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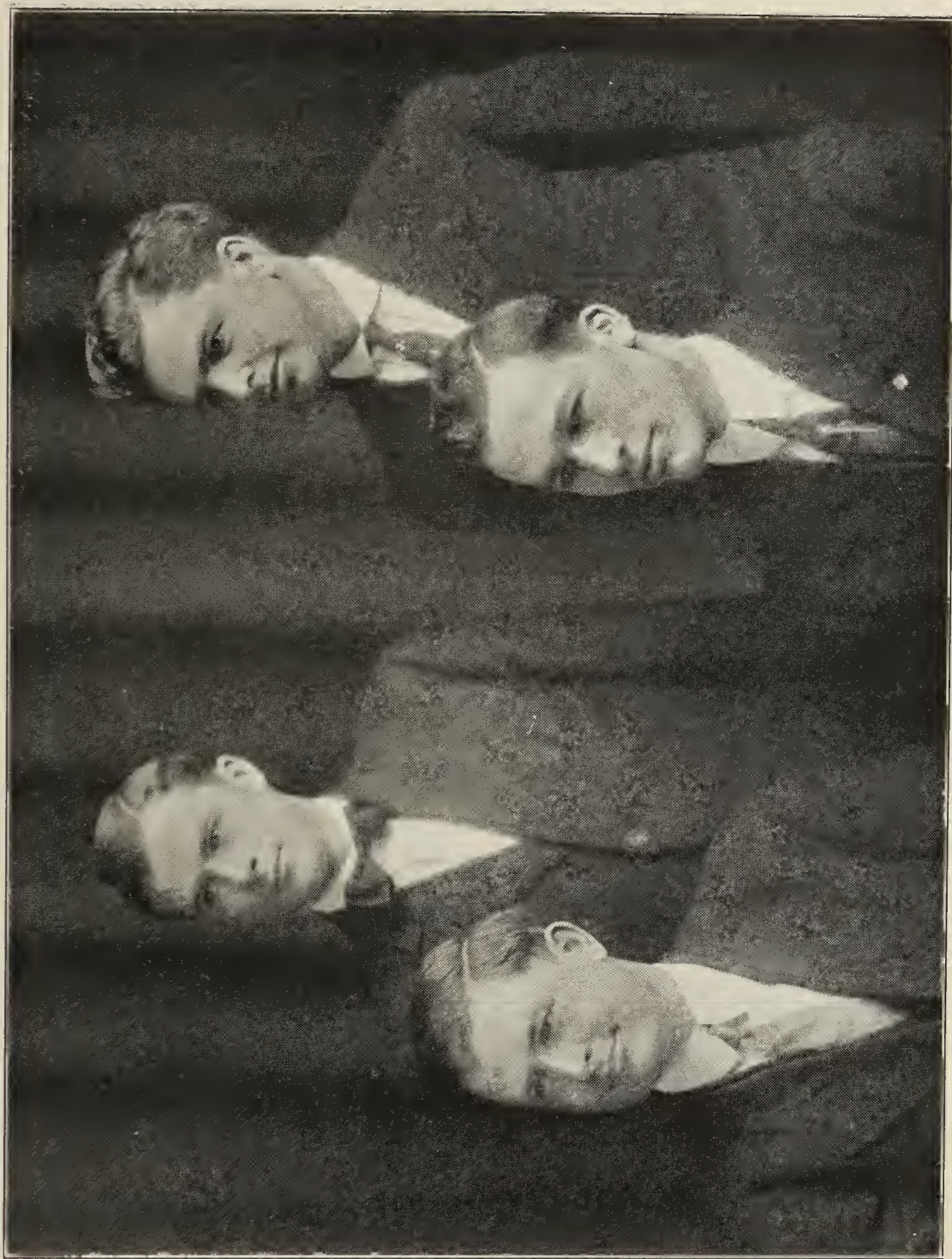
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## A POPULAR JUDICIARY.

\* T. J. MAHONEY, A. M., LL. B.

In Connolly's "Story of Montana," published some time ago in one of our magazines, we get a glimpse of the organization of government in an embryonic state. The gold seekers who first inhabited the gulches of western Montana were without a constitution or a code. They had no legislative halls, no executive mansion, and no courts of justice. Yet they found necessity for some means of protecting person and property that would be more effective than separate individual exertion. They met the necessity in their own rude way. When a crime was committed, the miners assembled in mass convention. This assembly exercised the functions of all three departments of government. It prescribed the penalty, passed on the guilt of the prisoner, and executed its own sentence. In one instance, instead of condemning the culprit to death, it gave him a mule and twenty minutes to betake himself from the camp. As he leaped into the saddle he thanked the court for its leniency, and said, "You give me twenty minutes; if this mule doesn't buck I shall not need five." In another instance, after two notorious outlaws had been condemned to death, only a part of the assembly proceeded to the place of execution. As these were principally friends of the prisoners they awarded a new trial, changed the sentence from death to banishment, and supplied the means of transportation, leaving the grave digger to post a sign, "This grave to let." In such a state there was no jealousy between the different departments of government, because

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the same men filled all departments. The courts were never unpopular, because the people, in mass convention assembled, constituted the court.

But in a nation of many millions of people, spread over a vast area, such simple methods are impossible. Among such a people a more complicated system is indispensable. Different functions must be performed by different agencies, and these agencies range themselves under three heads: legislative, executive, and judicial. We have to deal today only with the judiciary and its place in the confidence of our people.

If the law-making department, or one of its members, is unjustly assailed, a member may rise to a question of privilege, and either personally or by setting on foot an investigation, put the matter in its true light before the country. A member of such a body has also an opportunity to make a personal appeal to his constituents. If the executive is maligned, it is not thought a breach of the proprieties for him to unbosom himself to the representatives of the press and to assign his antagonist to his proper place in the "Ananias Club." Besides as legislators and executives are chosen, in large part, to carry out the will of a majority of their fellow citizens, they are not in danger of loss of popularity so long as they remain faithful to their ante-election pledges, or the platforms of their party. But it is not so with the judges. Propriety forbids their "talking back" to their critics. They must have been party nominees, but they have not been elected to carry out the party platform. They are allowed no initiative, and therefore cannot become leaders of sentiment. It is not permitted to them to "Follow the people, a little in advance," as Simon Cameron advised his son half a century ago, or "Go the same direction the people are going but a little faster," as our more verbose contemporary puts it. They cannot look for the support of the press, because the press

is devoted to matters in which the people take an active interest, and the people are more interested in the will, the purpose, and the policy of their public agents than in their judgment. But the courts are denied any will, purpose, or policy, and are limited to the exercise of the one faculty, judgment. As Hamilton put it in *The Federalist*: “They may truly be said to have neither *force nor will*, but merely judgment.”

Again, the press is not an accurate critic of judicial action. Its writers are well trained in matters of governmental policy, and are well fitted to discuss the merits of party issues, but they are not trained in the analysis of judicial pronouncements. This is no more to their disparagement than to say that they are not trained in medicine or surgery or any other branch of scientific knowledge.

Let me illustrate: Some time ago the judge of the United States District Court for the northern district of Illinois imposed a fine of \$29,240,000 upon the Standard Oil Company of Indiana. One of the questions involved in that case was whether a railroad lying wholly within one state, but forming a connecting link in an interstate shipment, was engaged in interstate commerce. If that question was answered in the negative it would result in the acquittal of the defendant. Answered in the affirmative, it was one of the essential findings to sustain the conviction. The court answered it in the affirmative, and the daily press, on the contrary, almost without exception, applauded the court as a “Daniel come to judgment.” There was a great demand for the judge’s photograph and biography. He awoke to fame, to such an extent even that a presidential boom was started in his favor. A little later the same question was presented to the United States Circuit Court of Appeals for the Eighth Circuit in an action against a railroad lying wholly within the state of Colorado. That court, by a majority opinion, reached the same conclusion as did the

United States District Court for the Northern District of Illinois, but it was very differently received by the press. The eminent character of the judges who affirmed the proposition, as well as the binding effect of the authority, force its acceptance as at least presumptively correct. But the great learning and unquestioned integrity of the judge who dissented is at least some evidence that the question was open to debate. But the press did not so analyze the decisions. The same journals that applauded the decision of the judge of the Northern District of Illinois, as a deliverance so wise and just as to command the admiration of all well disposed minds, denounced the same decision when put forth by the Court of Appeals for the Eighth Circuit as an insidious attempt to destroy the sovereignty, if not the autonomy, of the state, and to give us a centralized national government whose chief excuse for existence would be the protection of railroads and other gigantic corporations from just and equitable state control. It is a strange anomaly that, in our country of many millions of reading people, all fairly well posted upon the important events and discussions of the day, one judge may attain to heights of the most enviable distinction by a single decision, and another call down upon his head the wrath of the multitude by precisely the same decision. And yet I would not too severely censure the press for this anomaly. The conditions that surround us make it imperative that a newspaper to succeed must be interesting; to be interesting it must pursue a definite course relative to the one matter in which the people are most interested—politics. If it has espoused the cause of the so-called “masses” against the so-called “classes,” it must maintain the superficial appearance of consistency by applauding a judgment that inflicts a blow upon “predatory wealth” and condemning a judgment that seems to magnify the power of the general government, notwithstanding that both decisions rule the same question the same way.

