

PROCEEDINGS.

ANNUAL MEETING, OCTOBER 21, 1892, AT THE HALL OF THE
SOCIETY, IN WORCESTER.

THE Society was called to order at 10.30 A. M. by the President, STEPHEN SALISBURY, A.M.

The following members were present :—

George E. Ellis, Edward E. Hale, Andrew P. Peabody, Nathaniel Paine, Stephen Salisbury, P. Emory Aldrich, Samuel A. Green, Elijah B. Stoddard, George S. Paine, Edward L. Davis, William A. Smith, James F. Hunnewell, Egbert C. Smyth, Edward H. Hall, Albert H. Hoyt, Edward G. Porter, Reuben A. Guild, Charles C. Smith, Francis A. Walker, Edmund M. Barton, Thomas L. Nelson, Franklin B. Dexter, George P. Fisher, Charles A. Chase, Samuel S. Green, Henry W. Haynes, Andrew McF. Davis, J. Evarts Greene, Henry S. Nourse, William B. Weeden, Robert N. Toppan, Henry H. Edes, Frank P. Goulding, G. Stanley Hall, John McK. Merriam, William E. Foster, Hamilton A. Hill, John F. Jameson, Charles P. Bowditch, Edwin D. Mead, Charles Francis Adams, Calvin Stebbins, Francis H. Dewey, Benjamin A. Gould.

The minutes of the last meeting were read and approved.

THE PRESIDENT :—“Gentlemen, to-day completes eighty years of the existence of this Society, and, from very early in its inception special note has been made of the anniversary that is so generally celebrated to-day. It has been spoken of in the early reports and addresses of the Society, and, as you will learn to-day, has been considered as the most important epoch connected with the organization of this learned Society. The whole of the United States

to-day are recognizing this day which this Society so long has cherished. It has been considered desirable by members of the Society that special reference to this anniversary should be taken, in the exercises to-day."

As a part of the report of the Council, the Rev. EDWARD E. HALE, D.D., read a biographical sketch of THOMAS CHASE, LL.D., and the SECRETARY *pro tem.* read memorials of GEORGE H. MOORE, LL.D., Sir DANIEL WILSON and GEORGE P. BRINLEY, Esq.

Dr. HALE, in continuation of the report, read a paper upon "The Results of Columbus's Discovery."

NATHANIEL PAINE, Esq., presented his report as Treasurer, in print, and the Librarian's report was read by Mr. EDMUND M. BARTON.

All these reports were accepted as the report of the Council.

Hon. P. EMORY ALDRICH: "I move the acceptance of the Report of the Council and that it be referred to the committee of publication. And will you permit me, Mr. President, to accompany this motion with a few words upon one topic alluded to by Dr. HALE in the closing paragraphs of his report, and that is, the relation of the Judiciary to the other co-ordinate departments in our system of government. It may be confidently affirmed, that whatever of good or evil to mankind may have resulted from the discovery of America by Columbus, one thing which is new in the history of governments has been accomplished here, and which may now be considered as having passed its experimental stage, and become an established feature of our government, and which, it is believed, can be found in no other civil government in the world.

"We are in this country to a very great extent governed by the Judiciary department of government. In England, as is well known, the supreme power of government resides in Parliament, which is said to be, within the sphere of government, omnipotent. The English Parliament is both

a legislative and constituent assembly. It can pass or repeal, not only ordinary statutes, but it has authority to enact or abrogate statutes which have been or which may be regarded as part of the unwritten constitution of the United Kingdom. Parliament, in the plenitude of its power, can even alter the character of the English government and change the succession to the crown. The Judiciary in England, on the contrary, possesses no power, or at any rate, it never exercises the power of revising an act of Parliament to determine whether it is, or is not, within the spirit and just interpretation of the constitution. The English courts never declare an act of Parliament unconstitutional. The same thing is true of the courts in France and Belgium, although both of these countries have written constitutions. But their courts, not even the highest, never do, what is often done by our courts, declare acts of the supreme legislative power void and of no binding force because of their conflict with the provisions of the constitution.

