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pen." The judge having charged the jury to "leave out of view anything that has been said as to the character of his newspaper, about which there is no evidence before us," it was held that the remarks were not error. (This is an amusing case. Fry was a manager of Italian opera, who had the usual quarrels with his singers; and the comments of the "Herald" were in respect to his conduct therein. The report covers fifty pages.)

In Turner v. State, 4 Lea (Tenn.) 209, a prosecution for larceny, the district attorney told the jury that there was a regular band of thieves in the neighborhood in question; that the defendant was one of them, naming others known to the jury to have been recently convicted; and added: "If the jury fail to convict the defendant in this case, I would not blame the people for taking the law in their own hands." The conviction was reversed on this account. On the other hand, in Scott v. State, 7 Lea, 236, the attorney's remark that "if the juries don't punish the crime, the people will rise up and punish it," was held not material error. And in Northington v. State, 14 Lea, 424, a prosecution for bringing stolen mules into the State, it was held that references to the crimes of Guiteau and Buford were not fatal to the conviction, as those crimes were not facts not in proof, "but only matters of current history used by way of enforcing an argument." So a reasonable amount of historical scholarship is tolerated.

THE PARDONING OF THE ANARCHISTS: IS GOVERNOR ALTGELD LIABLE TO IMPEACHMENT?

By George H. Shibley.

ON the evening of May 4, 1886, in the city of Chicago, a dynamite bomb was thrown into a squad of policemen, numbering one hundred and eighty, whereby seven policemen were killed, and sixty more wounded. In the endeavor to find the guilty party or parties, several arrests were made, and an indictment returned against eight persons, charging them with being participants in a conspiracy having for its object the destruction of the police and militia of the city of Chicago, and that in pursuance of such conspiracy the bomb was thrown which did the killing. At the end of a lengthy trial the jury returned a verdict finding seven of the defendants guilty of murder, and fixing death as the penalty; the eighth man, Oscar W. Neebe, guilty of murder, and fixing the penalty at imprisonment in the penitentiary for a term of fifteen years. The case was by the defendants appealed to the Supreme Court of the State. The judgment was affirmed. The court, in a unanimous opinion of one hundred and sixty-seven pages (122 Ill. 100—267), reviews the evidence and discusses the principles of law which properly govern the case. The findings as to the *conspiracy*, and the defendants' connection therewith, are, in short, as follows: First, that the bomb thrown was made by Lingg, one of the defendants; second, that Lingg was a member of the "International Association," the members of which entered into a conspiracy having for its object "the destruction of the police and militia of Chicago;" third, that all of the defendants were members of the association, and took an active part therein; fourth, that the bombs constructed by Lingg and his associates "were made under the auspices of the International Association, and in furtherance of its objects and purposes;" fifth, the bomb was thrown by a co-conspirator, and in furtherance of the conspiracy. The evidence of this being that the bomb was one made by Lingg (see first finding), and

that on the evening of May 4th Lingg and his associates carried a large number of bombs to a place "known as Neff's Hall," and "that as soon as the trunk was opened and deposited in the hall-way, men came forward and took bombs therefrom, indicating an *expectation* that bombs would be found at that place at that time." The circumstances under which the bomb was thrown, and the discharge of firearms immediately following the throwing of the bomb, corresponded with the plan of attack previously agreed upon by the conspirators; the court saying: "If a bomb had been thrown into the station itself and the policemen had been shot down while coming out, a part of the conspiracy would have been *literally* executed just as it was agreed upon. It could make no difference in the guilt of those who were parties to the conspiracy that the man who threw the bomb and his confederates who fired the shot waited before doing their work until the policemen in the station had left it and had advanced some three hundred feet north of it."

The findings of the Supreme Court as to the *fairness of the trial* are as follows: First, that a juryman accepted by a defendant while he has unused peremptory challenges estops him from complaining that such juror was incompetent (the first eleven jurymen were accepted by the defendants while they had unused peremptory challenges); second, that the twelfth juror (who was by the court accepted after the defendants' peremptory challenges were exhausted, and after a challenge by them for cause was overruled) was a competent juror.