Such criticisms, though uttered without malice or purpose of wrong, militate against the efficiency of our courts by impairing the confidence of the people in these tribunals. They also cultivate false notions as to the functions of the courts. They class the judiciary with the political branches of the government and seek to make it responsive to the transitory changes of popular sentiment, rather than the settled will of the people as expressed in their constitutions and valid legislative enactments.

But the press is not the only agency that has, from time to time, attacked the stability of our judicial system. From the beginning of our national history the executive and legislative departments have repeatedly sought to bring it under their domination. Very early an amendment to the federal constitution was proposed making the judges removable by the President upon the joint address of both houses of Congress; a President has challenged and defied the execution of a judgment of the Supreme Court, and Congress at one time abolished all the circuit courts in the land as a means of getting rid of the judges who then occupied those benches. In the reconstruction era, when the Supreme Court consisted of ten judges, an act was passed forbidding the filling of any vacancies until the number should be reduced to seven. As soon as the reduction was accomplished and a new administration came into power the number was raised to nine, new judges were appointed and the legal tender decision promptly overruled. In our own time we have witnessed even so undignified a proceeding as a chief executive devoting a part of his message to Congress to simply scolding a judge because of an unpopular, though undoubtedly correct, decision.

This history cannot but impress every student of our system of government with the great wisdom of the framers of the constitution in undertaking to provide for the independence of the judiciary. They realized the difference between the will of the people as crystallized in their

fundamental law and mere outbursts of popular sentiment that sweep over the country like storm waves, to be quickly succeeded by radical revulsions. They realized that a government of, for and by the people must be none the less a government, and that, if it were to insure to themselves and their posterity the blessings of liberty, it must be a government of stability. They realized that there would be waves of popular sentiment and caprice, and that the political departments of government would be quick to respond to such changes. Hence they were careful to limit the powers of these departments, not as a limitation upon popular sovereignty, but as a protection to deliberate popular sovereignty against mere transitory popular whim. They created the Supreme Court as "the living voice of the constitution," whose duty it should be to preserve and enforce that solemn compact inviolate.

In supporting the constitution the court never originates an inquiry. As Mr. Bryce says, it never goes to meet the question, but always waits for the question to come to it. As early as Washington's administration the court refused to give the executive an opinion upon the validity of contemplated action. Hamilton calls it the weakest and most defenseless of the three departments of government. He says: "The executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of society; and can take no active resolution whatever. It may truly be said to have neither force nor will, but only judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its own judgments."

Further advocating the independence of the judiciary he says: "The complete independence of the courts of

justice is peculiarly essential in a limited constitution. By a limited constitution I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no *ex-post facto* laws, and the like. Limitations of this kind can be preserved in practice in no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the constitution void. Without this all reservations of particular rights or privileges would amount to nothing.”

These words were written in advocacy of the adoption of the constitution of 1787, and it would be doing violence to our intelligence to suppose that the people of that time did not deliberately intend that the court should have the power and be charged with the duty of declaring void any legislative enactment which was in violation of the constitution. True, this power of the court has been challenged throughout our entire history; but it is now more than a century since it was announced in the clearest terms by Chief Justice Marshall, and, although we have repeatedly amended the constitution since that announcement, the people have not seen fit to amend it in this particular. For more than a hundred years the people have sanctioned the exercise of that power by the judiciary. But it must be manifest that such a power could not be exercised by a court dependent upon the other branches of government or subject to change with every variation of popular sentiment.

It seems a work of supererogation to preach this doctrine to lawyers, and yet we have had at all times in the ranks of our profession some who have risen to distinction and who deplore any independence on the part of the judiciary. The chief justice of one of our states is even now advocating amendments to the constitution which would make the judges of the Supreme Court elective, and for a limited term, and which would expressly deny the power of

the court to declare a legislative act void. The argument is made catchy by a resort to ridicule. Thus he asks: "Are the ninety millions of Americans today, and the coming millions of the future, always to be tied hand and foot by what five elderly lawyers shall say that the thirty-nine dead men who signed the constitution of 1787 intended or did not intend?" By calling attention to the age of the judges he would imply a want of vigorous intelligence on their part, forgetting that since time began the enthusiasm of youth has found it expedient to consult the wisdom of years. Referring to the framers of the constitution as "thirty-nine dead men," he would belittle not only their work, but the wisdom of the people who approved it and of the millions who have since enjoyed the blessings it insured, so many of whom, in time of need, offered up their lives as a sacrifice for its perpetuation.

Criticisms of this character proceed from a perverted notion of popular sovereignty. They fail to recognize the difference between the settled and deliberate will of the people in their supreme act of government—the making and maintaining of their constitution—and mere transitory changes in the caprice of majorities. Attracted by the ripples of the surface, they ignore the steady flow of the tide beneath.

Of course there is no limit to the power of the people to alter, amend or even destroy their constitutions. If they deliberately determine to destroy the independence of the judiciary, if they decide that written constitutions shall bind only the conscience, but not the power, of their rights; if it is their will that Congress and forty-six different state legislatures shall each be the final judge of the constitutionality of its own enactments, all of this is within their power. They may change the whole theory of our government. But so long as we continue to live under written constitutions, ordained as the supreme law of the land, with courts to



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whose jurisdiction are committed controversies arising under such constitutions, these courts must not only have the power to pass on the validity of legislative enactments, but it must be their solemn duty to do so. In no other way can we have what Marshall calls a government of law rather than of men.

But it is not alone in holding legislative enactments unconstitutional that our courts have found themselves in conflict with other departments of government or with prevailing public sentiment. In deciding that executive officials are subject to the peremptory writ of mandamus and that *subpoena ad testificandum* may lawfully issue even to the President, the jealousy of the executive branch was aroused to an intense degree. At the time of the trial of Aaron Burr, not only the President, but the great popular majority, earnestly desired his conviction. The strongest impulses of resentment and even of patriotism were arrayed against him. A weak judge or one seeking public approval could very easily have submitted the question of his guilt to the jury. But it was the fortune, not merely for the prisoner, but for the preservation of personal liberty, that the presiding judge was courageous enough to enforce the constitutional requirement regarding the sufficiency of proof on a charge of treason.

Some twenty-five years ago the Supreme Court of Iowa decided that the prohibitory amendment had not been legally adopted. The decision was so unpopular that the leading newspaper of the dominant party demanded that none of the judges who concurred in that opinion should be renominated or re-elected. The program of official decapitation was carried out, but, although the personnel of the court has been entirely changed, there has been no attempt to overrule the decision. It has finally been accepted as correct.

Other historic instances might be cited, but these are sufficient to indicate the great work done by our courts in

the preservation of constitutional guaranties—the real will of the people—against assaults backed by transitory popular sentiment. Decisions such as these have maintained a government by the people, in the form ordained by the people, as distinguished from a government by the mob.

These considerations suggest the transcendent importance of maintaining the independence of the judiciary. One of the strongest arguments for the adoption of the constitution of 1787 was the provision it made for the independence of the judges of the Supreme Court. The President was not permitted to remove them, nor Congress to diminish their salaries. In 1829 John Marshall, then an old man and chief justice of the United States, accepted an election as delegate to a constitutional convention of Virginia. He naturally gave his chief attention to the provisions respecting the judiciary, and in the course of debate declared: “I have always thought, from my earliest youth till now, that the greatest scourge an angry heaven ever inflicted upon an ungrateful and a sinning people was an ignorant, a corrupt or a dependent judiciary. Our ancestors thought so, we thought so until very lately, and I trust the vote of this day will show that we think so still, and that we will not draw down this curse upon Virginia.”