“‘France and Belgium, being,’ says a learned writer, ‘governed under unitarian constitutions, the non-sovereign character of the legislature is, in each case, an accident, not an essential property of their polity,’¹ and the only safeguard against unconstitutional legislation under these constitutions is the respect for the constitution secured by moral and political sanctions. But under our federal system of government the constitution and the laws of the United States which shall be made in pursuance thereof, are declared to be the supreme law of the land, and the judges in every State shall be bound thereby. Hence it becomes the duty of every judge, whether of a State or federal court, when a question is raised as to the constitutionality of a statute, State or federal, relied upon in the prosecution or defence of a suit before him, to determine

¹ Dickey on The Law of the Constitution, pp. 143, 144.

and declare the statute to be constitutional or otherwise. And when that judgment is pronounced by the highest judicial tribunal authorized to deal with the question, it becomes binding upon, not only the parties to the suit, but upon all other departments of the government.

“This power in the courts to declare acts of the legislative department unconstitutional, and so null and void, is not expressly granted to the courts, either in the constitution of the United States or of the individual States; but it necessarily springs out of our federal system of government. There may be a federal government, as for example that of Switzerland, under which this extraordinary power is not vested in the courts. But it will be found that the Swiss constitution differs in many important respects from that of the United States.

“It is a peculiarity of this feature of our government, that, although this great power is possessed by the courts, it can never be called into exercise until it is invoked in a cause before the court for trial or hearing; in other words, a lawsuit brings the validity or constitutionality of the law into question. This subject has not received hitherto that attention among our own writers which its importance would seem to demand. It has been treated in a very satisfactory manner by three eminent foreign writers, viz.: by De Tocqueville in his two volumes, ‘Democracy in America’; by Professor Bryce in ‘The American Commonwealth,’ and by Professor Dicey in his ‘Lectures on the Law of the Constitution.’ And the subject was discussed in two very able addresses at the last meeting of the American Bar Association; one by Hon. J. Randolph Tucker of Virginia, and the other by Judge Dillon of New York. But when we reflect that it has been no uncommon occurrence for the Supreme Court of the United States to declare acts of Congress unconstitutional, and for the courts of last resort in the several States, to make similar declarations as to acts of the State legislatures, we cannot but feel some

surprise that the attention of the American people was first called to this most novel and most important element in our form of government in any other than professional works, by foreign writers. To such an extent have many of the provisions of our federal and State constitutions been made the subjects of judicial construction, that no adequate knowledge of the constitutions much less of constitutional law can be acquired without a careful study of the judgments of the courts in connection with the reading of the text of the constitutions. In a word, the constitutions are what the courts say they are, and so the ultimate governing authority is found in the courts."

Rev. GEORGE P. FISHER, D.D. :— "In connection with the observations made by Judge ALDRICH, I would say a word respecting the desirableness that writers upon American history should take pains to point out what is peculiar in American institutions and of distinctly American origin : of course we are obliged to trace our institutions and customs back to the Old World, and there is a constant effort made to find the source of what exists among us in the Old World. A class of writers are now very active in disseminating what I would call the Dutch myths. They would trace our institutions and whatever is praiseworthy in them to Holland. It seems to me, while exploring the origins of American history, we should take pains to point out also, what is indigenous and peculiar. I have been very much interested in the paper which has been read by Dr. HALE. He quoted from one of the authors, that among the advantages which this country has conferred upon the Old World is the product known as Peruvian bark, what we call quinine. I am reminded of a remark of Voltaire, in his philosophical dictionary, who sets it down as one of the mysteries of Divine Providence that a disease should be found in one continent, and the remedy should be found in another."

Rev. Dr. PEABODY :— "I would like to ask whether the supremacy of the judiciary is not the logical sequence and

a necessary inference from the written constitution as the fundamental law of the country and of the State?"

Judge ALDRICH:— "Yes, that is practically admitted to be the origin and foundation."

The motion made by Judge ALDRICH was adopted.

On a ballot for President, STEPHEN SALISBURY, A.M., was unanimously elected to the office.

A committee, of which Mr ROBERT N. TOPPAN was chairman, appointed to nominate the remaining officers to be chosen, reported the following list:—

Vice-Presidents:

Hon. GEORGE F. HOAR, LL.D., of Worcester.

Rev. EDWARD E. HALE, D.D., of Boston.

Secretary for Foreign Correspondence:

Hon. J. HAMMOND TRUMBULL, LL.D., of Hartford, Ct.

Secretary for Domestic Correspondence:

Rev. GEORGE E. ELLIS, D.D., of Boston.

Recording Secretary:

Hon. JOHN D. WASHBURN, LL.B., of Worcester.

Treasurer:

NATHANIEL PAINE, Esq., of Worcester.

