Lancaster Intelligencer.

FRIDAY EVENING, JAN, 30, 1880.

In Court.

In answer to Judge Patterson's rules on the editors of the INTELLIGENCER to answer for contempt, and to show cause why they should not be disbarred, they appeared before the court this morning at 10 o'clock and answered through their counsel, Rufus E. Shapley, esq., of the Philadelphia bar, who read their answer and made an argument of more than two hours' length in support of the propositions which the answer maintained. These in brief were that defendants were called to answer on one of four grounds; either for a contempt committed in court or out of court, or for professional misconduct and a breach of fidelity in court or out of court.

If the charge was contempt in court the respondents said that they had committed none, having promptly and courteously obeyed the judge's summons and respectfully and truthfully answered his interrogatories, even though they were not in a legal proceeding.

If the charge was based on a publication out of court, the act of 1836 declares that courts shall have no power to punish for contempt in such case.

If the charge is for professional misconduct in court none occurred.

If it is alleged that a breach of fidelity was committed in publishing a libel on the court, such accusation, involving questions of fact and motive, must be submitted to trial by jury, under the law of the land, and the court is not competent to determine it until after such constitutional trial.

The propositions were argued and numerous authorities to sustain them cited in a speech which the bar and all who heard it seem to pronounce learned, eloquent, dignified, respectful and forcible.

Judge Patterson took the papers and reserved his decision.

The Tyranny of Corporations.

Mr. Gowen tells a committee of Congress that the heart of the people needs to be changed before they can be freed from the tyranny of discriminating corporations, and that the judiciary is an inadequate bulwark against the danger. Mr. Gowen was testifying before the committee which has in charge the bill imposing restrictions upon the powers of railroad corporations to discriminate between their customers in their charges for transportation, and seemed to be of the opinion that the control of the evil must be left to the states, and that even there it could not be controlled by statute, owing to the vast power of the corporations which would contaminate the fountains of justice if it failed to subsidize the Legislature. We are altogether in a bad way according to Mr. Gowen's idea, and there is more truth than poetry in it. Judges are mortal, and many of them are very poor specimens of mortality. The title of judge is not a guarantee that the man who wears it honors it. If the "heart of the people" of which Mr. Gowen speaks was all right and the head likewise, the men who are made judges would be worthy of our confidence. It is the people who elect; and if the people were fit for their business the judges would be fit for theirs. "The people who elevated us to the bench," as Judge Patterson says, certainly expect him and his fellow judges to administer the laws with wisdom and impartiality. But it is eminently a case of great expectations very inadequately satisfied. And in many more cases than that of Judge Patterson. Our supreme bench of Pennsylvania is by no means illustrious in all its parts, and it does not surprise us to have Mr. Gowen say that he has heard it threatened to its face with the power of the Pennsylvania railroad. We all know that this power exists and is unscrupulously used in legislation. It is but now that the commonwealth is prosecuting in Harrisburg the agents of this company who sought to debauch the Legislature and secure the passage of a bill granting the aid of the state to the county of Allegheny to pay four millions of damages alleged to have been occasioned by the riots, though now it is announced that the railroad company has consented to receive less than two millions of dollars from the county on account of its losses, which far exceeded in amount the aggregate of those of those of all the other sufferers. There was a large sum in this four million appropriation laid aside for the use of the men who sought to secure the state's appropriation. The state was not only to pay the damages, but also the men who forced her to the expenditure.

In this case the heart of the people was too stout for the corporation; and now that the judiciary is called upon to punish the offenders it remains to be seen how strong its courage will be for the work. If Mr. Kemble is punished for his admitted wrong we may conclude that Mr. Gowen despairs too much of the judiciary; and if Mr. Kemble finally gets past the gubernatorial pardon into the jail he has so richly earned, we may have confidence that the heart of the people is approaching the state which is needed to secure from its servants the execution of its will. It is certainly true that eternal vigilance, is the price of a people's liberty, and they must have the needed intelligence and courage to exercise such vigilance or they will become the prey of the spoiler. Their greatest danger now lies in the vast aggregations of the capital of corporations into the control of a few hands. One of the chiefest instruments for their oppression which the cupidity of railway corporations drives them into using is that of discrimination in freight. It amounts to a tax levied by the power of the state upon its citizens unequally, so that one is given advantages while the other is ruined. It does not matter much to the injured that the state levies the tax indirectly through the corporation it has created and clothed with the power. The fact that the power exists and is used is sufficient to show that it should be taken away. The practical difficulties attending legislation upon the subject, though great, are certainly not irremediable. Congressional legislation can do away with part at least of the trouble, and the major part; state legislation can finish the work. It cannot be that intelligent and honest statesmanship will not find a remedy for a crying evil that is recognized as such on every hand, and even by the corporations who inflict it.

