

THE FIRST CENTURY
OF THE
BENCH AND BAR OF MAINE
1820-1920

MAINE STATE BAR ASSOCIATION

Biennial Meeting

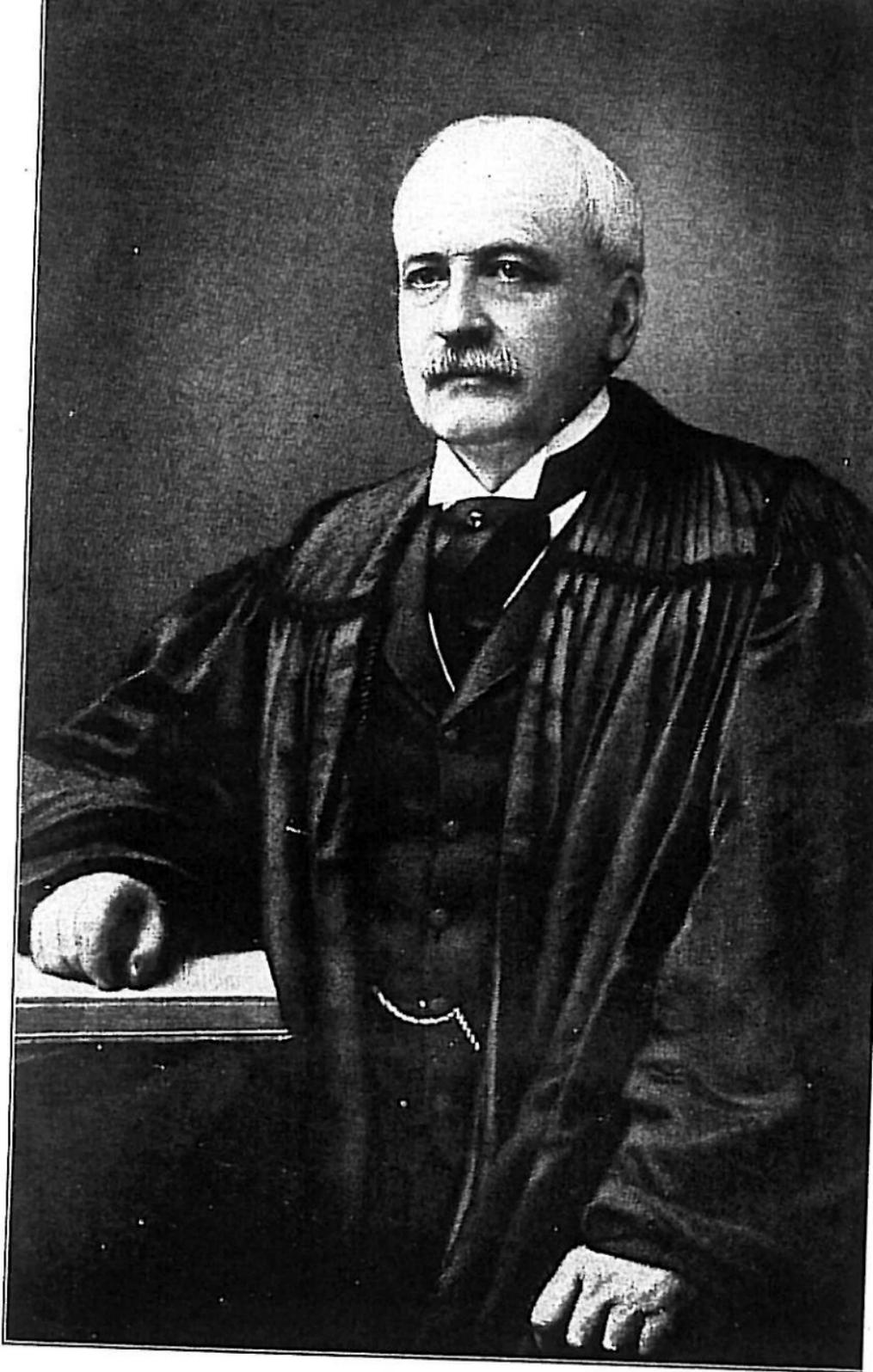
In Celebration of

THE FIRST CENTURY OF THE
JURISPRUDENCE OF THE
STATE OF MAINE



Augusta, Maine

Wednesday, January Twelfth
Nineteen hundred twenty one



Clarence Hale

A CENTURY OF THE FEDERAL COURTS IN MAINE

Mr. President, Brethren of the Maine Bar Association:

I thank you for asking me to tell you an old story, the story of a Century of the Federal Courts in Maine. It is a story of lawyers; and a story of lawyers cannot help being vivid and vital to you and me, even though tamely told. It is a book of beginnings. And the beginnings of things have an appeal to thoughtful men.

These beginnings are not so very long ago. The horizon is almost in sight. A century is but a span, even when measured by human lives. Men whom many of us have known and loved were in the convention that made our constitution, and launched our State upon the sea of service and achievement. And then, only a little beyond the State horizon, the new National Government comes in view; and the Federal Constitution fixes the starting point of our subject.

Article Three of the Constitution of the United States provides:

“The judicial power of the United States will be vested in one Supreme Court and such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Superior and inferior courts, shall hold their offices during good behavior* * * *.”

By the Act of September 24, 1789, Congress divided the United States into thirteen judicial districts:

“One to consist of that part of the State of Massachusetts which lies easterly of the State of New Hampshire, and to be called the Maine District.”

The Act of 1789 provided further that there be a court called the—

“District Court, in each of the districts, to consist of one judge who shall reside in the district, to which he is appointed, and shall be called a District Judge, and shall hold annually four sessions * * * * in the following named places; to wit, in the District of Maine, at Portland and Pownalborough, alternately, beginning at the first.”

The same Act divides the Districts—except Maine and Kentucky—into three circuits. The *Eastern* included New Hampshire, Massachusetts, Connecticut and New York; the *Middle*, New Jersey, Pennsylvania, Delaware, Maryland and Virginia; the *Southern*, South Carolina and Georgia. (North Carolina and Rhode Island had not yet adopted the Constitution, and Vermont was not yet a State.)

In Maine, though made a separate District with a District Court, no Circuit Court was to be held. The District Court was to exercise the Circuit Court jurisdiction, except appellate, which was given to the Circuit Court in the Massachusetts District.

Two Supreme Court Justices, and the District Judge in each District, were to hold the Circuit Courts, any two of the three to be a quorum.

The Supreme Court Justices divided themselves, two to each Circuit, but the two who were assigned to the Southern Circuit complained that they had more than their share of travel; and an Act of April 13, 1792, provided that the Justices should take this circuit in turn. This arrangement in substance lasted until Jefferson's Congress, 1801, after overthrowing the new Circuit Court established by the Federalists in 1800, provided for an assignment of each Supreme Court Justice to a Circuit, to hold the Circuit Court in each District with the District Judge. In 1820 an act was passed reorganizing the Circuit Court. It provided that Rhode Island, Massachusetts, New Hampshire and Maine were to constitute the First Circuit. In addition to the Circuit

Courts holden in the Circuits, it provided that there should be holden annually two Circuit Courts within and for the District of Maine by the justices of the Supreme Court residing in the Circuit, and the District Judge of Maine; providing, also, for the times and places of holden in the terms. The First Circuit is, to this day, constituted as it was by the Act of 1820, except that, in 1915, Porto Rico was added to the Circuit.

