LEGAL NOTES.

SUPREME COURT OF THE UNITED STATES.—The Hon. ROBERT C. GRIER, of Pennsylvania, having resigned his seat, after a service of nearly twenty-five years, his late brethren addressed the following letter to him, the sentiments of which have the hearty concurrence of the entire American bar.

SUPREME COURT ROOM,
Washington, January 31,1870.

DEAR BROTHER: Your term of judicial service as a justice of the Supreme Court of the United States will close to-day by your resignation. We cannot permit an event so interesting to pass without expressing to you something of the feeling which it excites in us, for some of us have been long associated with you, and though the association of others has been for briefer periods, we all honor and love you. Almost a quarter of a century ago you brought to the labors of the court a mind of great original vigor, endowed with singular powers of apprehension and discrimination, enriched by profound knowledge of the law, and prepared for the new work before you by large experience in a tribunal of which you were the sole judge.

Already you possessed the esteem, the respect, and the entire confidence of the bar and the suitors who frequented your court and of the people among whom you administered justice. Transferred to a more conspicuous position, you wore larger honors. The sentiments of the profession and of the people of a single city and State became the sentiments of the American bar and of the whole country. We who have been nearest you, best know how valid is your title to this consideration and affection. With an almost intuitive perception of the right, with an energetic detestation of wrong, with a positive enthusiasm for justice, with a broad and comprehensive understanding of legal and equitable principles, you have ever contributed your full share to the discussion and settlement of the numerous and often perplexing questions which duty has required us to investigate and determine. This aid we gratefully acknowledge and can never forget, nor can we ever cease to remember the considerate magnanimity with which you have often recalled or modified expressions of which your own reflections have disapproved as likely to wound unnecessarily the sensibility of your brethren of the bench or the bar. Your eminent services as a judge command our respect and gratitude; your magnanimity and kindness as a man, in our official and personal intercourse, have drawn to you irresistibly our veneration and love. We deeply lament that infirmities incident to advancing years constrain you to retire from the post you have so long and so honorably filled.

But though you will no longer actually participate in our labors here, we trust that you will still be with us in spirit and sympathy. We shall still seek aid from your counsels. We shall still look for gratification from your society. May you live many years to give us both. May every earthly blessing cheer and the assured hope of

a blessed immortality, through Christ our Saviour, brighten each year with ever-increasing radiance. With warm affection and profound respect, we remain your brethren of the bench.

SALMON P. CHASE, Chief Justice.

NATHAN CLIFFORD, SAMUEL NELSON,
SAMUEL F. MILLER, NOAH H. SWAYNE,
STEPHEN J. FIELD, DAVID DAVIS,
Associate Justices Supreme Court.

To Hon. R. C. GRIER, Associate Justice Supreme Court of the United States.

Washington, February 1, 1870.

MY DEAR BRETHREN: Your letter, read to me by the Chief Justice last evening, quite overcame me, and I could then make no reply. I promised to respond in writing. My pen even now cannot express the profound emotions it awakened—sentiments of esteem and affection toward each one of you; sentiments of regret, not unmingled, I trust, with resignation, that increasing infirmities have compelled our separation, and sentiments of gratitude for such a testimonial from my brethren at the close of my long term of service. In my home in Pennsylvania, whether life be long or short, you may rest assured I shall always cherish for each of you warm affection and sympathy. That God's blessing may rest upon the Supreme Court of the United States, and upon each of its members, is the fervent prayer of your late associate and brother.

R. C. GRIER.

The Hon. WILLIAM STRONG, late a justice of the Supreme Court of Pennsylvania, having been appointed to the vacancy caused by the resignation of Justice GRIER, was promptly confirmed by the Senate and took his seat on the fourteenth day of March. In 1857, Mr. Strong, who had long been the leader in his portion of the State, was, without any previous judicial experience, elected to the Supreme Court of Pennsylvania, and immediately took rank as one of the ablest jurists who had ever adorned that bench. His opinions, contained in 30–59 Penn. State Reports, are an enduring monument of profound knowledge of the law, sound judgment, accurate reasoning and clear and forcible judicial style. His transfer to the highest court in the country is in the highest degree satisfactory to the profession in his own State, and will soon be recognized throughout the country as a positive accession of strength to that eminent tribunal.