WE have no objection to the Philadelphia *Press* taking a contrary view of the law in contempt cases from that which we hold, but it should be careful not to misstate the fact on which the proceedings in contempt are based. This journal did not say nor intimate that Judge Patterson had been a party to the prostitution of the machinery of justice. What it did say was that as "all the parties implicated, *as well* as the judges themselves, are members of the Republican party, the court is unanimous—for once—that it need take no cognizance of the imposition practiced upon it, or the disgrace attaching to it."

PERSONAL.

Senator BLAINE will be fifty years old to-morrow.

SHAMUS O'BRIEN, of Baltimore, made an unsuccessful attempt to commit suicide the other day.

A quaint little girl who is playing *Buttercup* in the children's "Pinafore," in England, is a near relative of the late CHARLES MATHEWS.

Sir JOHN ASTLEY, the patron of athletic sports, sings a good song, and recenlty at a village concert gave "The Englishman" and "Lily Dale" with fine effect.

The mysterious disappearance of Dr. S. DANA HAYES, the eminent chemist and state assayer of Massachusetts, is the latest sensation that is agitating Boston.

Colonel NELSON TRUSLER, United States district attorney for Indiana, fell dead in the opera house in Indianapolis, last night, of apoplexy.

Mr. ALGERNON SARTORIS, who married Miss Nellie Grant, is at the Brevoort, New York. Mrs. Sartoris, whose death, it will be remembered, was announced incorrectly a few months ago, did not accompany her husband in his visit to this country.

Mrs. LYDIA A. FORNEY, wife of Wien Forney, Harrisburg, was nominated but declines being a candidate for school director. She says were there a lady nominee from other wards she would cheerfully accept the position. Mrs. Forney is a native of Lancaster and has many friends in this city.

Ex-Minister WASHBURNE positively denies that he stands in any other relation to the presidential canvass than that of a supporter of Gen. Grant, and affects to be so sure that Grant will be tendered and will accept the nomination that any talk of possibilities and contingencies does not concern him in the least.

RICHARD FROTHINGHAM, the veteran historian and journalist, died at his residence at Charlestown, Mass., last night, at ten o'clock, of acute pneumonia, aged 68. He was the distinguished historian of the "Battle of Bunker Hill" and the "Siege of Boston," was formerly a Democratic politician and one of the proprietors and editors of the Boston *Post*.

At the residence of the bride's parents, in Philadelphia, last evening were married ANNIE M. FITLER, the eldest daughter of Edwin H. Fitler and CHARLES H. HOWELL, eldest son of Henry C. Howell, formerly sheriff of Philadelphia. The marriage ceremony was performed in the drawing room at seven o'clock, by Bishop Stevens. The bride's dress was of white satin and white brocade, trimmed with pearls and duchesse lace and lace veil. Her jewelry consisted of diamond ear-rings, a present from the groom, and a diamond breastpin, a present from her aunt, Mrs. Joseph Moore. Nearly one thousand invitations had been issued, and among the guests were many of Philadelphia's most distinguished citizens.

LATEST NEWS BY MAIL.

The Netherlands have recognized the independence of Roumania.

An universal exhibition of arts and manufactures will be opened in Brussels on the first of May next.

Rev. J. M. Tower committed suicide at Fairbault, Minn., yesterday. He leaves a wife and six children in Illinois.

It is announced that the German government intends to propose a tax on all persons who are exempt from military service.

Joseph Kinkenberger, aged 23 years, a resident of York, who had freighted his way in from Mansfield, Ohio, was killed by the cars at Harrisburg yesterday.

George Pintard, while mounting a scaffold at Mount Holly, N. J., yesterday was seized with vertigo and fell to the ground, breaking his neck.

James Anderson, an undertaker of Dover, N. J., was killed by a train while walking on the railroad track at that place yesterday morning.

The trouble between the white and black laborers in Shenandoah county, Virginia, is ended, and the military sent there have returned home.

The Saunders House, and several stores, at Plattsmouth, Neb., were burned yesterday morning. Loss, $50,000. It is believed the fire was the work of an incendiary.

The third trial of Mrs. Smith and Bennett, charged with the murder of the former's husband in Jersey City, is drawing to a close, counsel now being engaged in "summing up."

At Whitehall station, of the Lehigh Valley railroad, yesterday morning Ella Shaffer, aged about seven years, had her foot caught in the frog of the railroad track and was killed by a passing passenger train.

At New Orleans, yesterday, the district attorney filed a complaint against the principals and seconds in the Burke-Hearsey duel. The principals were held each in $500 bail, and the seconds in $250. Under the state law the penalty for fighting a duel is $2000 fine and two years' imprisonment for the principals, and $100 fine and one years' imprisonment for the seconds.