The record of the District Court of the Maine District in the First Volume, on the first page, begins with the recital of Judge David Sewall's commission from George Washington. The commissions of all the Federal Judges, since that time, have followed the precise language of Judge Sewall's commission. The first term of the District Court in Maine was held on the first Tuesday (the first day) of December, 1789, in Portland. The oaths were administered to the judge, the marshal, the district attorney, and the district clerk. The second term was held at Pownalborough, in March, 1790. At the June Term, in 1790, at Portland, a grand jury was summoned for the first time. Deacon Benjamin Titcomb was its foreman. Two trial juries were summoned. The first case tried was a civil case, a proceeding by the United States against George Tyler of Deer Isle for smuggling "one barrel of West India rum, and one bag of brown sugar, being articles of foreign growth and manufacture." The jury found against Tyler, and found the value of the property to be \$400.

The Court then proceeded to try Thomas Bird for piracy and murder, or, as the indictment read, for "piratically, feloniously, willfully, and of his malice, making an assault upon John Connor, on the high seas, and for killing and shooting him with a gun." The trial was begun in the State Court House; but, on account of the large number of people in attendance, it was adjourned to the First Parish Meeting House, where it was concluded. Bird's associate, Hanson, was acquitted. Bird was convicted and afterwards executed by hanging on

Haggett's Hill. His case was the first capital case ever tried in a Federal Court in the United States. His execution was—so far as I can find—the first execution of a criminal, convicted in a Federal Court. This trial of Bird is one of the most celebrated trials in a Maine Court. In the Historical Society Records Joseph Williamson has a paper describing it and other capital trials in Maine before the separation.

In 1778 Congress assumed appellate jurisdiction of all maritime causes, dividing Massachusetts into three districts, Southern, Middle and Northern; the last embraced the three eastern counties, York, Cumberland and Lincoln, and acquired a distinctive name, the "District of Maine," which it retained until the separation. The judge of this district was Timothy Langdon, Esq., a lawyer of eminence, who lived at Wiscasset; Nathaniel Thwing of Woolwich was Clerk. The General Court of Massachusetts conceded the jurisdiction to Congress, and authorized an appeal from the State Courts to that body whenever the subject of a foreign power in amity with the United States claimed a vessel or cargo captured or libelled, unless the claimant chose to waive the right of appeal and have a trial in the State Court. The judges of the maritime courts were judges in admiralty; and all persons charged with piracy or felony upon the high seas were tryable by any two judges of the State and the Admiralty Judge residing within it.

In 1787 Judge Sewall, sitting in the Maine District Court was one of three judges—Mr. Justice William Cushing presiding—who tried a memorable murder case in Lincoln County, in the Pownalborough Court House; and Williamson gives this interesting incident that Rev. Jacob Bailey, a celebrated Episcopalian Minister, writes from Pownalborough: "We have a man in jail for murder * * * The prisoner has no chance for his life. Since my residence here, 1760, five or six murders have been committed on the Kennebec River, and neither the murderers nor the persons killed

ever frequented any divine worship." Nobody who did not go to meeting had any chance for his life in a murder trial in Maine in those "good old times."

In June, 1792, the case of the United States against Skinner was tried before Judge Sewall for fitting out a ship and importing thirteen slaves from Africa. And so it appears that here, in the Federal Court, in Portland, within little more than a century, there has been a trial and a judgment against Portland men, for prosecuting the slave trade.

In 1789, during the first year of David Sewall's life as District Judge, another Maine man was appointed to a great judicial office. So fleeting is the memory of honored names that we almost forget that William Cushing, Associate Justice of the Supreme Court of the United States, from 1789 to 1810, was for fifteen years of his life a Maine man. He settled in Pownalborough about 1760. Maine was then a wilderness; the inhabitants of the District then numbered scarcely fifteen hundred, scattered along the coast from Kittery to Pemaquid. Upon the conquest of Quebec, in 1759, the settlement of Maine began to increase, it then having obtained some relief from Indian attacks. The County of Cumberland and the County of Lincoln were set off from York in 1760; Lincoln County embracing the whole territory between the Androscoggin and Nova Scotia. Pownalborough was the County Seat, named for Thomas Pownal, Governor of Massachusetts. It included what is now Wiscasset, Dresden, Alna and Perkins. Here William Cushing tried cases until his appointment to the Supreme Bench in 1789. He was quite generally associated in these cases with John Adams, who had perhaps the largest docket in Cumberland and Lincoln Counties. Adams had an intimate knowledge of Maine, and always took an interest in its affairs. It will be remembered that afterwards, in 1819, he vigorously opposed the separation and wrote a memorable letter to Daniel Cony of Augusta, in which

he said that, sometime, some ardent politician would lead Maine from Massachusetts, and "leave her a State *below* mediocrity in the Union."

In Flander's "Lives of the Chief Justices," Cushing's residence in Maine is chronicled as extending from sometime in 1755 to his appointment as Judge of the Massachusetts Superior Court in 1771. As to his Chief Justiceship, the writer says:

"As Cushing never actually presided as Chief Justice, the reader may doubt whether *stricti juris*. he ever held the office. If, however, he accepted the appointment, it is not material to the question whether he discharged his duties. He was in fact Chief Justice."

THE EARLIEST MAINE JUDGES

You have asked me to talk to you about things that happened in the century last past. But it does no harm to stretch a tough old century; and I have already stretched the century so much that I will venture to give it another turn; so that I may talk to you of the earliest Maine judges—judges under the first government ever established within the limits of the Province of Maine. Under James the First, in 1623, Sir Ferdinando Gorges was commissioned by the Council of Plymouth as General Governor of New England. He was to have jurisdiction over all the territory "between the Piscataqua and the Kennebec rivers, and extending into the main land to the Great Lakes and the St. Lawrence River, known as the "River of Canada." Richmonds Island was at first the chief place. In 1635 the Council of Plymouth resigned its charter into the hands of the King, after granting the new patent to Gorges over the same territory. For the purpose of establishing a new government, Gorges sent over his nephew, William Gorges, with commissions to Vines, Richard Bonv-

thon, Thomas Cammock, Henry Joscelyn, Thomas Purchase, Edward Godfrey and Thomas Lewis, as judges, or, as they were then called, "Councillors." The court had legislative, as well as judicial power; it arraigned, tried and punished for various offenses. At first it sat in the dwelling house of Richard Bonython, at Saco, "not far from the shore on the east side of the river;" and here a court was opened March 25, 1636. In 1639 Gorges obtained a charter directly from the King confirming the grant of the Council, and directing that the territory "shall forever hereafter be called and named the Province or Countie of Maine;" a name bestowed in compliment to the Queen of England, a daughter of Henry Fourth of France, who was connected by title or estate with the Province of Meyne in France.

Gorges' commission to his new councillors, or judges, is dated September 2, 1639.