The Hon. JOSEPH P. BRADLEY, of New Jersey, having been appointed to the vacancy caused by the death of Justice WAYNE, has been confirmed, after some delay, and has taken his seat. The opposition in the Senate is understood to have been entirely on the ground that he was not a resident of the circuit over which he would probably be assigned to preside. Mr. Bradley has not, we believe, held judicial office previously, but has long been the leader of the New Jersey bar. And his appointment has given unqualified satisfaction to all who, like ourselves, desire to see the bench filled with those whose eminence is in the field of *law*.

NORTH CAROLINA.—THE COLLISION BETWEEN THE BENCH AND BAR.—On April 19, 1869, there appeared in the Daily Sentinel, a newspaper published in Raleigh, the following article, headed "A Solemn Protest of the Bar of North Carolina against Judicial Interference in Political affairs."

"The undersigned, present or former members of the bar of North Carolina, have witnessed the late public demonstrations of political partisanship, by the judges of the Supreme Court of the State, with profound regret and unfeigned alarm for the purity of the future administration of the laws of the land.

"Active and open participation in the strife of political contests by any judge of the State, so far as we recollect, or tradition or history has informed us, was unknown to the people until the late exhibitions. To say that these were wholly unexpected, and that a prediction of them by the wisest among us would have been spurned as incredible, would not express half of our astonishment or the painful shock suffered by our feelings when we saw the humiliating fact accomplished.

"Not only did we not anticipate it, but we thought it was impossible to be done in our day. Many of us have passed through political times almost as excited as those of to-day; and most of us, recently, through one more excited; but never before have we seen the judges of the Supreme Court, singly or *en masse*, moved from that becoming propriety so indispensable to secure the respect of the people, and, throwing aside the ermine, rush into the mad contest of politics under the excitement of drums and flags. From the unerring lessons of the past we are assured that a judge who openly and publicly displays his political party zeal, renders himself unfit to hold the "balance of justice," and that whenever an occasion may offer to serve his fellow-partisans, he will yield to the temptation, and the "wavering balance shake."

"It is a natural weakness in man that he who warmly and publicly identifies himself with a political party, will be tempted to uphold the party which upholds him, and all experience teaches us that a partisan judge cannot be safely trusted to settle the great principles of a political constitution, while he reads and studies the book of its laws under the banners of a party.

"Unwilling that our silence should be construed into an indifference to the humiliating spectacle now passing around us; influenced alone by a spirit of love and veneration for the past purity which has distinguished the administration of the law in our State, and animated by the hope that the voice of the bar of North Carolina will not be powerless to avert the pernicious example which we have denounced, and to repress its contagious influence, we have, under a sense of solemn duty subscribed and published this paper."

To the foregoing were signed over one hundred names, embracing many of the leading lawyers in the State. What the specific acts of the judges were which called forth this rather severe protest, the pamphlet account does not state.

At the June term of the Supreme Court, June 8. 1869, the following order was made by the court:

"The court being informed of a certain libellous publication directly tending to impair the respect due to the authority of the court, which appeared in the *Sentinel*, a newspaper published in Raleigh, on the 19th of April, 1869, and is headed 'A Solemn Protest of the Bar of North Carolina,' etc., and purporting to be signed by certain attorneys of this court, the clerk is hereby ordered to inquire and report to the court which of the persons whose names appear to be signed to said publication are attorneys practicing in this court."

Thereupon the clerk reported certain names as those of gentlemen who, as appeared by the records of the court, were practicing attorneys therein, and the court then made a further order, that the attorneys named therein should be "disabled from hereafter appearing as attorneys and counselors in the court, unless they shall severally appear on June 15, 1869, and show cause to the contrary;" and further ordered, that a copy of the order should be served upon the parties referred to.