Francis P. Hughes, a young man living at 325 East Thirty-fourth street, New York, while intoxicated in Brooklyn, on Wednesday night, stopped at the peanut stand of Giacomo Baylicli, an Italian, for a cigar light, when he staggered against the Italian, and in return was dealt a blow on the head with an iron nut cracker, receiving probably fatal injuries. Baylicli was arrested and Hughes was taken to a hospital.

At New Orleans, yesterday, the suit of Schmidt & Ziegler against R. G. Dun & Co., mercantile agents, resulted in a verdict of $1,000 for plaintiffs. It appears that Dun & Co. rated an irresponsible commercial firm very high, and failed to inform the plaintiffs, when the latter asked for a special report; that the agency's information was obtained from the members of the firm themselves. Relying on Dun & Co.'s report, plaintiffs sold a bill of goods on short time to the firm in question, who failed to pay for what they bought. Hence the suit.

THE WAR OF FACTION.

The Rules the Party.

Examiner Bull Ring Organ is in a bad Humor.

The "rules of the party" were carried out in letter and spirit, as interpreted by *precedent*. The rules require that "candidates for the various *offices* shall be *nominated* by a direct vote of the members of the Republican party." It has never been claimed that the position of delegates to a state convention is in any sense an "office." When their election did not involve the holding of a special primary election delegates have been elected at the time of nominating candidates for the several offices. In 1876 the delegates to the state convention were elected by the county committee, and again in 1878, and in both instances the state convention met before the usual time for nominating a county ticket. It has not been the custom to hold a special primary election, only for the purpose of electing delegates to the state convention. It is about time this falsehood was nailed, that any "rule" of the party was "not carried out" in the election of the delegates by the county committee. No voice in the committee was raised against the right to elect. In 1878 the "Hog Ringers" indorsed and approved it. In 1880, if they had been able to control the committee, they would have taken fiendish delight in using the committee to put a full delegation of "swine" into the state convention. There is not one of them, who gives an honest answer, that does not admit it, and has done so every day since the call was issued for the state convention.

The *Times* and *Press* are only too ready to re-echo all the falsehoods and slander the INTELLIGENCER and its aid—the *Era*—grind out in Lancaster, and because they know we rate them at their true value, and do not care to take the time and space to contradict them, they keep on repeating them.

An Impudent Usurpation.

Philadelphia Press.

The Lancaster *Examiner* denies that any "rule" of the party in Lancaster has been violated by the refusal of the county committee to order a primary election for the choice of delegates to the state convention, and says that the "other side" would have done the same thing if it had had the majority of the committee. With the quarrel between the two factions in Lancaster the *Press* has no part. It merely insists that a county committee ought not to have the power which the Lancaster county committee exercised, and that the people, by direct action, should have it. In ordinary cases the voters might not care for the privilege. But when a Republican nomination for the presidency is more or less involved, and great public interest attaches to the act, the county committee which conscientiously and intelligently grasps this power belonging to the people and which defiantly exercises it, is guilty of an impudent usurpation. It is just such tyranny which had raised up an army of scratching protesters of 20,000 in the state of New York. Every true Republican should frown upon practices which are calculated to breed dissension in the party, to cause just resentments and to weaken general confidence in its management. The *Press* believes in the rule of the people composing the party, and not in the rule of any of the machinery of organization. And under all circumstances it will maintain the right of the individual voter against the usurping and self-seeking placeman.

Just Like Him.

Philadelphia Times.

The Republicans of Lancaster county will hardly get much real comfort out of the resolution slipped through the county committee to allow them to instruct the Chicago delegates at a primary election in May. The able chairman of the county committee has such a distrust of the people and cares so little what they think of things that it would be just like him to arrange to have no primary election in May.

HAYT REMOVED.

Inspector Hammond Making a Confession and Then Falling with Apoplexy.

Indian Commissioner Hayt was removed from office yesterday by Secretary Schurz. Late in the afternoon Mr. Schurz entered the commissioner's office and said: "Mr. Hayt, you must go." At the same time he handed him the following letter:

"JAN. 29, 1880.

"*Hon. E. A. Hayt, Commissioner of Indian Affairs:*

"It has become my duty to inform you that the public interest demands a change in the Commissionership of Indian Affairs, and that your further services in this office are dispensed with.

"Very respectfully,

"C. SCHURZ."

A committee of the board of Indian commissioners has been investigating for some time charges against Mr. Hayt, the specific charge being that he failed to prosecute a corrupt Indian agent, one Hart, because that agent had interested friends of the commissioner in a silver mine about a year ago. Inspector Hammond went to the San Carlos agency, in the southwestern part of Colorado, and made a report charging Hart with all manner of corruption. About this time Hart sent Commissioner Hayt a specimen of ore from a silver mine which was on the reservation, but which mine, by a convenient use of surveying tactics, was placed outside of the reservation. Inspector Hammond fell into line, and did not present all the facts to the department, but did go to Jersey City, and in the building where Hayt's bank, the one whose failiure brought about Hayt's indictment, was located, found relatives and friends of Hayt, who embarked in the mining scheme. General Fisk had a letter of Hammond's to Hart, granting the latter immunity. Hammond declared the letter a clever forgery, and otherwise perjured himself before the commission.