Let Willis tell the story:

"Sir Thomas Josselyn was nominated deputy governor, and Vines, Champernoon, Henry Josselyn, Bonithon, Hooke, and Godfrey, his councillors. Sir Thomas declined the appointment of Deputy, and the office was conferred by Gorges on his cousin Thomas Gorges, who arrived at his Province in the spring of 1640. This was an able board. Thomas Gorges was educated at the Inns of Court, and was a lawyer. The first and only one, so far as we have any knowledge, who resided in the Province for the first hundred years after its settlement, except one, Thomas Morton, who was driven from Massachusetts and came to York in 1644. Vines had long experience of the country; he was the steward and confidential agent of the proprietor, and had a grant embracing the present town of Biddeford, in which he resided. Champernoon was a nephew of Sir Ferdinando Gorges, and was of an ancient family in the county of Devon. Henry

Josselyn had been in the country from six to nine years, was of good family, the son of Sir Thomas Josselyn of Kent, and was placed in responsible positions as early as 1634 in New Hampshire and Maine and continued to sustain his character in various fortunes, as a prominent actor in our provincial affairs, until after his death in 1682. Bonithon was here in 1632 as one of the grantees of the territory on the east side of Saco River, now embraced in the town of Saco. He was a man of energy and enterprise and strenuously opposed the extension of the Massachusetts jurisdiction over this province in 1652, and the following years, for which he was proscribed. Wm. Hooke was son of Alderman Hooke of Bristol, England, and an early settler of York, as was also the remaining councillor, Godfrey, who was connected with our political affairs forty years. He was the first to occupy the large tract of land at the mouth of York River, where was the principal plantation of Gorges, on which he expended much money, early erecting a manor house and a mill there, and stocking the place with cattle. Gorges in his "Narrative," written in 1640, p. 50, says: "I have not sped so ill, I thank my God for it, but I have a house and home there, and some necessary means of profit, by my saw mills and corn mills, besides some annual receipts sufficient to lay the foundation of greater matters, now the government is established."

These were the men to whom the Lord Proprietor confided the affairs of Maine. They were his court and his legislature. Here then we get a glance at the common law in Maine, and representative government in Maine, in action, almost three hundred years ago. Among other things, this court, or legislature, passed the first liquor law of Maine. The good natured Hebrew of the Old Testament Scriptures was right in

saying: "That which has been is now, and that which is to be hath already been." The germ of all liquor laws was in this old Maine law of March 29th, 1636.

"It is ordered that any man that doth sell strong liquor or wyne, shall suffer his neighbor, laborer or servant to continue drinking in the house, except men invited, or laborers, upon the working day, for one hower at dinner, or stranger or lodger there, the said offense being seene by one justice of the peace, within his limits, or constable, or proved by tew witnesses before a justice of the peace, such seller of strong liquor or wyne shall forfeit for every offense tenne shillings."

The Provincial Court or Legislature which enacted this Statute had character and judicial significance. Williamson says that the Charter of Gorges was a model; especially when it became assimilated to Colonial usages adopted by Massachusetts in 1691, under the Charter of William and Mary.

About 1640 the first law suits in Maine were tried in this court at Saco; they were suits brought by George Cleeve, the founder of Portland, against John Winter, the agent of the Trelawney interests. The first suit was for damages in dispossessing him of his house and land on Spurwink River near Richmond's Island, and for other "hinderances and annoyances, moved thereto with envy and without demand or title pretended." The verdict of the jury was the first verdict of a Maine jury, so far as history records. Here it is: "The jury find for the plaint. The house and land enclosed and containing foure acres or thereabouts, joyning with the said house, and giving eighty pounds sterling for damage, and twelve shillings and sixpence for cost of courts."

The other suit was of greater magnitude and involved the ownership and possession of the land which is now Portland, then called "Cleeve's Neck," or "Mache-

gonne," which Cleeve held by patent given by the English Crown in 1637. Winter claimed it in behalf of the Trelawney interests, on the ground of his title of 1631, obtained from the English Crown through Gorges. This patent ran to the "River of Casco." Cleeve insisted that this was Casco Bay; Winter urged that the "River of Casco" was the Presumpscot, which made his patent include what is now the City of Portland, and the land out to, and beyond, Martin's Point. Cleeve prevailed. Then followed an attempt on the part of Winter to impeach the jury. Some portion of the controversy was finally referred to Referees. Cleeve won in the end, and established his right to Machegonne, or the Portland Peninsula.

In this provincial court, held in a little house in Saco, nearly three hundred years ago, an English tribunal settled competently and forever questions vitally affecting the territory and the history of Portland.

Other matters grew out of these suits. At the instance of Cleeve, Winter was charged in various indictments with "Keeping down the price of beaver, and keeping up the price of liquor." Then followed the long hostility between the Cleeve interests and the Trelawney interests.

The first Maine court imposed taxes and tried for all crimes. In 1645 it adjudged one John Bonython, the son of one of the first Commissioners, to be an "outlaw and rebel, no longer under His Majesty's protection," and ordered, "if he should be taken alive, he should be taken to Boston to undergo some extraordinary animadversion."

Under Cleeve the court was held at Black Point, by Cleeve himself, with Henry Josselyn and Robert Jordan, who married the daughter of Winter.

Robert Jordan was the first Episcopalian minister who had a career in Maine; he was an English land owner, and politician, and the precursor or a large body of sturdy men and women all over the Country. All

the Jordans are his descendants. So were Chief Justice Peters and Chief Justice Wiswell. He was also the ancestor of the wife and children of the writer of this paper. Robert Jordan was a devout churchman and Royalist, and was never reconciled to the Massachusetts Government. He was finally compelled to leave Maine, and established his residence at Great Island, now Newcastle, New Hampshire. By his will, he left "broad lands" to his wife Sarah, and to his sons Dominicus, Jedediah and Samuel.

Let us take a look at the life of Maine when David Sewall was made judge, in 1789. According to Williamson, the population was about 96,000 souls. The increase was quite rapid from this time. In 1800 the census showed 151,179 inhabitants, and, at the time of the separation, 298,335. The Government by Gorges had long since passed. This royalist regime presented many features of strength and of interest; but, in the progress of Democracy, it had given way to the more liberal Government of the Massachusetts Bay Colony. Everything was at a low ebb. Maine was suffering from the war. It was still provincial and unsettled. Within only about a half century the last battle with the Indians had been fought at Lovewell's Pond. Portland was a little country village of three thousand people. The State itself was merely a secular aspect of the church. The annals of the church were the annals of New England. It has been well said that, in his history of Maine, Governor Sullivan always defined a town by the name of the pastor as infallibly as we identify Stratford-on-Avon with Shakespeare, or Rome with the Caesars. Education was for the purpose of enlarging the usefulness of the clergy. Harvard was chartered, in 1639, to supply primarily ministers of the Gospel; and, as late as the creation of Bowdoin, in the last stages of the Eighteenth Century, this idea prevailed. And so the history of Maine up to that time, was the history of ministers. The town voted on all matters pertaining to

the church. As late as 1803, the town of Turner voted in town meeting to settle Rev. Charles Turner, provided he will preach for four dollars and fifty cents a week.

Judge Sewall's term marks an era in Maine. When he began his service as District Judge, Maine was a province and part of a system of Church and State. When he left his office, Maine was just becoming a State. The Constitutional Convention soon followed. Judge Sewall's conduct of his office was one of the means that led to the separation; for it showed the individuality of Maine as a district; it got the people of Massachusetts familiar with the fact that there was a district of Maine, and that cases were being tried here and that law was being competently administered.

It is a good time now to give a glance at the frame in which the Courts were set at the time of the separation. When Maine became a State, in March, 1820, she was the twenty-third State in the Union. There were 236 corporate towns, but no cities.