It is appalling to contemplate what might have been our history except for the work of Marshall and those who stood with him in maintaining the supremacy of the constitution, oftentimes against the opposition of the President, the Congress and the popular majority. Save for their insistence that ours is a government of law and not of men, their fearless discharge of the duty to declare legislative acts in violation of the constitution invalid, the nullification acts of South Carolina would have been authoritative and every ordinance of secession beyond the scope of the federal government to assail.

We delight to honor the men who led our forces on the field of battle in defense of the government ordained

through the constitution of 1787, but had it not been for the fidelity and courage of the judiciary in interpreting that constitution these heroes of the civil war would have been mere marauders, or there would have been such want of loyalty to the constitution as would have permitted our nation to be broken into fragments without the lifting of a hand to stay its destruction. *Before Lincoln there was Marshall. Without Marshall there could have been no Lincoln.*

The decisions of John Marshall sustaining the supremacy of the constitution were unpopular at the time. But they ultimately became the foundation of such fixed notions of the character of our government as conceived it to be worth preserving, and furnished the patriotic zeal that did preserve it.

The judiciary is the balance wheel of our whole system. It makes no inquiry, and should make none, into the wisdom of the acts of the legislative or executive departments. It limits the inquiry to the question of power. If the power has been vested the manner of its exercise is not subject to judicial review. But if the legislative or executive undertakes to exercise a power not granted, or one specifically denied, it is the solemn duty of the courts to vindicate the constitution—the supreme law, enacted by the people themselves—against any attempted usurpation by the people's agents.

It may be asked whether courts are not liable to err in determining the limitations of power of other departments. The answer is yes. Every scheme of human government depends on fallible, finite judgment. The conflicting legal-tender and income-tax decisions proclaim the fallibility of our highest judicial tribunal. Its gradual and almost imperceptible change of sentiment on other questions proves its susceptibility to popular opinion. But the vesting or delegation of power somewhere is an in-

evitable incident of any government. And so long as we live under written constitutions the interpretation of these instruments will remain a judicial function, and judicial functions must always be discharged by the judiciary.

It is a matter of regret that our courts have not always had the support of the public and the bar to which they are entitled. Some time ago I heard a citizen of Nebraska offer, in defense of a mob that had murdered a prisoner, the plea that the court had postponed the day of execution of another prisoner until it could investigate the legality of his conviction. It is not an uncommon thing in judicial campaigns for partisan press and partisan political managers to advertise certain decisions as a reason why one class or another should vote against the re-election of a judge. In such cases the correctness of the decision usually secures no attention. The bald fact is advertised that the decision was rendered, the manner in which it may affect a certain class of persons is emphasized and the class so affected is urged to prevent the re-election of the judge. This is an element of weakness in our system, but one which we must probably continue to endure, lest in seeking a remedy we may aggravate the evil. Our lot is cast in an era of public discussion and public criticism. Of necessity, much of it is irrelevant and unjust. But even unjust criticism cannot be suppressed without jeopardizing the freedom of just and wholesome criticism.

Since judges are not permitted to take the stump for their own vindication, a duty devolves upon the profession to shield them from unjust attack. The defeated lawyer may still cling to the notion that his contention was correct; he violates no duty in believing and even insisting that his argument was logically unanswerable. He may solace himself and his client with the reflection that the intellectual powers of the court were so inferior to his own as to be unable to grasp the force of his unerring logic.

But when he goes farther and insinuates that the decision is the result of corrupt motive, a disposition to persecute him or favor his adversary or a leaning toward a certain class of litigants, he sows the wind of distrust and need not be surprised if he reap the whirlwind of disaster in his chosen calling.

James Bryce, a most accurate critic of American institutions, speaking of the relation of the bench and bar, says:

“I return to notice other causes which have sustained the authority of the court by saving it from immersion in the turbid pool of politics. These are the strength of professional feeling among American lawyers, the relation of the bench and the bar, the power of the legal profession in the country. Proposing to describe both bench and bar in subsequent chapters, I will only now remark that the keen interest which the profession takes in the law secures an unusually large number of accurate and competent critics of the interpretation put upon the law by the judges. Such men form a tribunal to whose opinion the judges are sensitive, and all the more sensitive because the judges, like those of England, but unlike those of continental Europe, have been themselves practicing counsel. The better lawyers of the United States do not sink their professional sentiment and opinion in their party sympathies. They know good law even when it goes against themselves, and privately condemn as bad law a decision none the less because it benefits their party or their clients. \* \* \* As the respect of the bench for the bar tends to keep the judges in the straight path, so the respect and regard of the bar for the bench, a regard grounded on the sense of professional brotherhood, insure the moral influence of the court in the country.”

The maintenance of this moral influence, of which Mr. Bryce speaks, is one of the highest duties of the profes-

sion. The lawyer is a sort of interpreter between the court and the people. If he misinterprets, if he distorts opinions, he may destroy popular confidence in the courts. He may cultivate the false notion that justice is not to be had by due process of law, and secure for himself a large share of responsibility for every attempt to supplant the court by the mob.

There can be no objection to a lawyer or a group of lawyers seeking, at the end of a judge's term, to secure the elevation of one believed to be more capable. But when the attempt is made to stir up popular antagonism by calling attention to certain decisions, merely because they may be unpopular, but without regard to their correctness, the lawyer who does that prostitutes the opportunities of his profession and lays violent hands on the columns of the temple of justice, entirely reckless of the ruin he is about to pull down upon his own head.

Toward no other department of our government is there greater need of maintaining popular confidence, and yet in no other department are officials so much denied the opportunity of shaping their official conduct with an eye to popular approval. The judge, to deserve popular confidence, must possess the courage to invite popular disapproval. He must sometimes stand between the wrath of the people and the veriest wretch who would otherwise be denied the benefit of those safeguards which the law has cast about personal liberty. He must sometimes protect "tainted wealth" by preventing its appropriation without due process of law. He must safeguard the constitutional rights of the minority and save even the individual against the entire power of the state. A conscientious discharge of these duties may render him, for the time, unpopular, but a conscious dereliction would render him infamous.

Hedged about by the intelligent criticism and sustained by the intelligent approval of the bar, our courts have per-

formed, and every day are performing, the highest function of human government, a function without which all others would be futile—the administration of justice between man and man. The efficiency with which that function will continue to be performed will depend, to some extent at least, upon the confidence of the public in the ability and fidelity of the judges. That confidence has been won, not by servile following of every breeze of political agitation or popular sentiment, but by steadfast adherence to justice and the law, an adherence which has forced more than one judge to drink the chalice of official martyrdom. But the martyr dies happy in the belief that he has fought a good fight and has kept the faith.

It is the function and privilege of the bar, by its industry and ability, to aid the courts in arriving at correct conclusions, and by its own high standard of morality to maintain that confidence in judicial procedure which will preserve for the judiciary the highest and best type of popularity—an abiding reliance upon the enforcement of the law and the triumph of a just cause.

T. J. MAHONEY, A. M., LL. B.

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## FREIGHT RATES.