Yesterday morning Hammond approached Gen. Fisk in the corridor of the Riggs house and asked for a few moments' conversation with him. They retired to the reading room, and after asking a few questions, Hammond said that he was satisfied he had been made a dupe of by others. He then admitted that the letter produced by Gen. Fisk was genuine.

Hammond was intensely excited while making his confession, and as soon as he had finished speaking he dropped to the floor in a paralytic fit.

He was at once taken to a room in the hotel and he slowly recovered. When able to speak he sent for Senator Plumb, who is his friend, and they talked together for over two hours. It is supposed that Hammond made a full confession of his case to Plumb.

Other charges against Mr. Hayt are in Gen. Fisk's possession, which would have been presented had he not been removed.

Mr. Hayt was personally one of the most unpopular men in the service of the government. He had scores of enemies among representatives and senators, who said that they visited his office with extreme reluctance because of the discourteous treatment they almost always received at his hands.

The Curtin-Yocum Case.

Contrary to the expectation of ex-Governor Curtin's friends, there will be no election for congressman in the Twentieth district on the 17th of February. The sub-committee of the House committee on elections has submitted a majority and a minority report to the full committee, but action thereon has been postponed till next Tuesday. The majority report recommends that the seat be declared vacant, but even if the House should adopt the report it would be impossible to comply with the provisions of the law relating to special elections for congressmen before the time of holding the regular borough and township elections.

SUICIDE OF A FARMER.

Prostrating Himself on the Track Before an Approaching Train.

A well-to-do farmer named John H. Soper, who lived a few miles from Frederick, Md., committed suicide without any apparent cause, on the Baltimore and Ohio railroad near Sandy Hook. Soper was run over by a freight train at about dusk, and when picked up life was extinct. It was supposed that he had been accidentally struck, until the statement of a 10-year-old son of the deceased man showed that Soper had deliberately placed himself in front of the approaching train and awaited death. The boy said that he and his father, who were visiting friends in the neighborhood, had gone out walking along the railroad track, Soper conversing upon various topics apparently in the best of humor. Toward dark they turned homeward, and soon afterward he heard the whistle of the approaching train. Soper at this time, according to his son's statement, exhibited great excitement, and exclaimed: "Charley, you run ahead and tell them to have supper ready." The boy obeyed, but when he had gone a few hundred feet he chanced to look back and was horrified to see his father stretched across the rails directly in the path of the train. Screaming loudly, he ran back toward his father's prostrate form, but getting his feet tangled in some undergrowth beside the rails, he fell headlong into a ditch, without being noticed by the engineer of the train, which at the next instant dashed by. The child scrambled out of the ditch and approached the body of his father, which was horribly mangled. Giving one look at the ghastly remains, he ran across the fields, wildly screaming for assistance.

FREEMEN DECLARED INSANE.

The Second Adventist Who Killed His Child After a Vision.

Charles Freeman, the Second Adventist, who killed his child in Pocasset, last May, was yesterday arraigned in court, and it being testified by medical experts that the man was insane, he was remanded to jail to await the May term of the court, when, if his condition remains the same, he will be sent to the lunatic asylum. Freeman still persists in his assertion that that the sacrifice of his child was a just and proper act and was demanded of him in a vision. It will be remembered that, after a prolonged revival in his sect, he awoke his wife in the early morning of May 1 last and told her that he had seen God in a vision, who had required of him that, as Abraham had obeyed the call to sacrifice Isaac, so should he offer up his little daughter Edith as a human sacrific. Then, after both had prayed, the mother went back to her bed and Freeman sought a sharp knife. The five-year-old daughter slept in the next room. Bending over her as she slept, Freeman drove the knife through her heart. She opened her eyes and, as the father afterward freely related the circumstances, cried out feebly "Oh, papa!" and died. Freeman lay down beside his wife again, and both slept peacefully till morning. He confidently expected that the child would rise from the dead on the third day. Though his neighbors of the same sect appear to have known of the murder, none of them informed the authorities, and it was only by accident that the crime was disclosed.

STATE ITEMS.

A six-year-old girl named Shaffer was killed by a Lehigh Valley railroad train at Whitehall, yesterday.

In Alba, Bradford county, Mrs. John Reynolds, aged 75 years, died on the 55th anniversary of her marriage. Her husband's death had occurred three days previous.

Bishop Tuigg has issued a circular to the Catholic clergymen of the Pittsburgh diocese, directing them to take up a collection for the benefit of the sufferers in Ireland on Sunday, Feb. 8.

LOCAL INTELLIGENCE.

COURT OF COMMON PLEAS.

Before Judge Patterson.