This order was subsequently directed to be discharged as to any party who should file a declaration that his name was attached to the protest without authority, and was, in fact, only served upon a few of the parties named.

The case of Hon. B. F. Moore, formerly attorney general of the State, and one of the oldest members of the bar, having been called, the following answer was filed:

"This respondent protesting that a rule which deprives him, even temporarily, of his privilege as an attorney of said court, ought not to have been made in his absence, without notice to him, and without affidavit or other legal proof of the facts upon which said rule is based, respectfully answers:

I. That he admits the signing and publishing of the paper called 'A Solemn Protest of the Bar of North Carolina against Judicial Interference in Political Affairs,' but insists that the Supreme Court hath no authority in law to make, or jurisdiction to enforce, said rule.

II. That the publication referred to in said rule is not libelous and doth not tend to impair the respect due to the authority of said court.

III. And for further answer this respondent saith, that said paper was conceived and prepared during the recent political canvass for the Presidency, and its publication deferred until after the close of the canvass to avoid its having the appearance of a partisan document. He admits that his purpose was to express his disapprobation of the conduct of individuals occupying high judicial stations; yet, as an actual justice to himself against the charge made in the rule, he not only disavows, in signing and publishing said paper, any intention of committing a contempt of the Supreme Court or of impairing the respect due to its authority, but on the contrary, he avows his motive to have been to preserve the purity which had ever distinguished the administration of justice by the courts of this State."

On this return a motion was made to discharge the rule, and after elaborate arguments for the respondent by *Hon. W. H. Battle, Hon. D. G. Fowle, Hon. S. J. Person, Hon. David A. Barnes* (all

ex-judges of the Supreme Court), and *Hon. W. N. H. Smith*, the motion was granted, on consideration of paragraph III. of the answer, PEARSON, C. J., saying: "It affords every member of the court pleasure that the respondent did not decline to make a sufficient disavowal on oath. We agree with the learned counsel that this disavowal *meets the words of the rule;* but we must say, it seems to us in bad taste to have introduced the expression, 'he admits that his purpose was to express his disapprobation of the conduct of individuals occupying high judicial stations.'"

"This is so vague that the Court is unable to give to it a positive meaning; and yet, it seems to imply that in taking the oath the respondent meant something which he hesitated to express, lest it might be taken to neutralize the legal effect of his disavowal. The concluding words of the oath are enough to express the purpose which the respondent avows he had in view, and the vague words referred to may be treated as surplusage. This presented the only difficulty to coming instantly to our conclusion, that the disavowal is sufficient."

NEW YORK.—THE LEGISLATURE AND SUPREME COURT. BREACH OF PRIVILEGE.—In January last, a subpœna was issued by the Hon. Platt Potter, a justice of the Supreme Court, sitting as a judge of Oyer and Terminer at Saratoga, directed to and commanding Henry Ray to appear and testify in a certain criminal proceeding then pending before the grand jury. Mr. Ray declined to appear, and assigned for reason that he was a member of the Assembly of the State of New York, which was then in session Thereupon an attachment was issued by Justice Potter against Ray for *contempt*, and he was arrested and brought before the grand jury and required to testify. The legislature appointed a committee to investigate the matter, who reported that a high breach of the privilege of the house had been committed, and a resolution was passed that Justice Potter be summoned to appear at the bar of the house. On February 16, Judge Potter appeared before the house and requested to be heard by counsel, but this being refused, he proceeded to state his views in person. First, protesting that as a member of the judiciary, he was a part of a co-ordinate branch of the Government, and not answerable to the house for his judicial action whether right or wrong; he then made a strong argument to show that no breach of privilege had been committed. The statute of New York enacts that members of the legislature "shall be privileged from arrest on civil process," and the learned judge argued strongly that an attachment for contempt in disobeying a subpœna to attend before a grand jury to testify in a criminal proceeding, could not be considered "civil process," within the language of the act. The committee submitted an elaborate report in support of its views, and after the argument was concluded the house passed a resolution that the action of Judge Potter was a breach of its privilege, but that the house believed it was in the performance of what he deemed his duty, and not with any intention to interfere with its dignity or independence.