It is well to get before us a picture of life in Maine a hundred years ago; it was a strange mixture of comfort and poverty; life had not far advanced beyond Colonial conditions. The houses were poor and small; almost all were cottages or "story and a half" houses; although there were some more pretentious dwellings. The fluted pillar appeared as a part of two or three Colonial mansions, at the entrance of which were the exquisite "fan-lights" over the paneled front door. There were no street lights, and no sidewalks in Portland. The traveler by night carried a lantern, and, sometimes, was helped along his way by a good friend hanging out a light at his front door. People did much of their journeying on horseback, the women sitting on "pillions." The horse-block appeared in front of all the meeting-houses. The lumbering stagecoach served the public. 1787 marked the advent of this crude form of conveyance and the Concord coach did not appear until 1828. Steam and electricity, the two great discoveries which made a

greater change in the habits of men than anything which had ever happened, were still far in the future. The winds still bore the traffic of the world across the great ocean. Fulton's steamboat had toiled up the Hudson in 1807; but no steamboat appeared in Maine for more than a decade. It was not until 1842 that a steam railroad began to operate between Portland and Portsmouth, ten years behind the first operation of a steam railroad in America and twelve years behind the first steam car that sped from Liverpool to Manchester, in England. The electric telegraph did not come until 1835.

Down to the Revolution the old Indian trails had been the only roads. Broadened for horse-back riders a little later, they became the general avenues of communication. A few years before the separation, the Massachusetts General Court had provided five turnpikes for the Maine District; one of these ran from Falmouth around the marshes, and over "Scottow's Hill." Over this turnpike, so far as it went, a rough, crude stage, a covered vehicle, in 1818, began to make its trip between Portland and Portsmouth, and so on to Boston. The traveler took this mail stage leaving Portland at two o'clock in the morning, having been roused by the post-man's horn an hour earlier. He reached Boston that evening at ten, if he was lucky and if the roads had not been made impassable by rains. He paid ten dollars for his fare. On the roads east of Portland conditions were still more uncomfortable; and the time when stages would arrive was very uncertain. Four-wheeled carriages were almost unknown, although there were ten of them in Portland at the time of the separation, and about ninety covered chaises with thoroughbrace springs. The doctor made his rounds in a gig. The shoemaker took his bench and kit of tools to the home of the citizen, and remained in the household until he had made the footwear for the family. Life was not complicated. Plain people lived plainly. The source of local history was James Sullivan's History of Maine, printed in 1795.

Jesse Appleton and William Allen, both presidents of Bowdoin, were writers of verse and prose. Enoch Lincoln had published his fine poem *The Village*, in 1816. Longfellow and Hawthorne and Willis were boys in their teens. John Neal, of Portland, was perhaps the best known Maine writer at the time, both of prose and verse. We realize how short the century has been when we think that John Neal was a stalwart and familiar figure in the streets of Portland within the memory of many of us here.

In those crude times how did it happen that there were Maine men fitted to do the constructive work of organizing the new State of Maine and of fulfilling the great duties put upon them? It did not merely happen. To aid the funds of Bowdoin College, and of five academies incorporated in Maine, the General Court of Massachusetts, up to the year 1797, had made many *liberal grants of the public lands of Maine*; each grant being limited to half a township, and given only to such objects as had received substantial funds from private donations. From similar sources came endowments of certain so-called grammar schools in several towns of Maine. The town of Turner was an example. Hence the Maine country Academy and the Maine endowed High School. These institutions gave an education to the early judges of Maine courts, State and Federal, as well as to all the men who made the State memorable, one hundred years ago and for half a century afterward. Fryeburg Academy was an example. There Daniel Webster taught, just after he left college. Many other famous men of his time taught these academies. So did the lawyers and judges of the next three or four generations of men. Some of our present judges were eminent teachers in these seminaries of learning. Many of us got our early training in them. I cannot conceive what the State of Maine would have been without those academies. Modern educational methods, with their great problems of giving the wider training to masses of men, do

not perhaps so much need the country Academy. But we must not forget what the Maine courts owe to the old academy. It had no narrow rules that kept the bright boy back on the line with the dull boy. The laggard got help and courage; the scholar "swept through his lessons like a devouring flame" and fitted for college or prepared himself to become a school teacher, so that he could earn money to put himself through college without depending upon the narrow means of his father. The young men and women went to those schools to learn. Their minds were wide open for knowledge. The Academy was, in fact, and not in mere poetic fiction, a temple of learning. The teacher was the "priest who fed the sacred fire."

But the Academy could not have done its work of ministry to the lawyers and judges and governors and senators of the coming century if it had not been for the district schools. Here every boy got his start; here the dullest boy from the farm digged out his lessons in the winter as doggedly as in summer he had digged the rocky soil; and the boy with the quicker mind got enough in the few short terms of the winter school to fit him for the academy. And so our fathers and grandfathers got their education. The country academy and the district school are not mere history. They are not dead flowers in an old book. They are mile-stones. They are monuments.

In later years, I have, with the deepest reverence, turned the worn and mouldy pages of the reading book that my father studied in the old red district schoolhouse at the foot of the hill. The reading book was literature; it was about all the literature that he had before him in his youth. No man can understand the men of 1820 without looking at the district schoolhouse, with its quaint maxims scrawled upon the walls; its high, narrow seats, and awkward, angular desks; its great smoky chimneys and floors worn with the tramp of rough-shod feet; its wood-shed littered with logs and chips, and

the open door battered by the winds of years and looking out upon the snowy hills of winter, and, in summer, upon the green fields full of buttercups and strawberries. Here in the district school the college touched and taught the outside world. The young collegian (as he was always called) kept the winter school, boarded around, and got his life-long hold upon the institutions of his country; he gave good pay in return. All of the boys, even down to our time, got their start in fitting for college in the lessons, after school from these young men from Dartmouth, Bowdoin and Waterville.

In "Snow Bound," Whittier—you remember—has made the teacher of the winter school immortal. He describes the school master as part of the household around the open fire, in the intimate home scene of a winter evening:

"Brisk wielder of the birch and rule,
The master of the district school,
Held at the fire his favored place;
Fresh hued and fair where scarce appeared
The uncertain prophecy of beard.

* * * * *
Large brained, clear eyed, of such as he
Shall Freedom's young apostles be."

In this view of the educational advantages of our early judges I have perhaps made a little detour. But I am now back on the State Road.

In telling the story of a century of Federal Courts in the State of Maine, I shall have to tell, as briefly as I can, a personal story of five men who sat as Judges in the District Court, and of two more in the Circuit Court.

THE DISTRICT COURT

In 1789 Judge David Sewall received from President Washington his commission as district judge. He sat for twenty-nine years, and resigned in 1818. He was born in 1735 at the town of York, then sometimes called by the Indian name of "Quack;" named York by Levett.

Mr. Sewall graduated from Harvard in 1755, a classmate of John Adams. At the time of his appointment he had already been, since 1777, Judge of the Massachusetts Superior Court of Judicature, the Court of final resort in Massachusetts, which changed its name in 1780, to the Supreme Judicial Court.

The Sewall family descended from an old English family, and had been well known since the time of the Norman Conquest. Henry Sewall, in 1607, was a linen draper of Coventry, said by the town records to be a "prudent man" and of "great estate." His son, Henry, came to Newbury, Massachusetts, and made his home there in 1635; Henry's grandson, Samuel Sewall, the father of David, settled in York. He was one of the justices of the court of the Province of Maine, under the charter of William and Mary, in 1691. He became Chief Justice of the Superior Court of Judicature of Massachusetts. He was the ancestor of Samuel, an eminent Chief Justice of the same Court, who died in 1814, while he was holding court in the District of Maine at Wiscasset, where his grave may now be found. The monument commemorating his memory has recently been restored, at the instance of two of his successors in office, Chief Justice Cornish of Maine and Chief Justice Rugg of Massachusetts.