In the case of John K. Barr and Hattie Barr, for the use of John K. Barr, the jury rendered a verdict in favor of the plaintiff for $1,000.08.

Before Judge Livingston.

In the case of Levi Sensenig vs. John Mentzer, the plaintiff suffered a non suit.

In the case of Elias E. Baer vs. Martin Bear, Jacob A. Bear, Samuel Bear, Amos Bear, Laban Ranck, for Amelia Ranck and Mary Weidler, issue of *devisavit vel non*, to try by a jury the validity of a certain paper or writing, purporting to be the last will and testament of Wm. Bear, deceased, a verdict was taken favor of the defendants.

Admitted to the Bar.

Rufus E. Shapley, of the Philadelphia bar, was admitted to practice in our courts.

Pigeon Shooting.

Yesterday afternoon several gentlemen of this city, took a drive out the Millersville pike at far as the first toll-gate, to witness a pigeon shooting match between S. Clay Miller and John Snyder. The match was 15 birds each, 21 yards rise, 80 yards bounds. Harry Gundaker acted as umpire. The score was as follows:

Miller.....101101111100011 1—11
Snyder....100110011011111—11

There being a tie and the party having no more birds it was resolved to shoot off the the tie at some other time. Each of the men hit three of the birds marked missed, but they fell outside of the bounds.

Aunt Polly Basset.

Last evening Aunt Polly Basset gave an entertainment in the opera house to an audience which was not remarkable for its size. The entertainment was similar to the one given before and seemed to please. Miss Belle Norton, a remarkably clever vocalist, who has joined the company recently, sang a number of popular songs of the day and assisted to a great extent in making the entertainment enjoyable.

Accident.

George Nees, of Manheim, while on a visit to his son near Brickerville, on Wednesday afternoon, happened to be standing on a cellar door while in conversation it gave way, and in falling against the remaiuing portion of the door fractured several of his ribs, besides receiving other injuries. He was taken home, medical attendance procured, and he is now confined to his bed.

Drunk and Disorderly.

Thomas Thompson was sent to jail for 30 days this morning by Alderman Barr, for being drunk and disorderly. George Jones got a ticket of admittance good for 10 days to the same institution.

Lucky Lancaster.

Philadelphia Times.

The Democrats of Lancaster have concluded to renominate Mayor MacGonigle, and the city may consider itself very fortunate if it always gets as good an executive officer as the present mayor.

BEFORE THE COURT.

The Case of Contempt and Disbarment.

At 10 o'clock this morning before Judges Patterson and Livingston was heard the case of Messrs, Steinman and Hensel, editors of the INTELLIGENCER and members of the Lancaster bar, upon whom Judge Patterson had served rules to answer for contempt of court, and to show cause why they should not be disbarred.

The bar was densely packed with attorneys, every seat being occupied and large numbers being compelled to stand. The court room was filled interested spectators.

On motion of H. M. North, esq., Rufus E. Shapley, esq., of Philadelphia, was admitted to practice before the courts of this county.

At 10 o'clock Judge Patterson stated that the hour had arrived at which Messrs. Steinman and Hensel were to answer the rules served on them.

Mr. Steinman rose and said he and Mr. Hensel were prepared to answer through counsel.

Judge Patterson said that was not what was wanted; the answer should be in writing and sworn to.

Mr. Shapley said he held in his hand the sworn answers of Messrs. Steinman & Hensel. They had been printed, and if it pleased the court he would read the answers, or was prepared to argue the case, as the court should direct.

Judge Patterson said the answers should be read before the argument commenced.

Mr. Shapley then read the answer to the rule made by Mr. Steinman, and stated that Mr. Hensel's answer was in the same words, excepting the name of respondent.

The answer was as follows:

And now, January 30th, 1880, the said Andrew J. Steinman comes into court and for answer to the above rule to show cause why he should not appear and answer for contempt, respectfully says:

1. That the said proceedings are irregular and said rule was improvidently granted, because said rule was not entertained upon a complaint, supported by affidavit, setting forth the precise charges against him, but appears to have been entered by the court of its own motion, for matters not occurring in the presence of the court and of which the court had no judicial knowledge.

2. That the publication set forth in the prefatory part of said rule was made out of court in the LANCASTER DAILY INTELLIGENCER, a newspaper published in the city of Lancaster, by the respondent as one of the publishers of the said newspaper, and was made in good faith, without malice and for the public good, of and concerning a case of great public importance which had been, before the writing of said publication, fully ended and determined, and in which the respondent had no interest as an attorney; and not of and concerning any case depending and undetermined in this honorable court; and therefore the respondent is not answerable, under the law, for a contempt by reason of said publication.