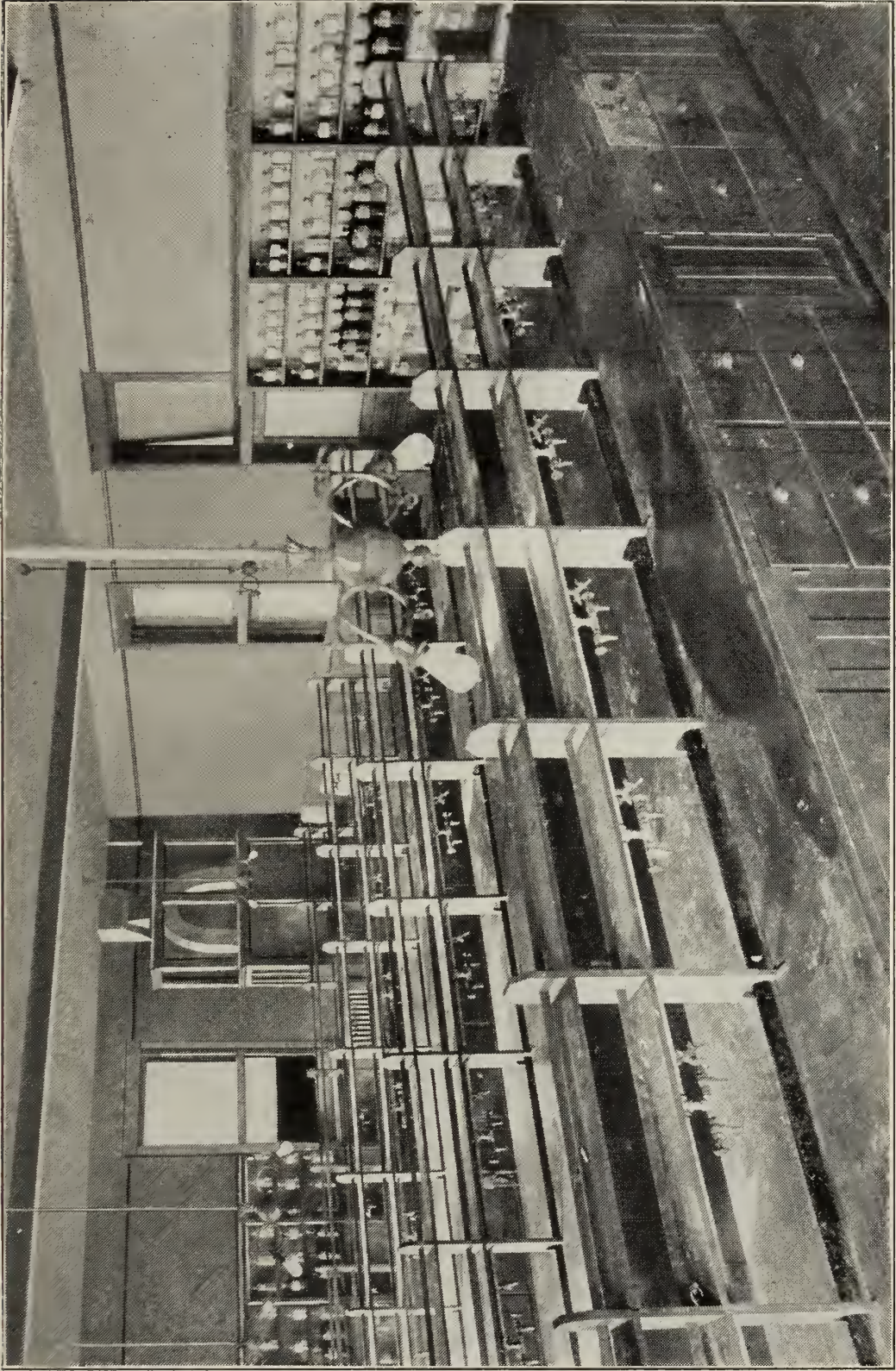
\* E. J. McVANN.

The controversy between the shipping public and the railroads in official classification territory and Western trunk line committee territory arose over the announced intention of those railroads to make material advances in their charges for transporting freight. The shippers in those two great divisions of railroad geography opposed the advances upon the ground that those advances were unnecessary. The earnings of the railroads, the shippers claimed, were ample to pay all expenses, meet the fixed charges and leave sufficient margin for dividends and surplus. The spokesmen of the railroads insisted that the shippers were not well informed. It was true, they admitted, that the gross receipts of the railroads had increased, but they argued that operating expenses had also increased; that they were confronted with further increases on account of the advances in wages, and that they must largely augment their gross receipts to meet the situation they were facing.

Space will not permit more than the barest mention of the development of this controversy. The shippers interested in the Eastern rates met in mass convention at Chicago, May 17, and appointed a conference committee with power to open negotiations with the Eastern presidents. The Eastern presidents ignored the committee and proceeded with the preparation of the advanced rates. A meeting of Western shippers was held at Omaha, May 24. Here the situation was more acute. The Western advances had been published and would become effective June 1. The treatment of the conference committee appointed at Chicago was known. It was felt that a similar move would be a waste of time and that drastic action was necessary. The

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administration was called upon for aid, through the enforcement of the conspiracy clause of the Sherman anti-trust law. The response was prompt and effective. Mr. Wickersham petitioned for a restraining order against the Western Trunk Line committee roads. Judge Dyer granted it on May 31. Congress was also petitioned for help, and almost immediately put a provision in the commerce law that any railroad which advanced any rate in effect January 1, 1910, or thereafter, must justify its act before the Interstate Commerce Commission if called upon to do so.

Thereupon the Eastern and Western railway presidents sent committees to the White House and offered to withdraw the proposed advances and submit the whole controversy to the commission. President Taft arranged the basis for such submission. The commission issued the necessary orders and appointed dates for hearings at Chicago, New York and Washington for the taking of evidence upon the question of the necessity for the proposed advances.

It is probable that the majority of the readers of the Times annual review are not shippers or railroad people. In order that they may clearly understand the magnitude of this controversy, a brief explanation and a few figures are necessary. Official classification territory is that part of the United States bounded on the east by the Atlantic Ocean, on the south by the Potomac and Ohio rivers, on the west by the Mississippi River and on the north by the Canadian line. This great territory overlaps the Western Trunk Line committee territory, which is bounded on the east by Lake Michigan and the Indiana-Illinois state line, on the south by the Missouri-Arkansas state line, on the west by the Missouri River and on the north by the Canada line.

Taken together, these two railroad territorial divisions coincide roughly with groups 1, 2, 3 and 4, as established by the Interstate Commerce Commission and shown in its statistical report for the fiscal year ending June 30, 1908.

According to that report there were 229,000 miles of railway in the United States, of which 116,600, more than 50 per cent, are included in these four groups. Of the 1,500,000,000 tons of freight handled by all the railways of the United States that year about 75 per cent (1,150,000,000 tons) were handled in these four groups. Of the 587,000,000 freight train miles that were run in the United States for the year ended June 30, 60 per cent were run in groups 1, 2, 3 and 4. Finally, of the \$2,395,000,000 total operating revenues of the railways of the United States for the year ended June 30, 1908, the railways in these four groups earned \$1,446,800,000—about 60 per cent. It is impossible to indicate accurately how much revenue would be added to this vast sum by the proposed advances. Many estimates have been made, but they are all predicated upon the movement of business for preceding periods and might be nullified entirely by the effect upon the commerce of the country if the advances demanded by the railroads should be allowed by the commission.

Under the provisions of the newly enacted law the railroads found themselves in the novel position of making an affirmative showing in support of their demands. The Eastern lines pooled their issues and presented as the backbone of their case a statement indicating that the advances in wages which they had been compelled to make, and would be compelled to make, would add \$35,000,000 per annum to their operating expense account, while their estimate of the increase in their revenues, based on the new rates, would only increase those revenues \$27,000,000. These tabulations were introduced by the clerks who made them. During the entire New York hearing none of the responsible executive officers of the Eastern roads was put upon the witness stand until the public press of all shades of opinion had united in ridiculing the sort of showing that the Eastern railroads made. The traffic executives of some of the principal lines were then introduced as witnesses, but it was easy to see

that their evidence was offered rather to meet the criticism of the press than to support the railroad position before the commission. Subsequently, at the Washington hearing, the presidents of the New York Central, the Pennsylvania and the Baltimore & Ohio testified. The gist of their evidence was that, in order to preserve the credit of the companies and enable them to obtain the additional capital necessary for the development of their properties, rates must be advanced to such a point that a large surplus could be accumulated to be put back into the property.

Between the hearing of the Eastern lines' case in New York and the taking of the testimony of the presidents of those lines in Washington, the actual results of the operation of the lines in official classification territory for the year ending June 30, 1910, were made public by the Interstate Commerce Commission. The railroad presidents were confronted with the fact that the lines which were called upon to pay the \$35,000,000 estimated increase in wages had \$51,000,000 actual increase in their net operating revenues for that year over and above their 1909 earnings, the basis upon which their estimate of \$27,000,000 increase was made. This enormous increase—\$16,000,000 more than sufficient to pay for the estimated increase in wages, was earned upon the basis of the old rates. These results seem to completely sustain the contention of the shippers that increases in the Eastern rates are entirely unnecessary.