During 148 years of the judicial history of Massachusetts as a province of the Crown, and 84 years as a Commonwealth, the Sewall family held seats upon the Bench of Massachusetts; and two of that name have been Chief Justices.

The records of the Maine Historical Society show that Judge David Sewall was a "learned and upright judge,—a man of great benevolence, unassuming in his deportment, sociable and amiable in his manner, and of great purity of character;" and that his name may well be associated with the great men whom the County of York has produced: Preble, Sullivan, Holmes, Shepley, Clifford, Howard, Appleton, Goodnow, King, Thatcher

and Mellen. He did his part as a citizen of Maine. For many years he was President of the Board of Overseers of Bowdoin College, and active in all matters pertaining to the college. Bowdoin students are still receiving his benefaction in the Sewall Prize. His portrait is in the college library. He was recognized as one of the most prominent citizens of Maine. Before he went upon the bench he was one of six lawyers who were raised to the degree of barrister by the Honorable Benchers of the Inner Temple of London, the others being John Gardiner, William Cushing, Theophilus Bradbury, David Wyer and William Wetmore.

Judge Sewall administered his office as district judge with distinguished ability for over twenty-nine years. In 1818, at the age of eighty-two, he resigned his judgeship, and was succeeded by Albion Keith Parris, then residing in Paris, Maine, a Representative in Congress from the Oxford County district. Judge Parris was judge of the district court for four years. He was a Maine boy, born at Hebron in 1788, a descendant of men who were intimately associated with the early history of the Union. His education was typical of New England. He spent his early life on his father's farm and went to the town schools. He graduated at Dartmouth College in 1806, studied law; early in his practice was County Attorney for Oxford County; at the age of 25 he was a Representative to the General Court of Massachusetts. In 1814 he was State Senator from the Counties of Oxford and Somerset. He was elected to the 14th Congress of the United States in the next year, and was re-elected to Congress for two terms. While a member, at the age of thirty, he was appointed Judge of the District Court. He resigned in 1822 to accept the office of Governor of Maine. He takes the palm as a holder of offices. His grandson records in the Maine Historical Society Records that:

"In 1819 he was chosen a member of the commission to form a constitution for the New State, then seeking admission into the Union, and took a prominent part in the proceedings and debates of that body. He was afterwards made Judge of Probate for Cumberland County, under the new regime, and while holding this position was nominated as Governor for the State, to which position he was elected and entered upon the discharge of his duties before he had attained the age of thirty-three. He was reelected as governor for five successive terms.

"In 1827, he was appointed to the United States Senate to complete the unexpired term of John Holmes, but had scarcely entered upon the duties of his new position when he was appointed Associate Justice of the Supreme Court of the State. He had occupied this office but a short time when, in 1836, he was called to Washington by Mr. Van Buren, to fill the position of second comptroller of the treasury. He continued in the exercise of his duties as comptroller for a period of thirteen years—through the administration of Presidents Van Buren, Harris, Tyler and Polk."

The records of the Maine Historical Society point out with reference to Judge Parris, that, although he was a "politician by nature," he found ample time to attend to his judicial duties and to the duties the performance of which tend to the welfare of the State as well as to promote domestic happiness and comfort. He was one of the early Trustees of Bowdoin College, serving on the board with Prentiss Mellen, Ashur Ware, Ether Shepley, Rev. Elijah Kellogg, Rev. Dr. Payson, and many others who made the history of Maine in their day and generation.

He made a good judge, although he was not long enough on the bench to attain a distinct and distinguished judicial career.

After the retirement of Judge Parris from the District Bench Ashur Ware was appointed District Judge, in February, 1822, and held the office until his resignation on account of impaired health in May, 1866, after a memorable judicial career of more than forty-four years. He was a great character in the history of Maine and of the Nation. He was born in Sherburne, Massachusetts, in February, 1782; he came to Portland in 1817; and, on the formation of Maine, he was the first Secretary of State. He had already been an editor of a political paper in Boston, and afterwards was editor of the *Eastern Argus*. His editorials upon the files of that paper are now eagerly read; they are not in the "editorial dialect;" they are upon a lofty plane and are well within the realm of literature. In his review of the *History of Maine*, in the collections of the Maine Historical Society, Joseph Williamson says that Maine literature was hardly born before 1820, and that Judge Ware's preface to the First Volume of Maine Historical Society Collections gave an impetus to historical study, and was the foreword, not only of Maine history, but of Maine literature. It is a matter of note that, when he was appointed, his selection was made because he was a literary man and had been a politician in two states. What reputation he had was acquired in partisan controversy; he had little or no experience as a lawyer, and he was called to fill the position in which men of national reputation had left their mark. But Judge Ware was fully equal to the work before him. His profound, scholarly mind found a fitting field in the great work of admiralty and maritime jurisprudence.

The law of the sea upon which he was called to pronounce had received little attention from the Courts. Peters and Bee were the only reports of the decisions of the District Courts of the United States. Judge Ware was compelled, therefore, to depend largely upon his own resources and upon direct reference to the maritime codes, and the ancient laws of the sea. The work ap-

pealed to his scholarly mind, and to his imagination. Judge Story has said: "The admiralty court, if it be not of immemorial antiquity, as Lord Coke supposes, it is almost certain that its origin can be safely assigned to some anterior age."

Judge Ware loved to trace this Court of Admiralty back to the age of Edward First, earlier than 1300, to the time when the Court of the Lord High Admiral of England was held first on shipboard, as the old records have it "*velo levato*;" to follow its more permanent usage by Edward Third, before 1400, and the record of its trials in accordance with the laws of Oleron, and the procedure of the civil law; and to cite the "Black Book" of the Admiralty. He recognized it as the Court of the Sea, originally held within the ebb and flow of the tide; a court having within its scope the commerce of the world and not to be administered upon the artificial maxims and principles of the common law. It was left to Judge Ware to become a pioneer in maritime law. He had to determine the natural principles of law applicable to each case as it arose. The English decisions in admiralty were rare and were only partially applicable to this country where we had given our admiralty courts a more liberal jurisdiction. The bent of his mind inclining him to mathematics made him exact in his application of legal principles. His taste for theological studies had promoted his instincts of justice; the pure and ethical standards by which he regulated his life prompted him to mark sharply the boundaries between right and wrong, and to detect every form of fraud or oppression. He contributed more than any other American judge, yes, perhaps even more than Judge Story,—to make Admiralty law a science. Hence his work became of world-wide importance. His opinions are the standard of authority. The two volumes of his reports are cited wherever in the world maritime law is brought in question. We are indebted to the collections of the Maine Historical Society for ample sketches of his life

by Mr. Talbot, Judge Fox and others. His life was simple and adverse to notoriety. No religious zealot was more unworldly. By taking thought he did not try to add a cubit to his stature. He looked with contempt on anything which would bring publicity to the judicial office. His face made a winning appeal to human sympathy in his extreme old age; even after his mental powers were dimmed and failing; it was the face of a philosopher and a poet. Judge Symonds used to say that the world of lawyers will remember Judge Ware long after the rest of us are forgotten.