3. That the proceedings recited in the prefatory part of said rule as having taken place in the presence of the court did not occur in any legal proceeding in said court and were *coram non judice*, and the respondent is not answerable for any contempt by reason of any of said answers made in said recited proceedings, or by reason of his declining to answer any of the said questions propounded to him by your honorable court; but the said respondent says that having been sent for and interrogated as aforesaid by said court, he answered said interrogatories respectfully and truthfully, and was guilty of no contempt in the said recited premises.

Wherefore the respondent respectfully submits that the said rule to show cause why he should not appear and answer for contempt should be discharged.

And for answer to the above rule upon him to show cause why he should not be stricken from the list of attorneys for misbehavior in his office of attorney of this court, respectfully says:

1. That the said proceedings are irregular, and said rule was improvidently granted because said rule was not entered upon a complaint, supported by affidavit, setting forth the precise charges against him, but appears to have been entered by the court of its own motion, for matters not occurring in the presence of the court and of which the court had no judicial knowledge.

2. That the said proceeding is irregular, because, if the charge against him be that he published a libelous article in the said newspaper, of which he is one of the publishers, it amounts to an indictable offense, not committed by him in the presence of the court, or while acting as an officer of the court, and therefore he cannot be called upon to answer this rule until he shall have been tried and convicted according to law of said indictable offense; and he respectfully suggests that this court is not competent to determine, in this form of proceeding, that the respondent did unlawfully and maliciously publish, out of court, a libel upon the court, and to hear and determine disputed questions of fact, involving the motive of the respondent and the official conduct of the court itself.

3. That if it be intended to charge him with misbehavior in his office of attorney, by reason of the said recited occurrence in presence of the court, said occurrences did not take place in any legal proceeding in said court, and were *coram non judice;* and the respondent is not answerable in this proceeding by reason of any said answers made in said recited proceedings, or by reason of his declining to answer any of said questions propounded to him by the court; but he says that, having been sent for and interrogated as aforesaid by said court, he answered said interrogatories respectfully and truthfully, and was guilty of no misbehavior in his office of attorney by reason of said recited premises.

4. The publication referred to was not made by the respondent within the presence of the court, or while acting as an attorney and officer of the court, or of, or concerning any case pending and undetermined in said court, but was made by him solely in his capacity as a publisher of a newspaper, out of court, and while acting in good faith, without malice and for the public good, of and concerning a case of great public importance which had been finally ended and determined in said court, and in which the respondent had not, at any time, been in any way employed or interested as an attorney, and which did not in any way involve his professional fidelity to the court; and he is therefore not answerable, as an attorney, for his said act as a publisher of a newspaper; but if he has, in said publication, abused the freedom of the press guaranteed by the constitution of the commonwealth, he is liable to be indicted in the proper forum and is ready to answer before a jury of his countrymen, according to the law of the land, for such abuse of his rights under the law.

5. That the respondent has not been guilty of any misbehavior in his office of attorney.

Lancaster County, ss.

Personally appeared before me, the clerk of said court, Andrew J. Steinman, who, being duly affirmed, declared that the facts set forth in the foregoing answer are true.

[Mr. Hensel's answer was exactly the same, with the change of name.—REP.]

In opening his argument Mr. Shapley said he was bound to presume that the court believed it had been libeled; it would not undertake to hold any citizen responsible for fair criticism of its conduct or character. Personally Mr. Shapley thought the publication complained of reflected rather on attorneys of the court than the court itself, but he was willing for all the purposes of the argument to presume that the court thought itself libelled or even that it was libeled. He also assumed that the court would respect its constitutional oath, and do even justice regardless of interest or feeling, and if a calm review of the law showed it to be wrong rules improvidently granted, would be promptly discharged. Then dividing the subject as the rules divided it, Mr. Shapley considered, first, the rules for contempt, then the rules to disbar for what took place in court and for what occurred out of court; and the following extracts from an elaborate brief printed, and a copy handed to the court, will convey an idea of the line of argument adopted:

Brief of Argument.

First. As to the rule of contempt.

1. There is nothing appearing in the proceedings recited as having taken place in court which can be tortured into anything resembling a contempt of court.

The court sent a messenger, asking the respondents to come into court, and although no complaint had been made against them, no process of the court had been served upon them, and no judicial proceeding was pending, they courteously responded to the message from the court, and respectfully and truthfully answered the interrogatories propounded to them by the court. They were not bound to answer the questions thus extra-judicially propounded, and the court had no power to compel them to do so. But they frankly and respectfully answered that they were editors of the LANCASTER INTELLIGENCER, and, as such, were responsible for the article which the court complained of. The court pressed for an answer to the question, whether they adopted the sentiments contained in the article, to which they made answer, that as editors, and editors only, they were responsible for the article.

The whole proceeding was *coram non judice*.