The advances made by the railroads in Western Trunk Line territory were not important in and of themselves, but the executives of those lines made it clear that it was their intention to follow these advances with others that would augment their revenues materially, if the commission approved of the first figures submitted. The theory of the Western roads was much the same as that finally adopted by the Eastern roads, viz., that their operating expenses were increasing with greater relative rapidity than their gross earnings, and that they must augment their gross

earnings materially in order to pay their dividends and fixed charges and create the amount of surplus that they considered necessary to preserve their credit. The principal Western roads presented an elaborate theory of fair return, based partly upon the evidence of Vice-President May, of Price, Waterhouse & Co., and partly upon the theory that they were entitled to capitalize their surplus earnings that had been put back into the property. Mr. May's theory was that fair return included not only present dividends, but the right to returns upon the investment from the beginning of the company's history. In other words, if the Santa Fe road passed its dividends during several bad years it was entitled to add the amount of those passed dividends to its present dividends, so that the average would equal a fair return for all the years of its existence. The other theory was put forward by the Burlington and Northwestern. The Burlington claimed that it had a right to a fair return upon \$127,000,000 of surplus reinvested in its property, and the Northwestern showing indicated a claim to earn returns upon nearly \$60,000,000 of surplus income reinvested in the same manner.

The Burlington road laid great stress upon the evidence of its general manager, Mr. Ward, that the property would cost \$530,000,000 to reproduce. Included in this estimate was \$160,000,000 land value. Mr. Ward testified that he based this value upon an ascertained actual value of surrounding property, which was multiplied by three upon the theory that it cost a railroad three times the value of surrounding property to obtain land for its use. The fair inference from Mr. Ward's testimony was that he had applied this multiple of three throughout. When the Burlington was confronted with the fact that the cost to the railroads of terminal property in four large cities was as follows:

Omaha, 150 per cent of adjoining land.

Minneapolis, 160 per cent of adjoining land.

St. Paul, 175 per cent of adjoining land.

Duluth, 125 per cent of adjoining land.

and that the use of the multiple of 150 supported by these figures cut Ward's value estimate in two, Mr. Ward was put back on the stand and modified his first testimony materially. He corrected his evidence by the statement that he had not used a multiple of three uniformly, but only with reference to farm lands. The value per acre upon which he supported his estimate of farm lands was so far out of line with actual values, even admitting the correctness of his multiple of three, that it is not anticipated that the commission will pay much attention to that estimate as a basis for the claim of fair return.

The underlying theory of the testimony of all the Western railroads seemed to be that the commission ought to accept without question their statement of the amount of their operating expenses, and not to go behind those statements, dealing only with the net revenues left after deducting these operating expenses from the gross revenues. If the testimony of the railroads themselves showed no abnormal or unusual conditions as to the amount of their operating expenses, their position in this respect would not be open to serious question. Counsel for the shippers, however, made an exhaustive analysis of the operating expenses of the principal Western railroads upon the theory that the transportation conditions in the West were controlled by the Atchison, Topeka & Santa Fe, the Chicago, Burlington & Quincy, the Chicago & Northwestern and the Chicago, Milwaukee & St. Paul railways, and that the commission must decide the case with reference to the showing made by those four roads because of their commanding position and because of the fact that they were generally admitted to be capitalized with reasonable fairness and to be honestly and ably managed.

This analysis showed an unprecedented increase in operating expenses under the heads of maintenance of way, structures and equipment. The testimony of the execu-

tives of three of these roads had been to the effect that their properties had been kept up from year to year in such shape that they were better at the end of each year than they had been the preceding year. Notwithstanding this fact, their maintenance expenses were very largely increased during the fiscal year ending 1910. The increases showed most clearly in those items which could be most readily controlled by the fiat of management. No claim was made by the shippers that these accounts had been deliberately padded for the purpose of increasing operating expenses. The theory presented for the consideration of the commission was that if the judgment of the management had resulted in the contracting of unusually heavy maintenance expenses during the fiscal year 1910, that fact should not be made the basis for advancing rates in order to augment gross earnings. As an instance of the large expenditures for maintenance, there was the case of the tie renewal account of the Santa Fe. This account showed that the Santa Fe company had expended \$850,000 more in 1910 than in 1909 for renewals of ties, but had laid 600,000 less ties in 1910, and had reported to the commission that the cost of its ties at the point of distribution was practically the same for both years. Another instance was an increase in the expenditures of the same company of \$1,350,000 in 1910 over 1909 under the item of roadway and track. Summed up, the Santa Fe maintenance accounts increased 25 per cent, the Chicago & Northwestern maintenance account 22 1-2 per cent and the Chicago, Burlington & Quincy 16 1-2 per cent. There was also much railroad testimony that the winter of 1909-1910 was an exceedingly hard winter and that the Illinois coal strike, which lasted several months, had affected operating expenses through the increase in the cost of fuel, and freight revenues through the decrease in coal tonnage.

Notwithstanding all of these adverse conditions, these roads were enabled to pay their fixed charges, ample dividends upon their stock, make the usual appropriations from

income for betterments and carry considerable sums to their surplus account for the year 1910. The contention of the shippers is that these facts would justify the commission in denying these roads the right to make any advances in their rates.

A point presented by the shippers for the consideration of the commission was the reduction of railroad earnings to the basis which the railroad people themselves are so fond of presenting, viz: Considering the railroad as a manufacturer and seller of transportation and presenting its gross profits from the sale of its wares. On this basis it was shown that the Chicago & Northwestern railroad had done a business of \$74,000,000 in the year 1910 and, after paying the cost of selling its transportation had a gross profit of 32.7 cents out of every dollar received, available for taxes, depreciation, fixed charges, dividends, special funds, and including a surplus of \$2,400,000 over all these items. Upon the same basis the Santa Fe was shown to have sold \$165,000,000 worth of transportation and to have left a gross profit of 36.6 cents out of every dollar. The Chicago, Burlington & Quincy railroad sold \$88,000,000 worth of transportation, out of which it had a gross profit of 33.8 cents on each dollar. In addition to these profits, it is, of course, understood that there is included in the operating expenses a very large amount of money which is really re-invested in the property by way of maintenance charges, which, of course, increases the value behind the securities. Mr. Ward testified that the Burlington road had put about \$8,000,000 into its property during the year 1910, but the account of his company for that year showed a little over \$1,000,000 deducted from surplus income under the heading of additions and betterments. The natural inference is that nearly \$7,000,000 was expended for maintenance charges that increase value of the property and was charged to operating expenses.

Many important facts were developed incidentally during the hearing of the western testimony which, from the shippers' point of view, would militate strongly against the claims of the western railroads that they needed more revenue. One instance of this was the issue of \$100,000,000 worth of Chicago, Milwaukee & St. Paul stock which paid 7 per cent, or \$7,000,000 in dividends in 1910, in exchange for a like amount of Chicago, Milwaukee & Puget Sound bonds, which paid 3 per cent to the parent company. This, of course, made a net loss of \$3,000,000 in the income account of the St. Paul road, which their witness strenuously insisted was made up by the additional business gained through the building of the Puget Sound road, but no definite evidence was introduced in support of this claim. Another item of this character was the exhibit of the Santa Fe system, which showed that road had charged off its income account since it reorganized in 1896, \$30,000,000 which was put back into the property by way of additions and betterments; about \$8,500,000 net discount on its bonds and \$2,500,000 fuel reserve fund, a total of \$41,000,000. In addition this exhibit showed an existing surplus in income account of \$24,000,000, or a total in excess of \$65,000,000 surplus income earned by that road in addition to operating expenses, fixed charges and dividends. Mr. Ripley testified that this surplus was not enough, but that the road should be enabled to earn at least 6 per cent additional on its common stock, or about \$6,000,000. His theory was that sound financial policy required the piling up of the surplus that would result. As against this testimony it was interesting to note that Mr. Gardner, president of the Chicago & Northwestern railway, testified that he would be satisfied with \$25,000,000 surplus to be earned in ten years, which was exactly at the rate of the surplus earned by his company in 1910, under the existing rates. With respect to this item of surplus earnings, Mr. Gardner remarked that the possession of too large a surplus tended to extravagance in management. During the same line of examination Mr. Gard-



*Credighton College of Pharmacy Library and Museum.*



ner made the significant remark that a basis of earnings which might be justice to some lesser line would extravagantly increase the earnings of a road like the Northwestern. This is precisely what the shippers contend with reference to the present situation, viz: that the commission ought to fix the rates based upon the financial situation of the strong lines that control the transportation situation, and let the overcapitalized and badly managed roads take care of themselves.