After the death of Judge Ware, Edward Fox was appointed Judge in May, 1866, and served until his death, in December, 1881. He was a graduate of Harvard College in the Class of '34, and of the Cambridge Law School in 1837. After a useful and conspicuous career at the bar, upon the elevation of Judge Appleton to the Chief Justiceship, in 1862, he was appointed a Justice of the State Court. He retained the position, however, only about a year, and resigned it to resume his large practice in the courts. He was an advocate of remarkable vigor and success. In paying an eloquent tribute to the judges who had sat in the United States District Court, Mr. Talbot said of him: "Here Fox curbed that eager and polemic spirit which was wont to sweep all obstacles before it in the forensic contests of the bar." He was well prepared for the duties of the judgeship, having had great experience as an advocate; of mature years, about fifty-three; with a fondness for study and for judicial research. He had what some philosopher has called the best preparation for judicial work—the desire to seek, patience to doubt, fondness to meditate, slowness to assert and readiness to reconsider. I remember an instance illustrating his ability to reconsider. A case was heard before him without a jury, involving a sharp contention on figures, and where there were many complications in the application of the law to the facts. At the close of the arguments, he at once began to read

a carefully prepared opinion on the questions involved, but said: "During the argument I have had occasion to revise my findings three distinct times on important matters," and he showed us his notes which fully verified what he had said. He was a man of strong convictions, and did not hesitate to express sharply his views upon questions before the jury. I remember once telling him that a judge in the State Court had enforced his own views upon the jury in such a manner as to take away my chance of obtaining a verdict. He put on a serious look and said: "Oh, it is very wrong for a judge ever to enforce his own view."

Mr. Lodge has said that there was a great deal of sound truth in Byron's remark to Mitford: that, "having named his sins it is but fair to state his virtues, learning, research, wrath." And then Mr. Lodge adds: "I call the latter virtues in a writer, because they make him write in earnest." Judge Fox did his work in earnest. He had learning, research and wrath. He did not hesitate to use the last named virtue whenever he thought the case indicated it. But, with his strong sense of justice, he never used wrath to wrong a human being. With some austerity of manner, he possessed a kind heart and strong human sympathies. He died suddenly while engaged in the trial of a case. After charging the jury late in the afternoon, he seemed, in the evening, to be in his usual health, except for some slight discomfort from indigestion; but was seized in the night, without premonition, and died immediately from heart disease. He is the only district judge who has died during his term of office.

He was succeeded by Nathan Webb, who was appointed in January, 1882, and served until July, 1902, when he resigned from failing health.

Judge Webb was born in Portland in 1825. He graduated at Harvard in the Class of '46, in the class with Senator George F. Hoar of Massachusetts. He had a long experience at the bar, serving as county

attorney of Cumberland County from 1865 to 1870, and District Attorney of the United States from 1870 to 1878. He was a distinguished advocate. Possessed of remarkable clearness of thought, and power of expression, he made a practice of daily study of the classics even up to his last years, and always urged upon the young lawyers the necessity of filling their minds with the reading of history and general literature. He attributed Judge Ware's success in his work to his classical training. In an address to the Circuit Court upon Judge Shepley, he called attention to the scene in Scott's novel where Guy Mannering went up to Edinburgh to consult Counselor Pleydell; he found the rare old lawyer, of quaint speech, of kindly companionship, and of good reading; when he came to his professional interview, the quaint old philosopher led Mannering through his straitened hall and poorly furnished drawing room, into his ample library; there he showed him, piled to the ceiling, the best editions of the best authors, and said: "These are my tools of trade. The lawyer without literature and history is a mere mechanic; he is nothing better than a mason; with these he may make some profession to be called an architect."

Judge Webb's choice vocabulary came in great measure from his study of good literature. In 1877 while District Attorney, he tried the case against the railroad engineers, who were indicted for combining to obstruct and delay the United States Mails, and to effect this obstruction by means of a strike. The case aroused him, and set his whole spirit ablaze. In his argument he pictured these engineers, leaving their duty, and by their selfish action bringing danger to the public and contempt upon themselves. The case presented a construction of the law hitherto unknown in the courts. In every tone of his voice he showed his purpose to have justice done in that court, and to have guilty men brought to judgment. It would have required a very bold, or a very stolid, jury to refuse him a verdict.

While upon the bench his decision was often rendered as soon as the case ended, while his mind was fully aglow with the case and every incident of it in his mind. At such time his statement of the case, his grouping of the testimony, the delicate precision of his choice of words, made a memorable presentation of the subject. Such decisions showed the bent of his philosophic mind, and his power of vivid statement. He did his work modestly without seeking notoriety, and without any assumption of superior learning. He gave his opinions and decisions in his own simple English so that they became models of statement. Of him it may be said, as of Mr. Langdell:

“That the study of the law by precept and example was not mere letter—worship of authority; he did not treat his conclusions as something to be settled by the enumeration of decided points. At the root of all his work and making his criticisms vital as well as keen was the conviction that although judicial decisions are, in our system, the best evidence of the principles, yet not all decisions are acceptable, or ultimately accepted, the touchstone by which particular decisions have to be tried being principle.”

His style was direct and simple. He had no tricks of speech; he did not strain for figures or for epigrams; he did not approach his position by “stealthy parallels;” he was too sincere and serious to employ cheap decorations of speech. He went straight to the point. Judge Webb’s directness of speech led logically to the use of wit. Emerson has defined wit to be the “genius of the unexpected.” I recall an instance of a flash of the unexpected in a case in the State court, which came to my personal observation, not many years before Mr. Webb was called to the bench. During the progress of the trial a very good lawyer for the plaintiff took much time in taking down evidence. At last Mr. Webb, who

appeared for the defendant, could stand the delay no more, and rather impatiently said: "May it please the Court, I object to the interminable delay caused by the learned counsel for the plaintiff," to which the counsel for the plaintiff replied: "Oh, may it please the Court, I am proceeding as rapidly as possible; you must remember that I take minutes." "Minutes" returned Mr. Webb, "you take hours."

Judge Webb's career was a memorable one and is held in the loving memory of many who are here present.

THE CIRCUIT COURT

George Foster Shepley was the first Maine man to be Circuit Judge. Soon after the close of the war of the Rebellion, the business in some of the circuits had so increased that it became no longer possible that the labor of sitting on appeals with a District Judge could be performed by a single judge who was also charged with the performance of duties devolving upon justices of the Supreme Court. Congress, therefore, provided for the appointment of one Circuit Judge for each of the nine circuits; and, in December, 1869, Mr. Shepley received the appointment for the first circuit.

He was of fortunate birth, the son of Ether Shepley, of Portland, who, at the birth of his son George, was thirty years old. The history of Ether Shepley, up to that time, had been a part of the history of the old Commonwealth in which he was born and had held high office, having been a member of its House of Representatives and a delegate to the Constitutional Convention which created the State of Maine. He was afterwards a United States Senator from Maine, serving from 1833 to 1836, and then resigning from the Senate to become a Justice of the Supreme Judicial Court of Maine, and, seven years later, its Chief Justice,—the fourth Chief Justice of Maine. He was a memorable man in Maine history.

I shall never forget how the venerable Chief Justice impressed me, when I was a young man, as I saw him about the streets of Portland or walking up the aisle to the head of his pew in the State Street Church. He was then enjoying his long term of retirement, and was the foremost citizen of Maine.

In an address before the Historical Society, in 1878, Gov. Washburn alluded to Judge Shepley's primacy among our State worthies.