NEW YORK BAR ASSOCIATION.—In December, 1869, an address, numerously signed by the leading lawyers of New York, was issued, proposing some organization of the bar of that city. In pursuance of arrangements made by a committee, a bar meeting was held February 1, 1870, and an adjourned meeting February 15, at which the "Bar Association of the City of New York" was formed, with a constitution, officers and a permanent organization. The Hon. WILLAM M. EVARTS was elected president. The object of the association, as set forth in the constitution, is "to maintain the honor and dignity of the profession of the law, to cultivate social intercourse among its members and to increase its usefulness in promoting the due administration of justice."

The bar of New York city numbers about four thousand members, and while its leaders have always been among the ablest lawyers in the country, yet it is undeniable that neither in learning, ability or character, has the general standard of the bar been equal to those of Philadelphia, Baltimore or Boston. In fact the decline of the New York judiciary, though more widely commented upon, was not more marked or more disastrous in its effects than the degradation of the bar, and these unpalatable truths, and the necessity of reform to save the bar from utter destruction, were most eloquently and forcibly stated by the speakers at the meeting for the organization of the association. Addresses were made by the chairman, Edgar S. Van Winkle, Esq., Hon. Henry Nicoll, Hon. Edwards Pierrepont, Hon. James Emott, Samuel J. Tilden, Esq., E. W. Stoughton, Esq., D. B. Eaton, Esq., and Hon. William M. Evarts, alluding with marked earnestness and singular unanimity to the disastrous effects of the change, which twenty-five years ago made the judiciary elective and substituted a short term for the independent tenure of good behavior.

The number and character of the gentlemen present at the meeting, and the genuine and profound interest evinced, is a certain guarantee that the association means to accomplish a good work, and we regard it as a subject of congratulation to the entire legal profession that the largest and wealthiest bar in the country has resolutely determined that its own professional character, as well as that of its judiciary, shall be freed from future reproach.

JAMES T. BRADY.—The New York Law Institute, of which this distinguished advocate was president at the time of his death, ordered a marble bust, which was unveiled February 9th, before a large meeting of the bench and bar. From the speech of Hon. J. W. Edmonds on the occasion, we learn one fact highly honorable to Mr. Brady, that we had not previously seen: when his brother was raised to the bench, Mr. Brady retired from practice in that court, and never afterward appeared there while his brother presided.

FEDERAL AND STATE COURTS, THE RELATION BETWEEN.—NO CONFLICT OF JURISDICTION.—In *Ex parte Holman et al.*, before the Supreme Court of Iowa, the conflict of jurisdiction noticed heretofore (Am. Law Reg. Vol. 8, N. S. p. 620), has been terminated by the decision of the full bench, reversing the order of Justice BECK