From the shippers' point of view, the strongest argument against permitting the railroads to increase their rates is the argument advanced at the Chicago hearing, that to do so would be to ignore the inexorable economic law underlying all commercial transactions, that law which invariably operates to decrease the volume of business in direct ratio to the increase in the cost of doing that business. The only exception to the operation of that law is in those cases where there is an absolute monopoly in the barter and sale of a necessity of life. No one has yet been heard to claim that the railroad monopoly of transportation is absolute, and it follows that increases in the price of railroad transportation must decrease the volume of business. In fact, ever since the railroads became a factor in transportation the universal rule applied by them has been to reduce transportation rates when they desired to increase their business and their earnings. A complete reversal of this policy seems strange and the shippers believe, and urged this view upon the commission, that the necessary result of such a policy would be to impede the free interchange of commodities, cause hardship to many established lines of business, heavy losses to the shipping public and bring no real gains to the railroads.

On February 22, 1911, the two cases having been fully argued, were decided by the commission in favor of the contentions of the shippers. The commission held that there was no justification of the proposed advances and required

the railroads to cancel their new tariffs and leave the present rates in effect.

The decision in the eastern case was written by Judge Charles A. Prouty, of Vermont, and in the western case by Hon. Franklin K. Lane, of California. The decisions are commended to readers of the Chronicle. The situation is summed up ably and the reasoning is close and sound.

E. J. McVANN.

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## DRUG PLANTS.

\* JOHN E. O'BRIEN.

The United States raises a good many of its medicinal plants, but there are such enormous quantities used here that we pay to foreign countries an annual bill of about twenty million dollars for importations. If these drugs must be used, it is only natural to ask why the patients cannot save some of the money by encouraging home industry. Many drug plants are products of the tropics and could not be raised here, but certainly five million dollars worth of the others could be readily produced in the back yards of our suburban homes.

The pioneers of this country considered their herbs of prime medicinal importance, but with the development of medicine, and particularly through the establishment of the ubiquitous drug store, the practice of raising herbs fell into disuse, for there was no need to raise one's medicinal plants if they could be obtained much easier and with little expense at the apothecary's.

There has been a steadily increasing shortage in the common golden seal, or *hydrastis canadensis*. At one time

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\*Professor of Chemistry, Creighton College of Pharmacy.

golden seal was so abundant in the east that it was torn up and burned by the farmers, to prevent its overrunning their fields; in the Ohio valley it was considered a pest, but today, owing to its increased use and decreased supply, it is worth \$2.75 per pound, wholesale. There are scarcely two hundred thousand pounds collected annually, in this country, though the actual demand is several times this amount. Golden seal will grow readily on rich loose garden soil, which should be made to resemble as nearly as possible that of the woods. The plants are put in rows, six inches apart, with a foot between each. It takes about three years from the time the plants are set out until the first harvest, but after that an annual supply of roots is assured. In two seasons the original plants should increase four times by dividing the rhizomes, which should be cut up in the fall. After the second year the increase should be much faster, for the rhizomes can be cut into smaller pieces and each one bearing a bud will form a new plant. The original plants can be obtained either from the woods or from the nurseries and in any event should be planted in the late summer and carefully protected during the first winter.

The cultivation of senega root, or snake root (*polygola senega*), has also been undertaken in this country. Like golden seal, it was at one time very abundant and was gathered by collectors of drug plants in the south. The annual shortage has sent the price soaring.

Cascara sagrada, or *Rhamnus Purshiana*, and the cone-flower, or *Echinactia Augustifolia*, are also running short in this country and their cultivation could be undertaken with a sure knowledge that prices would be maintained for years to come. Plantations of these drugs should yield a good income after the second year and if the propagation were increased by cuttings the supply should be satisfactory.

A curious fact in regard to the drug trade is that we are today importing in considerable quantities ordinary

medicinal plants which were once found growing wild in this country, and are now largely neglected. In some cases these wild plants are destroyed by farmers as noxious weeds and their very presence on the farm is regarded as an eye-sore. In this class of drug plants we have the common dandelion, burdock, couch grass and curly dock. Fair prices are quoted in the drug trade for burdock and dandelion roots and the cultivated sorts are so much superior to the wild that there is money in them. All that the farmer need do is to start a rich piece of damp ground with the roots of the dandelion or burdock and then by transplanting cuttings each year a large supply could be raised. The plants take possession of the soil, but the small ones should be thinned out to give the better growths more room. To cultivate dandelions, burdock and couch grass seems like an absurdity to some, but many tons of these roots are imported annually.

Experiments have been made to introduce the camphor and cork trees in the southern states, though little success has been attained; it would seem much more to the point if farmers would attempt the cultivation of the wild native plants we now have to import to meet the ordinary drug trade demand. There is the common sage that we raise in such small quantities that we have to depend upon Italy for our supply. The prices for sage are small and this fact has discouraged many from its cultivation, but the plant is so easily raised, requiring little attention, and its annual crop of leaves is large. Five or ten acres devoted to sage growing yields excellent returns on the money and labor invested. Sage will grow in soil that is not very rich and once the plantation is started it continues to yield an income for the simple work of harvesting. To make it profitable it should be raised on a fairly liberal scale, not less than five or ten acres. In the south, particularly, it can be raised at small cost. It can be started from seed and then increased rapidly by cutting, so that in two or three years a plantation should be in full growth. The leaves are stripped from the

bushes and dried out of doors on wooden racks, after which they are baled for the market.

Belladonna and Henbane are biennials and can be increased by root division. The leaves are collected and dried in warm, airy places for market. Prices for these drugs are moderately good and an acre of land devoted to their culture should yield fair profits. The labor of cultivating is small, the chief item of expense being the harvesting of the dried leaves. The work is light, interesting and profitable for man or woman.

Caraway, anise and coriander seeds are not usually classed among drugs by the average person, but they are so considered by dealers and imported in large quantities from older countries. The value of imported anise seed oil alone is about one hundred thousand dollars per year. All three of these plants can be successfully raised in the average well-drained garden. The seeds are gathered just before they are ripened and when dry they have a steady market at nearly all seasons of the year. Like many garden products, they are not subject to violent fluctuations in price, nor are they perishable goods, and may therefore be held for some time or shipped to a distant market.

We import nearly three million dollars worth of crude opium. In the south the true opium poppy grows successfully and the products are of a high commercial value. A rich, well-drained soil is needed for the opium poppy and the small seeds are drilled or sown in rows. More skill is required in the cultivation of this plant than in most of the others mentioned above. When the capsules appear in the plant they are gently scraped or scored with a knife and through this slight incision the milk of the plant oozes. This quickly coagulates—hardens and turns black. It is then collected for medicinal purposes and refined by various processes. The incision on the capsule is not deep enough

to injure the maturing of the seeds, which later are shaken out and the oil is extracted from them.

We import about forty million pounds of thyme oil, which is made from the ordinary thyme of our old New England gardens, while great quantities of the leaves are used for culinary purposes. The commercial growth of thyme on a small scale should prove a profitable industry, especially as a side issue in gardening or farming where land is cheap and plentiful.

The roots of sarsaparilla grow wild in the Carolinas and have been cultivated to some extent in other parts of the country, while orris, gentian and ginger roots have been experimented with in the warm southern states. Dr. Sholoterbech of the University of Michigan has proven by experiment that the cultivated plants are, in every case, far richer in medicinal constituents, and there is little doubt that drug culture, if intelligently conducted, would prove not merely interesting, but satisfactorily lucrative.

JOHN E. O'BRIEN.

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## NEWS NOTES.

The Intercollegiate debate between the teams representing Loyola **Department** University, of Chicago, and Creighton University, of Omaha, which was held in the **of Law** Creighton Auditorium Friday evening, March 31st, attracted a large audience. The Creighton University Orchestra opened the program with some pleasing selections, and a quartette of Creighton singers relieved the tension of the forensic battle by rendering some choice vocal numbers. The interjection of college yells enlivened the proceedings at every lull in the debate. The question debated was "Resolved, that the conservation of our Natural resources should be left to the States rather than to the United States." The Chicago debaters, Messrs. Sinnott, Connors, and Kettles, upheld the expediency of leaving this duty to the state, while Messrs. Donahue, Delehant and Matthews, of Creighton, contended that the national government should undertake the conservation of natural resources.