The two last-mentioned findings were, by writ of error, carried to the Supreme Court of the United States, and by it unanimously affirmed (123 U. S. 131, 168).

Before the time set for the execution of the condemned men, Governor Oglesby commuted the sentences of Fielden and of Schwab to imprisonment for life; there were hanged defendants Spies, Engel, Fischer, and Parsons, Lingg having killed himself by holding a bomb in his mouth and exploding it.

On June 27, 1893, Governor Altgeld, in the exercise of the power conferred by the Constitution of the State of Illinois in the words, "The Governor shall have power to grant reprieves, commutations, and pardons, after conviction, for all offences," gave the imprisoned men their liberty, giving, as his reasons for so doing: First, that *the State failed to show that the prisoners had committed a crime;* second, that "*the trial was not fair.*"

It is remarkable that the reasons assigned by the Governor, in a paper of at least twelve thousand words, are not that the circumstances of the case call for *mercy*, but that the pardoning power is exercised that *justice* may be done; in short, that the judicial Department of government imprisoned unjustly those who are pardoned, and judicially murdered those who were hanged. Two questions are by this pardon and the reasons assigned brought prominently forward: First, were the so-called Anarchists unjustly condemned? Second, Is the Chief Executive of a State, under the power to *pardon*, authorized to review the facts and the law whereby a prisoner is by the Judicial Department of government condemned, and declare officially that the duly constituted courts of justice are dispensing injustice?

The first question is answered by the findings of the Supreme Court of the State and of the United States, as above quoted, together with the fact that no *newly discovered* evidence is brought forward which tends to disprove the facts found by the jury to be true. Governor Altgeld, it is true, quotes an affidavit which relates to the action of a special bailiff who served the *venire*; but as the first eleven jurors were accepted by the defendants, and the twelfth was by the Supreme Court of the State and of the United States held to be a competent juror, the affidavit does not show that the defendants did not have a fair trial; it follows that the Governor's argument is

fallacious,— an untruth, — a fact which he must have known, he having been a circuit judge. Other affidavits are quoted, not as being in their nature newly discovered evidence, but as tending to prove a theory which the Governor advances to the effect that the bomb was thrown by a personal enemy of Chief Inspector Bonfield. This evidence is, by well-recognized principles of justice, entitled to no weight

The second question is an important one; if allowed by our form of government, it permits the Chief Executive to officially brand a *co-ordinate* department of government as being corrupt, without first giving the accused parties the right of a trial, and the bringing forward of proof to sustain the correctness of their position. The facts are that the Constitution of the State provides that "the Governor and all civil officers of this State shall be liable to *impeachment* for any misdemeanor in office." It also provides that, "The powers of government of this State are divided into three distinct departments, — the Legislative, Executive, and Judicial, — and no person or collection of persons, being one of these departments, *shall exercise any power properly belonging to either of the others*, except as hereinafter expressly directed or permitted."

The Judicial Department is given the power to *interpret* the law which the Legislative Department enacts, and *apply the law to the affairs of the inhabitants* whenever a case is properly brought before it; in other words, to administer justice, — redress wrongs.

The Governor is given the power to "*pardon after conviction;*" in other words, show mercy, forgive, remit the punishment inflicted by the Judicial Department. This power is subject to no restraints, but it does not confer upon the Governor authority to interpret the law in a case *where the Supreme Court has interpreted it*, or to *apply the law* to the affairs of an inhabitant in a case *where the Supreme Court has applied it*. The Anarchists' case had become *res judicata*, and therefore could not properly be questioned by the Executive Department. If the Justices of the Supreme Court of the State have violated their oaths, they are liable to impeachment; but *until* such time as the interpretation of the law, as made by the Supreme Court of the State, is by it reversed, or reversed by the Supreme Court of the United States, or repealed by legislative action, it is *the law of the land*, which the Governor in his oath of office has sworn to uphold and to execute. For example, an ambiguous statute is interpreted by the Judges; when they have ascertained and announced the meaning which the Legislature intended to convey, the statute as interpreted is the expression of the legislative will, and therefore the law which the Governor is to uphold and to execute; for him to re-interpret the ambiguous statute is for him to say that he will not be bound by the legislative will, — that he acknowledges no co-ordinate department of government, and therefore that he is Governor, Legislature, and Judge.