In a striking memorial of Chief Justice Shepley, Llewellyn Dean, formerly of Portland and afterwards of Washington, writes of him as the good, great man of Maine, not as a mere "mouther of religious phrases, but constantly illustrating the vitality of religion." Mr. Dean points out that Judge Shepley and Rev. Dr. Edward Payson were born about the same time and were friends in Portland. This was at a time when Portland was a country village on the border, and when municipalities were just ceasing to vote on the settling of ministers. When Maine was in its making, these two men helped to start its history in the right direction.

Judge Shepley lived to the age of eighty-eight and died in 1877, only a year before the death of his distinguished son, George.

George F. Shepley graduated at Dartmouth in 1837, and received his education in law at Harvard Law School. He was engaged in the practice of his profession in Bangor from 1840 to 1844, when he returned to Portland and entered upon a successful practice. He was District Attorney from 1853 to 1861, the position which his eminent father had occupied from 1821 to 1833. His fame as an advocate is still a part of the history of the Cumberland Bar.

Judge Clifford said of him:

"From the character of his mind, which enabled him to perceive the truth without much investigation, and to discriminate error from fact without much

labor, he was admirably adapted to the detection of obscure and well concealed weaknesses or fallacies in a narrative of alleged facts, and was equally expert in bringing the same to the light, and exposing such hindrances to justice to the clear vision of those less scrutinizing and adroit."

When the Democrats assembled in convention in Charlestown in 1860, George Shepley was a member of the convention and one of the first to place the Democratic Party in distinct opposition to the demands of the Secession leaders. Mr. Shepley was perhaps the first to throw the gauge of battle to the Southern champions. Just before the convention broke up he made a stirring speech, warning the South against insisting upon its demands, and, in vivid sentences, showing that the Northern Democrats would no longer yield to Southern rule; he closed with these lines from Scott:

"There are hills beyond Pentland and lands beyond Forth;

If there's lords in the lowlands, there's chiefs in the North."

At the outbreak of the Rebellion he accepted a commission as Colonel of the 12th Maine Volunteers, raised to form a part of the New England Division of General Butler's command. On the occupation of New Orleans he was made Military Commandant of that City; and so administered its military and municipal affairs as to win the respect and affection of the conquered and embittered inhabitants and to secure the confidence of the whole Army. His duties were both civil and military; and in both he manifested great prudence, energy and ability.

President Lincoln afterwards appointed him Military Governor of the State and promoted him to the rank of Brigadier General. Upon being relieved from duty

in Louisiana, General Shepley reported to the Department in Virginia, and North Carolina, and was placed in command of the District of Eastern Virginia, where he did eminent service. He was Military Governor of Richmond upon its occupation by the Union troops. He made a brilliant career as a soldier, serving from the beginning to the end of the war.

He filled the position of United States Circuit Judge from 1869 until his death in 1878, and did distinguished service. He had marked judicial qualities. As an advocate he had acquired a convincing habit of speech; as a Judge it may be said of him, as it was of President Roosevelt, that he was as willing to be convinced as he was convincing. The buoyancy and brilliance of his mind, shown as an advocate, did not forsake him as a judge, and he also acquired the patience and the learning which belonged to the bench. He was not legalistic; he always had the human touch and the magnetic faculty of making interesting everything which he approached. His clearness of vision and mechanical knowledge led him to eminence in patent law. I once heard him conduct a patent case before a jury, the only patent case, I think, ever tried to a jury in the Maine District. Here his human qualities were shown. As I listened to his charge I could not help observing that he could make a charge to a jury in a patent case as interesting as Macaulay's History, or Fiske's "Beginnings of New England." His distinguished judicial career was cut short after only nine years of service.

After the death of Judge Shepley, in 1879, there was no Circuit Judge resident in Maine until after the passage of the Act of 1892, creating the Court of Appeals to relieve the work of the Circuit Court. Judge Putnam was then appointed Circuit Judge, by President Harrison, and served from that time until 1918, a period of about 26 years. Upon the resignation of Judge Putnam, Judge Charles F. Johnson was appointed to the position of Circuit Judge, and is now rendering distinguished service in that office.

William LeBaron Putnam was born in Bath in 1835, and graduated at Bowdoin College in 1855; he practiced law in Portland continuously from 1857 until his appointment to the bench. His practice was of the broadest nature, especially in commercial law, and formed a fitting foundation for his judicial work. Mr. Justice Holmes, in his brilliant book, "The Common Law," has said: "The life of the law has not been logic; it has been experience." The public had the advantage of Judge Putnam's stored up experience of more than half a century. He was, throughout his judicial life, the adviser of many men and women of Maine in the care of their estates. From 1868 to 1884 he was an overseer of Bowdoin College, and a trustee from 1884 to the time of his death. During many years he was chairman of the Finance Committee. In 1885 he acted as counsel for owners of fishing vessels seized by the Canadian Government, and later was retained by the United States Government in this service. In 1887 he was appointed by President Cleveland, with Mr. Bayard, Secretary of State, and James B. Angel, commissioners to adjust a fishery controversy with Canada. He did distinguished service in the presentation of a treaty on this subject. Afterwards, during his judicial term, he represented the United States under the Treaty for the settlement of the Behring Strait Claim, the Treaty being concluded between Great Britain and United States, at Washington, in February, 1896. His life was devoted to orderly, systematic, continuous labor; by it he achieved his results. With this power of labor and his strong sense of justice, he was sure of a useful and distinguished judicial career. Judge Aldrich in his court memorial address in memory of Judge Putnam, said: "Industry was his leading characteristic. That he accomplished so much, both in and outside the law, was because he systematized his work. In business affairs, as a practicing lawyer, and as a judge, he was

essentially a man of systematic labor. He was more a man of action than of theory, or of philosophy, or of keen categorical analysis."

In his memorial of Joseph H. Choate, Elihu Root said that Mr. Choate's capacity for labor was the only quality which Mr. Choate was really proud of; and that he never regarded it as a compliment to have any reference made to his being able to reach results without the exercise of that power; that this is the power which makes the lawyer. I know of no one who ever had the power of labor in a higher degree than Judge Putnam. It was colossal. He never lost a minute. He did not know how to rest. His ordinary summer vacation was a three days trip to the Profile House where he spent much of that brief time looking over judicial papers. His first opinion was in *Beal v. The City of Somerville*, in the 50th Volume of the Federal Reporter (1892.) It was an equity case and is still a leading authority. From that time his opinions are found for 25 years in 188 volumes of the Federal Reporter. In 478 cases he wrote the opinion for the Court of Appeals, and in 44 cases he wrote opinions, either concurring or dissenting. Besides these, there are 197 of his opinions published in the Federal Reporter in cases in the Circuit and District Courts. We must remember, too, that he was, especially in the early part of his judicial labors, presiding over many jury trials in the various districts of the Circuit. And then, too, he was often sitting in equity. He always said that jury work, and sitting as chancellor without associates, was the best training a judge could have. His business ability and orderly mind enabled him to apply the varied rules and precedents of equity to the facts of a case; and so made him an authority in equity practice. He grasped an equity case as a business proposition. He was the ideal chancellor.

THE SUPREME COURT OF THE UNITED STATES
IN THE MAINE DISTRICT.