on *habeas corpus*, discharging the relators from custody of the United States Marshal. The case was one of those growing out of the county subscriptions to railroad bonds, in which the Iowa courts hold the bonds void, but the Supreme Court of the United States, in *Gelpcke* v. *Dubuque*, 1 Wall. 175, and subsequent cases, has held the counties liable. In April, 1863, J. Edgar Thomson, a citizen of Pennsylvania, and a holder of bonds of Lee county, brought an action upon his coupons, against the supervisors, in the United States Circuit Court for Iowa, which was subsequently transferred to the Circuit Court of Northern Illinois, which, at the October term, 1864, rendered judgment for plaintiff. The judgment being unpaid, and there being no property on which an execution could operate, the United States Circuit Court of Northern Illinois, in July, 1868, issued an alternative, and in October, a peremptory mandamus to the supervisors of Lee county, commanding them to levy a tax to pay the judgment. No return was made by the supervisors to either writ, but on the day the peremptory writ was served on them, they passed a resolution, setting forth that prior to the commencment of the suit of Thomson in the United States Court, they or their official predecessors had been enjoined by a decree of the Supreme Court of Iowa (entered in June, 1863, as of December 1, 1862), from levying and collecting any taxes to pay certain railroad bonds and coupons issued by the county, among which are those upon which Thomson recovered his judgment, and that therefore they were unable to comply with the mandate of the writ without committing contempt of the Iowa court. The injunction referred to had been issued to the county treasurer, etc., the official predecessors of these relators, at the suit of certain tax-payers. Neither Thomson nor any other bondholder was party to that suit. At January term, in 1869, the Circuit Court for Northern Illinois, on application and proof of the foregoing facts, issued an attachment against the supervisors for contempt, in disobeying the mandate of the mandamus. The opinion of DRUMMOND, J., will be found in full in Chicago Legal News for January 16, 1869. Under this attachment, the United States Marshal for Iowa took the supervisors in custody, but before getting out of the State, was served with *habeas corpus*, issued by Judge BECK, sitting at Chambers, who, on hearing, discharged the supervisors from custody, as reported ante Vol. 8 p. 620. The present case was an appeal to the court in banc, which reversed the order and remanded the relators to the custody of the marshal. DILLON, C. J., WRIGHT and COLE, J. J., concurred that the United States Court having jurisdiction of Thomson's original action, had jurisdiction to issue the *mandamus* and attachment founded on it, the parties and the subject matter being before the court, its judgment could not be inquired into on *habeas corpus*. If relators were not satisfied with the correctness of the decision by the Circuit Court of Northern Illinois, their remedy was by writ of error to the Supreme Court of the United States. BECK, J., dissented, adhering to his former views.

CHRISTIANITY.—THE BIBLE IN THE PUBLIC SCHOOLS.—*Minor et al.* v. *The Board of Education of Cincinnati*, in the Superior Court of the City of Cincinnati (Feb., 1870), has attracted general public attention from the interest of the question involved, as well as the fullness and zeal with which it was discussed. The facts were that the Board of Education in November, 1869, passed a resolution in the following words: "Resolved that religious instruction and the reading of religious books, including the Holy Bible, are prohibited in the common schools of Cincinnati, it being the true object and intent in this rule to allow the children of the parents of all sects and opinions, in matters of faith and worship, to enjoy alike the benefit of the common school fund." There was also a second resolution repealing so much of the regulations as prescribed the reading of the Bible in the opening exercises. The plaintiffs filed a bill in the Superior Court, alleging that the said resolution and the action of the defendants were in violation of law and against public policy and morality, and asked an order restraining the defendants from putting in operation the said resolution. An order was granted and the case continued till the general term, when it was argued before a full bench by *W. M. Ramsey, Geo. R. Sage* and *Rufus King Esqrs.*, for the plaintiffs, and by Hon. *J. B. Stallo*, Hon. *Geo. Hoadly*, and Hon. *Stanley Mathews* for defendants. The length of the arguments covering three hundred and twenty-five pages, prevents our giving even an analysis of them in this place. The majority of the court, HAGANS and STORER, J J., held the resolution to be in violation of the seventh section of the Ohio Bill of Rights, which, after declaring that all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience, etc., continues. "Religion, morality and knowledge, however, being essential to good government, it shall be the duty of the General Assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction." The injunction was therefore made perpetual. TAFT, J., dissented, holding that the rule was not in conflict with the bill of rights properly construed; that the command of the bill of rights is to the General Assembly, not to the courts, and the only laws the General Assembly has in the discretion committed to it, though, "suitable" for the purpose, are the common school laws, by which the defendants are authorized "from time to time to make such regulations for the government and *instruction* of the children (in said schools), as shall appear to them proper and expedient;" and that the court in issuing the injunction is going beyond its proper jurisdiction, to decide a question placed by the law within the exclusive discretion of the defendants.

The case of course will go to the Supreme Court of Ohio.