An attorney has an equal right with every citizen to entertain and express freely, out of court, such sentiments regarding the conduct of a court in a case which has been determined as he may see fit to hold or utter without rendering himself liable to punishment for contempt. And as the court has no constitutional power to compel a citizen or an attorney to avow, or disclaim, in court, sentiments uttered out of court, it would be an abuse of the prerogatives of a court to call before them persons against whom no legal complaint or proceedings are pending and to endeavor to compel them, in violation of their constitutional rights, to make admissions or furnish information against themselves, upon which a criminal prosecution might be founded. As no such power has ever been claimed by any court in which the English language is spoken, it is to be presumed that these rules have not been taken, and that it is not contemplated punishing the respondents for contempt, by reason of what they said, or what they did not say, in the extra-judicial inquiry by the court.

2. That the respondents cannot be punished for contempt for the publication, made out of court, of the article complained of is settled by the act of June 16, 1836.

Secondly. As to the rule to disbar.

1. If the respondents are not guilty of a contempt by reason of anything which occurred in the extra-judicial proceeding in court, still less are they guilty of misbehavior as attorneys. And even if they could be held guilty of a contempt by reason of what occurred in court, such a contempt does not constitute one of the legal causes for which an attorney can be legally disbarred.

2. If their alleged misbehavior, as attorneys, is charged to have consisted in their publishing the article complained of, as it was published out of court and the court could have no judicial knowledge of the fact, this proceeding is irregular, because the rule was not founded upon a complaint containing the precise charges against them and supported by affidavit, and the rules should therefore be discharged.

An attorney's office is his property, of which he can be deprived only for legal causes and according to the well-established rules of law.

Chief Justice Taney, in delivering the opinion of the supreme court of the United States, in *ex parte Secombe*, 19 Howard 9, used this language: "It rests exclusively with the court to determine who is qualified to become one of its officers, as an attorney and counsellor at law, and for what cause he ought to be removed. *That power, however, is not an arbitrary and despotic one, to be exercised at the pleasure of the court, or from passion, prejudice, or personal hostility;* but it is the duty of the court to exercise and regulate it by sound and just judicial discretion, whereby the rights and independence of the bar may be scrupulously guarded and maintained by the court, as well as the rights and dignity of the court itself."

In delivering the opinion of the court in 1835, Chief Justice Gibson, without referring to any authorities, advanced the doctrine, which seems to have never before been ruled in any court in England or America, that a lawyer, who would beat or insult a judge in the street for a judgment in court, or who would attempt to overawe the bench by menace, challenge, or that powerful engine, the press, would be guilty—not of a contempt, but of such a violation of professional fidelity as would justify his dismissal from the bar.

It is necessary to examine his opinion carefully, so as not to fall into the error of supposing that that great judge meant to limit the rights of either the bar or the press to scrutinize the conduct of judges, or to say that a lawyer may be punished professionally for what he did as a citizen, or that an editor, who happens to be a lawyer, may be proceeded against and punished in any other way, than one can be who is not a lawyer. Can his language possibly be misunderstood? He says:

"But the end to be attained by removal, is not punishment, but protection. As punishment it would be unreasonably severe, for those causes in which the end is reclamation and not destruction and for which reprimand, suspension, fine or imprisonment seem to be the more adequate instruments of correction; for expulsion from the bar blasts all prospects of prosperity to come, and mars the fruit expected from the training of a lifetime. * *

And Mr. Justice Field, in *Bradley vs. Fisher*, 13 Wallace, 335 said: "This power of removal from the bar is possessed by all courts which have authority to admit attorneys to practice. It is a power which should only be exercised for the most weighty reasons, such as would render the continuance of the attorney in practice incompatible with a proper respect of the court for itself, or a proper regard for the integrity of the profession. * * * * * * * Admission as an attorney is not obtained without years of labor and study. To most persons who enter the profession, it is the means of support to themselves and their families. To deprive one of an office of this character would often be to decree poverty to himself and destitution to his family. A removal from the bar should, therefore, never be decreed where any punishment less severe, such as reprimand, temporary suspension, of fine, would accomplish the end desired."

The supreme court of California, in a very carefully considered case, to which I shall have occasion again to refer, the case of *Mulford et. al.*, 1 Cal. 143, said: "An attorney, by his admission as such, acquires rights of which he cannot be deprived, at the *discretion* of the court, any more than a physician of the practice of his profession, a mechanic of the exercise of his trade, or a merchant of the pursuit of his commercial avocation. It is true, that, being officers of the court, attorneys are in many respects subject to their orders, but these orders must be the result of some sound and legal, and not of arbitrary and uncontrolled discretion."

As the respondents are charged with having committed an act amounting to an indictable offense—the publication of a libel upon the court—but not committed in the presence of the court or while acting in the capacity of attorneys, this proceeding will not lie, even if the alleged offense constitutes one of the causes for which an attorney can be disbarred, until after their trial and conviction by a jury.

According to all the English and American cases, a rule will not be entered against an attorney who is charged with the commission of an infamous crime, not committed in the presence of the court, or in his office of attorney, until he has been convicted of such offense according to law.