The debate was closely contested and each speaker was given close attention as he presented the argument for his position. The judges, Messrs. John M. Calvin and Emmet Tinley, of Council Bluffs, and Prof. Woolery of the Omaha High School, awarded the Creighton team the decision by a vote of two to one.

On the same evening another team representing Creighton University debated the same question with the South Dakota University at Vermillion. The South Dakota debaters won the decision there.

The Night Sophomore Class has elected the following officers: Philip E. Horan, '13, President; J. T. McGuekin, '13, Vice-President; F. J. Rossbach, '13, Secretary; C. F. Schrempp, '13, Sergeant at Arms; J. C. Barrett, '13, Treasurer; F. B. Cherniss, '13, Assistant Sergeant at Arms.

Mr. Harland L. Mossman, '09, visited the Department March fourteenth.

Mr. Henry M. Gallagher, '10, associated with State Senator Moonan, at Waseca, Minnesota, has been serving during the present session of the Legislature of the state of Minnesota as clerk of the Ways and Means committee in the House of Representatives.

Mr. Peter F. Ward, '10, is now associated in the practice of law with Mr. Elmer R. Juckett, Minnekata Building, Hot Springs, South Dakota.

Mr. Arthur E. Ryman, '10, has opened an office at 222 Colorado Building, Denver, Colorado, and reports that his prospects are bright.

Mr. James H. Hanley, '10, left Omaha March thirty-first for Washington, D. C., where he assumed his duties as private secretary to Congressman C. O. Lobeck.

The new catalogue of the department for the school year of 1911-12 has been issued and is ready for distribution.

"All's well that ends well," the last number of the series of booklets issued during the year under the general heading of "Confessions of a Law Student," was sent out on April fifteenth.

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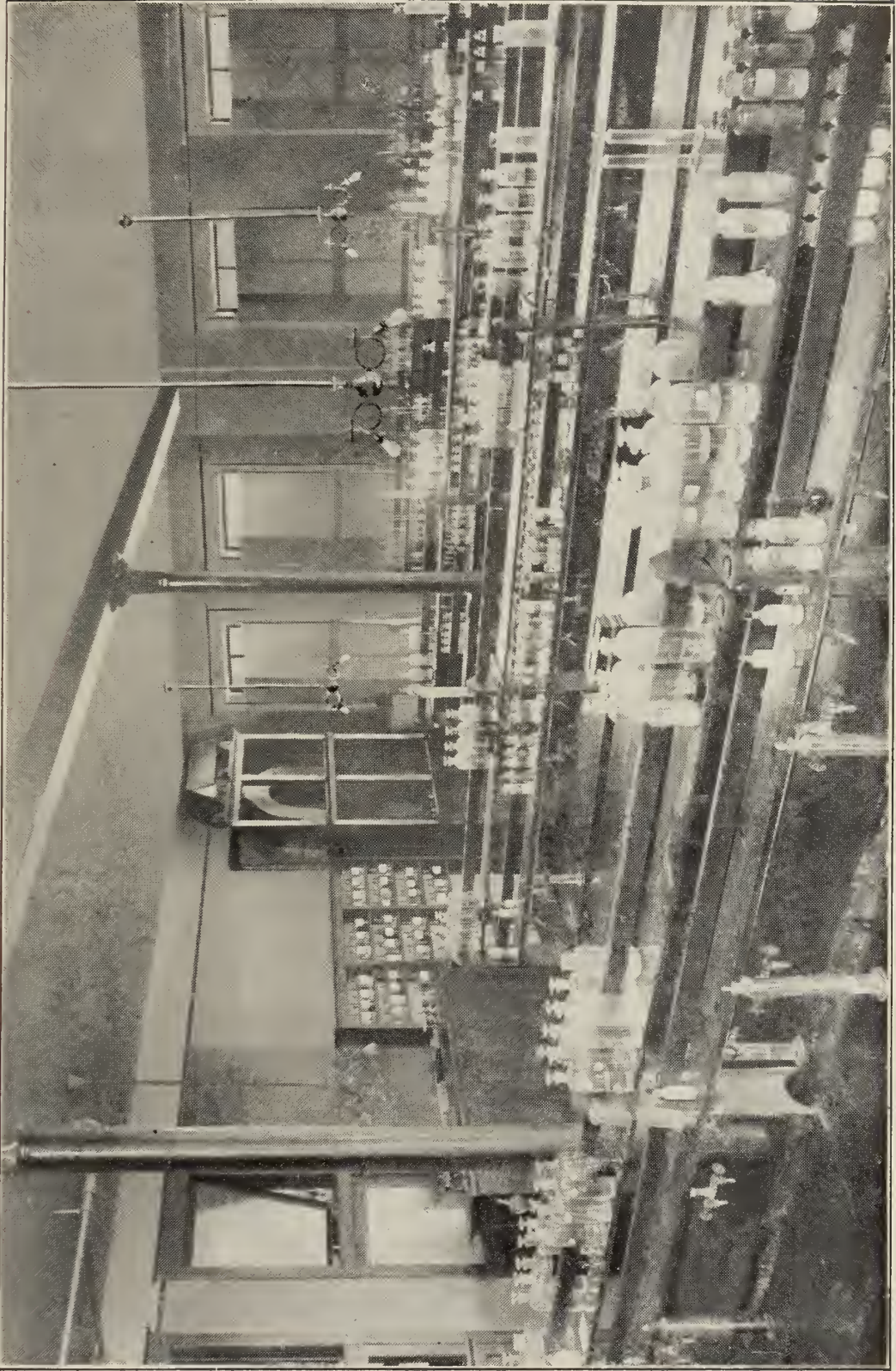
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Dr. J. S. Foote will preside at the combined Commencement exercises of the departments of Medicine, Law and Dentistry on April twenty-ninth, and will deliver a short introductory address.

**Department  
of Medecine.**

The principal speech will be made by Dr. J. J. Walsh, Dean of the Fordham University School of Medicine, New York City. Dr. Walsh studied under the famous Dr. Osler, formerly of Johns Hopkins, now of London, England, and has been a prolific writer on various subjects, having devoted special attention to Medical and Medico-Legal topics.

Among the papers read at the semi-annual convention of the Missouri Valley Medical Society which met at St. Joseph, Missouri, for three days commencing March sixteenth, were the following:



*Creighton College of Pharmacy—Pharmaceutical Laboratory.*



“Some Observations and Conclusions on the Subject of Fractures,” by Dr. J. P. Lord.

“Acquired Diverticula of the Sigmond,” by Dr. A. D. Dunn.

A daughter was born to Dr. and Mrs. A. M. Flynn, of Tacoma, Washington, on February twenty-eighth.

Dr. Michael J. Scott, '03, Dean of Staff and Chief Surgeon of St. James Hospital, Butte, Montana, reports that he is getting along very nicely.

The examinations of the Department commenced April tenth and will conclude April twenty-fifth.

The Seniors have prepared an unusually attractive commencement announcement consisting of several steel-engraved pages. The first page contains a sepia half-tone reproduction of the group of medical buildings. The booklet is bound in drab leather upon which the seal of the university is embossed.

Dr. H. B. Jennings has just returned from the Johns Hopkins Hospital, Baltimore, Maryland, where his wife was operated upon by Dr. Cushing.

Dr. A. L. Muirhead attended a meeting of the State Board of Medical Examiners held at Lincoln on April twelfth.

The father of Mr. Morris Schillington and the mother of Mr. Otis Morgenthaler died recently.

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Dr. Warren Hall, '09, of Battle Creek, Nebraska, paid the Infirmary a visit in the early part of April. Dr. Hall reports that he is getting along nicely.

**Department of Dentistry**

Dr. J. E. Stoft, '09, returned from Douglas, Alaska, March twenty-sixth, where he has been practicing since graduating.