Governor Altgeld, in declaring officially that "it is here that the case for the State failed," and "the trial was not fair," has, the writer believes, exercised a power properly belonging to the Judicial Department of government. If the Governor has exercised a power prohibited to the Executive Department, he has committed a misdemeanor, and is, therefore, liable to impeachment. (See constitutional provision, *ante*.)

The object of impeachment is simply to remove an unfit person, and to set the seal of disapproval upon unauthorized acts. That the seal of disapproval should be set upon the statement to the effect that the Anarchists who were executed were judicially murdered by the State, is evidenced by the many public utterances since made, among which are the following: Herr Most has proclaimed, "We must have a reckoning with this blood-sucking crowd!" A club in Chicago, on the Sunday following the pardon, passed a resolution of which the fol-

lowing is a clause: "*Whereas*, The records show that police-captains, bailiffs, and judges anarchistically violated established precedent and justice in imprisoning those Governor Altgeld recently released." And the editor of the Grand Forks "News" (N. D.) finds solace in Altgeld's assault upon the Judiciary by saying: "He shows that the man who threw the bomb was never found, and that there was no way of legally connecting the men who were prosecuted, with the bomb-thrower. In fact, the Governor makes out a clear case of murder and conspiracy against Judge Gary and the Chicago police that could not have been more strongly fortified, or more truly professed by the most radical Anarchist."

There is no great cause for complaint that three misguided men who now doubtless see the error of their way are pardoned; certainly the Governor is clothed with absolute power to pardon; but when he in exercising the pardoning power — the remission of a penalty inflicted by a court of justice — usurps judicial powers, and in his official capacity declares that the Supreme Court of the State and of the United States have affirmed the sentence of men who have not committed a crime, then it is that society must, by its duly constituted machinery, brand as untrustworthy such utterance, — untrustworthy because, in addition to its being a usurpation of power, it is the passing of judgment by one man without the presentation of both sides of the case, or the assistance which the argument of counsel gives.

LONDON LEGAL LETTER.

London, Sept. 9, 1893.

I MENTIONED in a former letter the vacancy that had occurred in the professorate at Oxford, through the resignation of the Chair of Civil Law by Mr. Bryce, now Chancellor of the Duchy of Lancaster. After much delay the Government made an appointment which occasioned great surprise in every quarter; they selected Professor Goudy, the occupant of the Civil Law Chair in the University of Edinburgh, a Scottish advocate, who had not even been educated at Oxford or Cambridge. Mr. Goudy was admirably qualified for the duties of his office at Edinburgh, where the lecturer does not require to do much more than give a plain statement of the principles of Roman law in daily prelections, continued through a winter session of five months and a summer session of two; the results of original research would be out of place, and certainly quite beyond the grasp of the majority of the students, very few of whom attend the class of Civil Law for any reason except the requirements of their professional curriculum. In Oxford it is far otherwise. The professorial chairs are not agencies for ordinary tuition; this service is performed by tutors and lecturers. The ancient seats of English learning reserve their chairs for scholars and thinkers, who enjoy distinction superior to the mere possession of competent knowledge. These illustrious professors break the silence of the cloister seldom; their position is not demeaned by daily toil, and therefore the greater need that on the infrequent occasions when their voices are heard by small and select audiences, a new idea, a fresh fact, should be contributed to the sum of human knowledge. We wish Professor Goudy well in his new sphere; but if he wishes to be more than an academic stipendiary, he must invent a hypothesis. Can none of our foremost jurists take a hint from the fruitful labors of Biblical critics, and demonstrate that few, if any, of the great treatises on the Law of Rome are really from the pen of the writers with whose names they have hitherto been identified? Mr. Goudy might profitably commence such an onslaught as we have indicated on the obscure and frequently unintelligible writings of which Gaius is the reputed author. As I stated in my previous reference to this matter, Mr. Thomas Raleigh, Fellow of All Souls College and Vinerian Reader in Law, was, on all hands, regarded as the man most highly qualified for the position, and keen regret was felt when it was found that his claims had not been recognized. Several other Oxford and Cambridge men possessed the necessary equip-

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