INFIDELITY. — DEVISE TO CHARITABLE USE VOID FOR UNCERTAINTY.—In *James* v. *Zeisweiss*, the Supreme Court of Pennsylvania (Jan. 1870), had to consider the effect of the follow-

ing devise: "My real estate aforesaid shall go to and be held in fee simple by the Infidel Society in Philadelphia, hereafter to be incorporated, and to be held and disposed of by them for the purpose of building a hall for the free discussion of religion and politics, etc." The court held 1. The devise was void for remoteness, no such society being then in existence, and even should such a corporation be erected during the continuance of the particular estate, it would be *potentia remota*. 2. Where a devise is to a valid charitable use, although of an indefinite nature, and there is a trustee named, competent to take, and clothed with discretionary powers, the courts will enforce it; but if no such trustee is designated, the courts of Pennsylvania will not undertake to administer the trust. 3. In this case the trust is too indefinite; the discretion as to the keeping of the hall and regulating the free discussion, etc., must be vested in some person, and the execution of such a charity would be foreign to the judicial function.

In placing the decision on the foregoing grounds, the court said it did not wish to be understood as admitting that under any circumstances such a devise would be sustained as a valid charitable use. The Constitution of Pennsylvania secures the rights of conscience and religious liberty, but "it is in entire consistency with this sacred guarantee, to hold that even if Christianity is no part of the law of the land, it is the popular religion of the country, an insult to which would be indictable as directly tending to disturb the public peace. The laws and institutions of this State are built on the foundation of reverence for Christianity. To this extent at least, it must certainly be considered as well as settled that the religion revealed in the Bible is not to be openly reviled, ridiculed or blasphemed, to the annoyance of sincere believers who compose the great mass of the good people of the Commonwealth; *Updegraff* v. *The Commonwealth*, 11 S. & R. 394; *Vidal* v. *Girard's Executors*, 2 Howard (U. S.) 198." The opinion of the court by SHARSWOOD, J., is reported in full in the Philadelphia Legal Intelligencer, for January 28, 1870.

CORPORATION BONDS, ISSUE OF NEW BOND IN PLACE OF ONE LOST.—*Mathews* v. *City of Lynchburg*, in the District Court of Appeals of Virginia, was a bill in chancery to compel the city to issue a new bond in place of one that had been lost, and also to pay interest without presentation of the coupons. The facts were that plaintiff was the owner of certain unregistered negotiable coupon bonds of the City of Lynchburg, in April, 1865, when his house in Appamattox county was taken possession of and sacked by the army of Gen. Grant; that he had not since then been able to find said bonds, nor to hear of them, though he had advertised in the Richmond papers and given notice to the city treasurer; and that none of the bonds or coupons had ever been presented at the treasury for payment. The court, by JOYNES, J., decreed, 1, That plaintiff was entitled to payment for the coupons now due, upon giving bond of idemnity with personal security. 2, That plaintiff was not entitled to compel the

city to execute a new or duplicate bond, and 3, That he was entitled to a decree for payment of the several coupons and of the bond itself as they should severally come due, upon giving a bond of indemnity; and that to avoid multiplicity of suits, such decree should be made in this suit, the payments to be made upon rules against the city from time to time, reserving to the city upon any such rule, the right to show that the bond or coupon had been found and presented. The plaintiff was required to apply for payment and tender indemnity before obtaining each rule.

JURY TRIALS—CHARGING THE JURY.—At the opening of the Circuit Court of the United States for the District of Rhode Island, December 28, 1869, the Hon. JOHN P. KNOWLES, District Judge, took occasion, as this was the first time he had presided at a jury trial, to express his views on the subject of the judge's duties in summing up or charging the jury We make the following extract, which indicates the current of his thought:

"I, therefore, would here say, that in my view, the cases are of rare occurrence when, in committing a case to a jury, it is a duty of the judge to make a new, or a full, or a partial presentment of the case in hearing, as he may chance to view it, upon the testimony and evidence and argument, as he shall have understood or misunderstood the one, and construed or misconstrued the other. He listens to the evidence and the argument to the end, mainly, that he may give to the jury the rules of law which should guide them in deducing conclusions of fact from the evidence permitted to pass to them As to those conclusions of fact, he is supposed to have no opinion, prior to the rendering of the jury's verdict; and if, unhappily, he form one, he ought not, in my judgment, to disclose or betray it, in the jury's hearing—nor, indeed, the hearing of any one, until it shall have been settled, beyond a peradventure, that no motion to set aside the verdict as against evidence, will be addressed to him by the losing party. A judge, *sui generis*, I grant would he be, who could preside at a jury trial of a cause without forming an opinion of its merits; but something more than a model judge, that rarest specimen of Omnipotence's handiwork, I submit, must he be who could, in one case in ten, recapitulate, review and comment upon the testimony in a cause without provoking from plaintiff or defendant a murmur or an exclamation in which the significant phrase, *third argument* (may be with an unseemly adjectival prefix) would be distinctly audible. It is, in my judgment, of paramount importance, under a government of laws like ours, of which the consent of the governed is the life and breath, that judicial proceedings be so ordered, that parties litigant in general shall be satisfied when judgments are rendered against them, that they have had a full, fair and impartial hearing and trial of their cause; and my experience as a Rhode Islander is, that here, where (with or without reason) a jury trial is more prized than in some other sections of the country, few litigants ever are satisfied in this regard, when a court's charge or summing up *upon the facts* is intentionally or unintentionally against them."

While we concur most heartily with the learned judge, that a judge should betray no opinion on the facts, and that to satisfy the parties that their case has been impartially heard and decided, is scarcely, if at all, less important than impartiality in fact, yet we can hardly agree with him as to the impossibility of a judge's attaining the power to charge impartially, and to the satisfaction of the parties, or as to the danger of the practice, where less than absolute perfection in such matters is attained. The memory of BUSHROD WASHINGTON is enshrined in the hearts of his professional brethren, as that of a perfect Nisi Prius judge; though in his charges to the jury he elaborately reviewed the facts, yet not even counsel in the case could detect the slighest trace of his personal opinion. Perhaps there are few judges to whom this perfection would be unanimously conceded, but we think a fair approach to it is attainable by any one of judicial temperament who earnestly makes the effort, and the judges who fairly satisfy the best portion of the bar in this respect, are more numerous than those who do not.

The danger that jurors will not listen to evidence, but depend entirely on the charge they know is to come, is not, in our opinion, to be weighed at all against the undue advantage that the absence of a full charge gives to the counsel who closes the case.

PRIVILEGED COMMUNICATION, SUBPŒNA DUCES TECUM. DOCUMENTS IN RELATION TO PARDONS ON FILE IN THE EXECUTIVE DEPARTMENT.—*The People of Illinois* v. *Rummel*, in the Recorder's Court of Chicago (Reb., 1870), was a motion for an attachment against the defendant, the Secretary of State of Illinois, for noncompliance with a subpœna *duces tecum*. The facts were that complaint having been made before the grand jury against several citizens of Chicago, for an alleged libel contained in a petition signed by said citizens and presented to the governor, asking for commutation of the sentence of a prisoner under sentence of death, a subpœna was issued and served upon the defendant, commanding him to produce the said petition before the grand jury. This defendant declined to do. The court by MCALLISTER, J., refused the attachment, holding 1, That the court ought to look into the character of the document sought to be obtained by the subpœna, citing *Rex* v. *Dixon*, 3 Burr. 1867; *Ameg* v. *Long*, 9 East. 473. 2, That the petition was part of a proceeding in the regular course of justice (though not strictly a judicial proceeding), and unless it be shown that it contains libelous matter not pertinent to its object and inserted from malice, it was privileged and could not be made the foundation of in indictment for libel: *Gilbert* v. *People*, 1 Denio 43; *Thorne* v. *Blanchard* 5 Johns. 508; *Vanderzee* v. *McGregor*, 12 Wend. 545; and 3, That confidential communications to the governor of a State, in relation to any of his duties as a public officer, are privileged: *Gray* v. *Pentland*, 2 Serg. & Rawle 23. The opinion in full is reported in Chicago Legal News for February 19, 1870.

REVENUE LAWS LIMITATION OF INDICTMENT FOR VIOLATION OF —*United States* v. *Wright*, in the United States Circuit Court for the