At the regular monthly meeting of the Delta Sigma Delta fraternity the following officers were elected:

Mr. W. A. Walzen, '12, Grand Master; Mr. A. B. Johnson, '12, Worthy Master; Mr. Frank O'Neil, '13, Scribe; Mr. Frank Stout, '12, Treasurer; Mr. C. F. Patten, '12, Senior Page; Mr. Munsel, '13, Tyler; Mr. Charles Wonders, '13, Junior Page; Mr. Kerns, '12, Historian.

The last initiation of the society was held April tenth. During the last week of April the society is planning on giving a banquet, at which covers will be laid for about thirty-five persons.

Dr. Edward Dailey has moved his office from the Karbach block to 603-604 Brandeis building.

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Mr. G. E. Gustine, '05, was a visitor at the Department recently.

**Department  
of Pharmacy**

He reported that he was enjoying a prosperous business.

Mr. Ben G. Worthington, '05, is now in business for himself at Elm Creek, Nebraska.

Mr. Merl McDonald is still in the hospital.

The Junior course will be completed April twenty-second.

The Freshman class will not complete their work until some time in August.

Mr. R. O. Lowery, who has been ill with smallpox, has resumed his work in the Department.

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On Saturday, March the twenty-fifth, the State Board of Examiners for Colleges empowered to grant State Teachers' Certificates made their annual visit to the Creighton College of Arts. The Board for the present year consists of E. J. Bodwell, Superintendent of Schools at Beatrice, A. H. Waterhouse, Superintendent of Schools at Fremont, and Fred M. Hunter, Superintendent of Schools at Norfolk. Their examination was very thorough and they extended their inspection to the work of the preparatory department as well as to the college classes. The Library, the Laboratories, and the other facilities were included in their in-

vestigation. Though no official report has as yet been given out of their findings, they expressed themselves as exceedingly well pleased with the standard of work displayed by the students of the different classes and had the highest praises for the work of the school.

The Senior Class of the College of Arts rendered the following specimen of their work to the other students of the school Wednesday morning, April the fifth:

Paper.....A Triad of Greek Philosophers  
Essayist: Mr. Leo E. Ineichen

Discussion.....The Rational Faculties of Man  
Affirmative: Mr. John E. Sullivan  
Negative: Mr. Herbert E. Connell

Paper.....Theories of Knowledge  
Essayist: Mr. Charles W. Peasinger

Discussion.....The Nature of the Human Soul  
Affirmative: Mr. Roy A. Counley  
Negative: Mr. Paul L. Kelly

Paper.....Darwinism and Evolution  
Essayist: Mr. L. B. Day

Discussion.....Topics in General Ethics  
Affirmative: Mr. Thomas S. Donnelly  
Negative: Mr. James J. Connolly

Paper.....St. Thomas and Scholastic Philosophy  
Essayist: Mr. Elmer W. Reading

The work throughout was clear-cut and excited great interest among the students. The Essays gave a short and comprehensive view of the History of Philosophy, while the discussions brought forth with clearness the underlying principles of Philosophy and various objections which have from time to time been advanced against them. The Specimen was excellent testimony of the ability and the earnest work of the entire Senior Class.

The annual Alumni retreat opened on Sunday, April tenth, under the direction of Rev. Joseph Davis, S. J., of Saint Louis University. About 150 alumni attended. Simultaneously a retreat for the students of the college and high school departments was in progress, conducted by the President of the University.

The Intercollegiate Peace Association will hold its first Oratorical Contest in Nebraska this spring. William Jennings Bryan has offered a prize of seventy-five dollars to the student of a Nebraska College who delivers the best oration upon International Peace and Arbitration. Two Massachusetts ladies have offered an additional prize of fifty dollars to the one delivering the second best oration. Creighton College, Bellevue College, Hastings College, and York College are the schools which will be represented in the contest. The University of Nebraska had first planned to enter a representative and to conduct the contest, but upon its default the offer of Creighton University to conduct the contest in Omaha was gladly accepted by Mr. George Fulk, secretary of the Association. Arrangements for the contest have not been entirely completed, but from present indications the contest will be held in the Creighton University Auditorium about the middle of May.

The University baseball team this spring bids fair to be the best one that has worn the "Blue and White" for years. A number of the players are members of the professional departments, and are old and experienced men on the diamond. The staff of pitchers is exceptionally encouraging. Hombach, of the Medical department, Kingdon and McCormick from other departments, are showing good speed and curves in practice.

A squad of eighteen or twenty are out on the campus every night for practice, and it will be a difficult task to determine who will start the first game.

This will be with Morningside College, Wednesday afternoon, April 19, and judging from the way the students are selling tickets for this game, they are very confident of a victory over their old time rivals.

The next game is the following day, when the team plays the Omaha baseball team at Rourke Park.

On Saturday, April 22, Highland Park College team comes to Omaha to meet Creighton on the Creighton Field.

The football schedule for next fall is nearly finished. Most of the members of last year's team will return, and with Coach Miller at their head great things are expected of them. Consequently, a good list of games is being arranged for them. The following is the schedule up to date:

October 21—Morningside College, at Omaha.  
 October 28—Colorado College, at Colorado Springs, Col.  
 November 4—University of South Dakota, at Omaha.  
 November 11—Kansas Aggies, at Manhattan, Kan.  
 November 18—Haskell Indians, at Omaha.  
 Thanksgiving Day—Des Moines College, at Omaha.

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The scientific event of the month was Professor Rigge's lecture on Thursday evening, March twenty-third. The subject was "Some Causes and Effects of Heat."

**Department of Science**

After some preliminary definitions, and an experimental proof that the radiometer is acted upon by heat and not by light, the lecturer took up three causes and effects of heat. The first cause, compression, was illustrated by a cake of ice through which a fine wire was made to pass without cutting it in two, and by the fire syringe, in which the rapid compression of air ignited some touch paper. The first effect of heat, expansion, was shown by the ball and ring experiment, by the differential expansion of two metals, and by the recalescence of a steel ribbon.

The second cause of heat, arrested motion, was illustrated by clamping a tube containing water between two boards, when the friction generated by turning it changed the water to steam and blew out the cork. It was found that about one quarter of a horse power of energy was required for the purpose. This led the way to the converse experiment, in which the effect of heat was exemplified in Hero's engine, a toy in which the principle of the steam engine lay dormant for two thousand years.

The third cause of heat taken up in the lecture was electricity. A long iron wire was heated and fused by the current, iron rails were electrically welded together, copper and iron were melted and a toy savings bank was broken into by the electric arc.

The underlying principles of the experiments were duly explained and their useful applications commented upon. Every experiment was a success, and the audience manifested the greatest interest and attention. Professor Rigge was assisted by three of his students, Paul Tobin, Thomas Keenan and Edward Costello.

Mr. James M. Fitzgerald, '03, has just been appointed Deputy County Attorney for Douglas County, Nebraska, in the place of Mr. William J. Coad, '99. The morning World-Herald for April eleventh says of Mr. Fitzgerald:

### Alumni

“He is prominent among the younger democrats of the city and his services as a speaker have been much in demand in Omaha and over the state during the campaign period. He is one of the boosters of the Southwest Improvement Club.

Mr. Fitzgerald was born in Chicago, August 7, 1874. In 1880 his parents moved to Grafton, Nebraska, and after spending a number of years on a farm near that place Mr. Fitzgerald moved to Omaha. He graduated from Creighton in 1903 and in 1906 took his degree at the law department of the University of Michigan. Since that date he has been engaged in the active practice of law in Omaha, being a member of the firm of Fitzgerald and Lynch, with offices in the City National Bank building. Mr. Fitzgerald was formerly secretary of the Omaha Bar Association.”

The many friends of Mr. William J. Young, S. J., who studied at Creighton with marked success from 1902 to 1906, will regret to learn of the death of his mother at Chicago, on March twenty-second.

Rev. Daniel J. Hurley, '04, spent a couple of weeks with Omaha friends immediately prior to Easter.

Mr. Thomas Swift, father of Thomas F. Swift who attended Creighton in the early 80's, and father-in-law of Mr. Charles B. Dugdale, also of the 80's, died at his home in Omaha on Saturday night, March twenty-fifth. Mr. Swift was one of the pioneers of Omaha, having come to this city in 1856. The funeral was held from St. Philomena's Church on Tuesday morning, March twenty-eighth and a large crowd of sorrowing friends was in attendance. Interment was at Holy Sepulchre Cemetery.

Mr. Charles D. Beaton returned home recently from a trip to Europe.