But, assuming, for the sake of the argument, that these objections to the regularity of this proceeding are not well founded, and that the publication complained of is, in fact, a libel on the court, this is not one of the causes for which an attorney can be legally disbarred.

The publication was made by the respondents as the publishers of a newspaper out of court and concerning a case with which they had no professional connection, and was in no sense their act as attorneys of this court.

In England there seem to be but two causes recognized as sufficient to warrant striking an attorney off the rolls—actual malpractice, attended with fraud or corruption, and conviction of an infamous crime.

But the manifest tendency of all recen legislation in this country, and, in fact, of all recent decisions, is to curb and restrict the power of courts in these summary proceeding, to punish for contempts and to disbar attorneys.

In a number of the states of the Union, statutes have been enacted requiring all charges of misconduct against attorneys to be tried by jury, on regular and formal complaints preferred. Such is now the law in Arkansas, in Alabama, in North Carolina, in Indiana, in Missouri, and, I believe, in other states. In Illinois the supreme court alone has power to dismiss attorneys from office, the district courts only having the power to suspend temporarily. In Kansas, when charges are preferred against a lawyer, he is entitled, on alleging that the regular judge is prejudiced against him, to a change of *venue*, or to have a judge appointed *pro tem.*, from the members of the bar, to try his case.

From this examinaiton of the English and American authorities it may be accepted as settled law that a court has no right to expel one of its attorneys unless it is conclusively shown that he has either:

1st. Committed some act of malpractice in his professional capacity which involves the violation of his professional oath; or

2d. Been convicted of some infamous crime; or

3d. Any general bad conduct, or some grossly dishonest acts so impaired his character for integrity as to render him unworthy of public confidence, unsafe to be entrusted with the powers of his profession, and unfit to be continued a member of it.

Does the alleged act of these respondents, under the most unfavorable construction which can be put upon it, fall under any one of these legal causes for dismissal from their office?

Certainly they have not been convicted of any crime.

Certainly it will not be contended that their alleged offence can be brought under the third head, while their guilt or innocence of the charge of libel is legally undetermined, even if it could come under that class at any time.

To hold that a court, whose conduct has been scrutinized by an attorney, may set aside a jury and determine for itself whether the scrutiny into its conduct is fair, or expose the author to "legal animadversion," is to hold a doctrine so dangerous that it would not be recognized as law by the supreme court, or be long tolerated by an enlightened public opinion. If, therefore, that court, in the Austin case held, that a lawyer might be held professionally answerable for *any libel* on the court, it meant he was answerable only after conviction by a jury. If that is the law, it is not applicable to the present case.

But what Chief Justice Gibson evidently meant, was that a court may summarily remove one of its attorneys who, being professionally concerned in a case, endeavors to control judicial action in it, by menace, or challenge, or violence; or who, for a similar purpose, endeavors to overawe the court, or impair its influence, by exciting popular prejudice, through the means of attacks in the public press.

But there must be a professional connection of the attorney with the case in which he seeks to control judicial action or excite popular prejudice.

Does this language admit of any other construction?

"Therefore," he says, "*the motice should be clearly shown to be the acquirement of an influence over the judge in the exercise of his judicial functions*, by the instrumentality of popular prejudice."

And again he says, "it is the *prostitution of it* (the right of an attorney to scrutinize the conduct of a judge) *to impure purposes*, that can bring him into collision with his professional fidelity."

In McLaughlin's case 5 W. & S. 272, the court said, "In Austin and others (5 Rawle 191) it is held that it is a breach of professional fidelity to attack the proceedings of the court, *for impure and improper purposes*, through the medium of the public press."

How could the impure motive and improper purpose which would bring an attorney into collision with his professional fidelity exist, if he had no professional connection with or interest in the case commented on or criticized?

The impure motive must be the motive of the lawyer, not of the citizen, to make the lawyer answerable as such.

There must be a *professional* motive, to make the act a breach of *professional* fidelity. The act must, in some sense, be the act of a lawyer, as such, and not his act as an ordinary citizen. How can there be the professional motive, or professional action, without the professional employment? Mark! it is not put on the ground of *professional unfitness*, but of *professional infidelity*.

And there can be no professional infidelity where there is neither professional motive nor professional action.

The distinction between what is and what is not to be considered as the professional act of attorney has been recognized in almost every reported case, before, or since, the Austin case.

While Mr. Shapley was arguing in regard to the alleged contempt out of court, and the unusual method of instituting the proceedings, Judge Patterson said he had sent for the respondents because of the previous kindly social relations existing between him and them and to give them an opportunity to explain or disavow any intention to reflect upon the integrity of the court.

Mr. Shapley said he was glad to hear that his presumptions were correct, and that the court would not undertake to set a trap to get an attorney to repeat in court what could not be punished as a contempt if committed out of court. And therefore since it appeared no contempt was commit-