Nathan Clifford is the only representative Maine has ever had on the United States Supreme Court. Chief Justice Fuller was a native of Maine, but his appointment was from Illinois, the State of his residence, and of his practice at the bar. I have already alluded to Justice Cushing. Nathan Clifford was appointed Justice of the Supreme Court by President Buchanan in 1858, and served until his death in 1881. During this time he sat every year in the Portland Circuit. It had been the custom, throughout the history of Maine, for Supreme Court Justices to be assigned to this circuit, and to sit in the Federal Court in Portland. Judge Story held his last term in Portland, in 1845; and so Maine became associated with his fame. At the October term, 1845, Judge Woodbury of New Hampshire, sat here in the Circuit Court; and a memorial of Judge Story, prepared by one of his most intimate friends, Charles Stewart Davies, of Portland, and bearing the signature of Stephen Longfellow as president of the bar, was presented and entered of record.

At the September Term, 1852, Judge Curtis was present for the first time, and continued to hold terms at Portland until 1857. After that, Judge Clifford was a familiar figure in the Federal Court, and upon the streets of Portland. His impressive, dignified presence will always be a memory in our State. He was born in Rumney, New Hampshire, in 1803, and educated at Haverhill Academy and Hampton Academy. He moved to Newfield, York County, in 1827, and at once entered upon a prosperous practice. This was in the old days of the supremacy of the Democratic party. In 1830, within three years after entering his profession, he was sent to the Maine Legislature, and served four terms, during the last two of which he was speaker of the House. Young, aspiring, popular, Mr. Clifford soon became a

favorite leader of his party in Maine, holding the office of Attorney General of the State from 1834 to 1838 and serving two terms in the National House from 1839 to 1843. He was appointed Attorney General by President Polk, in 1848, the first cabinet officer Maine ever had. Shortly after this he was sent, by President Polk, to Mexico, as Commissioner, with powers of envoy extraordinary and minister plenipotentiary, to exchange ratifications of the treaty with Mexico. He was thus associated with the famous treaty of Guadalupe Hidalgo, by which California became part of the United States. His term of service in the Supreme Court covers the most stormy period of our National History. It was a period, too, when the party opposed to the political views of Judge Clifford was in power. During this trying time his patient industry and resolute purpose to do right, made his services most memorable. As the oldest Associate Justice he became president of the Electoral Commission of 1877, to settle the contest for the Presidency between Hayes and Tilden. In doing that unique duty, he conducted the proceedings with marked ability and dignity and with entire impartiality, in spite of his unquestioned predilection in favor of the cause of Mr. Tilden for the Presidency.

Maine lawyers are most interested in Judge Clifford's labors in the Federal Court in this Circuit. From the authority of his associates in the Circuit it appears that at the time of his appointment and when he was assigned to the work of the First Circuit, the District Judges were all well advanced in years; most of them had slight acquaintance with the law work of the Circuit, and could afford the Judge but little relief in disposing of the matters pending before the Circuit Court; hence, for many years, the duties of the Circuit devolved largely upon him; so that, after a long and wearisome term at Washington he was generally obliged to devote his entire vacation to Circuit duties. His labors were so effective that, upon questions of practice, other Cir-

cuits looked to this as a guide. His New England companions in the court point out that, although Judge Clifford had never acted as counsel in the trial of either an admiralty or a patent cause, before he came to the bench, yet he made himself a complete master of both of these branches; and for many years the Supreme Court regarded him as an authority upon them, as well as upon all questions of practice.

His decision in *Goodman v. Simonds*, 20 Howard, 342 (his first opinion) made him the leading authority of the court on questions relating to negotiable paper. Justice Swayne, in reviewing the opinion said that it was absolutely exhaustive and conclusive, both on principle and authority. Judge Fox observed that "it may well be doubted if a tribunal in any country has ever been favored with a judge who, for the same length of time, has devoted so many hours to the laborious duties of his office, as has Judge Clifford."

Judge David Davis said: "Investigation to Judge Clifford was a labor of love, and industry was a recreation." Jefferson's statement respecting Washington was applicable to Nathan Clifford: "His mind was slow in operation, being little aided by invention or imagination, but he was sure in his conclusions." His associates upon the court leaned upon him more and more; and the public learned to have entire confidence in his conclusions. It is always interesting to observe the little mannerisms that have characterized strong judges. Much has been written of Judge Lemuel Shaw's peculiar expressions. Judge Putnam used to be rallied upon his overworking of the word "disenable." Throughout a number of volumes Judge Clifford's opinions are marked by the persistent omission of the definite article; this seems an affectation, but it never weakened his ample, dignified style. There was a court-room tradition that a brother justice, in the conference room, moved the humorous resolution that "Brother Clifford be encouraged to use the definite article in moderation."

James W. Bradbury, a lifelong friend of Judge Clifford, in an address to the Historical Society in 1881, said of him:

“He loved legal study and investigation. To this he applied himself with the energy of a devotee. He was wedded to the philosophy of the science of which the legal profession is the student and the exponent. He liked to trace the history of judicial decisions down through successive years and examine the manner in which the great minds of the law regarded the operation of those principles that affect the relations and rights of men. He liked to follow out these fundamental principles as they appeared in their decisions, and to imbue himself with their spirit.

By his power of application, his unparalleled ability for continuous labor, and his conscientious devotion to duty, he was enabled to accomplish his grand life-work and achieve the character of a great jurist. * * * *

His opinions and decisions upon the circuit, contained in the four volumes of ‘Clifford’s Reports,’ edited by his son, William H. Clifford, Esq., are evidence of the mental character, the ability and great legal research and learning of the judge. They embrace decisions upon admiralty, marine, and commercial subjects of prominent importance; and our patent laws received his special attention, and were expounded with the skill of a master in that department of jurisprudence.

His opinions as a member of the Supreme Court are distributed through forty-one of the volumes of the Reports of that court. They are numerous as well as long and learned, characterized by exhaustive research and ability, and a thorough examination of all the authorities bearing upon the questions under consideration.”

Judge Clifford pervaded a court-room with the atmosphere of dignity and deliberation. In describing Rufus Choate's manner in the Senate, Edward Everett said: "He was one of the few whose very presence in a public assembly was a call to order." Judge Clifford's presence in court was such a mandate. The younger members of the profession were treated by him with marked kindness and consideration. As he drew near the close of his life this kindly habit was even more marked. On one occasion I heard him address applicants for admission to the Federal Court. These young men could never forget the impressiveness with which he reminded them of the duties before them; and that they were looking out upon the morning of life, while he was passing into the evening. He left his enduring impression upon the greatest court in the world. His ability was characterized by learning, integrity and enthusiasm for his profession. His name will always hold a respected place in American judicial history, and reflect high honor upon his State.

I have said that this address of mine is a book of beginnings. I am afraid you will think it a story without end. It has given us, a look, however, not only at the annals of men, but the growth of the common law. We have traced the common law in the lives of Maine lawyers for three hundred years. We have seen it, in the beginning, on Richmonds Island and, a little later, in an English Court held in a humble dwelling house in Saco. It was sown in weakness; it is raised in power. In this space only a glance is possible. But if there is anything in this address to inspire the Maine Bar with a desire to be better acquainted with the history of the early Maine lawyers and judges, especially in the Federal Courts, I shall be content.

(Prolonged applause.)

THE PRESIDENT: Gentlemen: In the one hundred years past many distinguished gentlemen have held the honored position of Chief Justice of the Supreme Court of Maine. None however has added greater strength or dignity to the Court than our present Chief Justice, who will now address you upon "A Century of the Supreme Court of Maine,"—Chief Justice Cornish.

(Prolonged applause, the audience rising.)

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Julie Rowe, Executive Director, Maine Bar Association

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