the gap between the law as it existed and what the welfare of the

community required, especially in the law of procedure, was very wide. The system of pleading and procedure had grown to be so technical as to defeat in many cases the cause of justice. This was eminently true of the common law system of pleading and procedure, and even the system of equity was equally open to the reproach of undue technicality and of intolerable delays. The need for a cheaper, simpler, and more expeditious procedure at law and in equity had become a crying want. Mr. Field, if he did not originate the idea, clearly put himself at the head of the movement to remedy the evil. This he did at an early stage in his professional life, and to this as well as to the codification, looking to improvement in criminal law and procedure, as well as in substantive law, he gave without ceasing, being instant in season and out of season, more than fifty years of his active career. He advocated the principle of codification everywhere. He was a man of strong feelings and convictions. Every man of real force is so, almost necessarily. He, therefore, fought for codification; and he fought with dauntless courage everybody who opposed him. We may think that he unduly estimated the scope, the value and the beneficence of codification. He may have done so. Effective and true reformers are apt to go too far. But this detracts not the least from the estimation in which he is justly entitled to be held by the bar and the public. I do not wish to surround him with a haze of golden panegyric. He does not need it. Look at his public labors in municipal and international law, extending from 1839 to 1894, and what lawyer in this country, dead or living, has ever dedicated half as many years as he to conscientious and unselfish efforts to improve our laws and jurisprudence? In this view he stands without a peer. Consider the successes which have crowned his work in this country, in England and in the English colonies, and his career is strikingly distinctive. It dominates our legal landscape. True, some of his schemes of law amendment failed of adoption, those more especially relating to the codification of the common law, but he seized upon one principle which he made eminently successful and which in turn made him famous and justly so, namely, the simplification of the law of procedure. The New York Code of 1843, in substance or principle, Mr. Field lived to see adopted in a large majority of the States and territories of the Union, and in the Judicature Act of 1873 of the British Parliament.

[Concluded in next issue.]