All the above being *ex-officio* members of the Council, and the following—

Councillors:

Hon. SAMUEL A. GREEN, M.D., of Boston.

Hon. P. EMORY ALDRICH, LL.D., of Worcester.

Rev. EGBERT C. SMYTH, D.D., of Andover.

SAMUEL S. GREEN, A.M., of Worcester.

Rev. ANDREW P. PEABODY, D.D., of Cambridge.

CHARLES A. CHASE, A.M., of Worcester.

Hon. EDWARD L. DAVIS, of Worcester.

FRANKLIN B. DEXTER, A.M., of New Haven, Ct.
 J. EVARTS GREENE, A.B., of Worcester.
 G. STANLEY HALL, LL.D., of Worcester.

Committee of Publication:

REV. EDWARD E. HALE, D.D., of Boston.
 NATHANIEL PAINE, Esq., of Worcester.
 CHARLES A. CHASE, A.M., of Worcester.
 CHARLES C. SMITH, A.M., of Boston.

Auditors:

WILLIAM A. SMITH, A.B., of Worcester.
 A. GEORGE BULLOCK, A.M., of Worcester.

By order of the Society, the SECRETARY *pro tem.* cast a yea ballot for the officers above named, and they were declared by the PRESIDENT to be elected.

A letter from Rev. LUCIUS R. PAIGE, D.D., regretting his inability to be present, was read by Hon. SAMUEL A. GREEN, and the SECRETARY *pro tem.* was instructed to convey the felicitations of the Society to Dr. PAIGE.

The SECRETARY *pro tem.* reported that the Council had voted to recommend to the Society the names of—

HON. EDWARD L. PIERCE, LL.D., of Milton,
 EUGENE F. BLISS, A.M., of Cincinnati, Ohio,
 for domestic membership, and

MR. JOHN BELLOWS, of Gloucester, England,
 CHARLES H. FIRTH, M.A., of Oxford, England,
 for foreign membership.

They were duly elected on separate ballots.

Mr. SAMUEL S. GREEN thought proper for the Society on this anniversary to express their appreciation of the valuable services which have been rendered by Mr. Henry HARRISSE of America and Paris. "No scholar writes anything of importance about Columbus, or the discovery

of America, without taking into a careful account the investigations and conclusions of Mr. HARRISSE upon the subject he is considering. It seems to me particularly appropriate that he should be remembered here to-day."

Mr. WILLIAM B. WEEDEN, of Providence, read a paper on "The World of Commerce in 1492."

President HALL of Clark University made remarks on the condition of the different sciences in 1492.

Mr. EDWARD H. THOMPSON, U. S. Consul to Yucatan, read papers on "The Ancient Structures of Yucatan not Communal Dwellings," and "Yucatan at the Time of its Discovery."

The PRESIDENT:—"I would call attention to one matter that Mr. THOMPSON omitted to mention. Here is a representation of the costume of a warrior, and others showing their implements of warfare, and in no case, I am informed by Mr. THOMPSON, is there to be found any representation of the bow and arrow."

Hon. SAMUEL A. GREEN:—"In keeping with this anniversary, Mr. President, as well as in harmony with the subject of the interesting papers to which we have listened to-day, I wish to present to the Society a silver Medal struck in honor of the great navigator and discoverer. On the obverse is the head of Christopher Columbus, and on the reverse, an inscription in Italian: 'Genoa to the scientific Italians.' It was made by G. Girometti, and is dated 1846. More than thirty-five years ago I bought it in Florence, but know nothing further in regard to its history."

Mr. CHARLES FRANCIS ADAMS:—"As probably the youngest member of this Society here present,—having been elected a member but a year ago, and never before having attended a meeting,—I certainly should not have taken part in the active proceedings of to-day but for the pointed, and, if he will permit me to say so, somewhat appalling, if unexplained, allusions made to me by Mr.

HALE. As we were coming into the room this morning, I accidentally joined Mr. HALE, and, when he told me that he proposed to read a paper on the Columbus celebration, I jocosely remarked that if he did so I hoped he meant to take the only really correct view of the discovery of America, to wit: that it had proved an almost unmitigated calamity to mankind. He received the remark in the jesting spirit in which it was meant; but a burnt child fears the fire, and experience has taught me that irony sometimes entails unexpected consequences. It is apt to be taken seriously. For instance, a number of years ago I was a member of the school committee of the town of Quincy. The children in one of our school districts,—that in which the granite quarries are situated,—increased with such awful rapidity that they were continually overcrowding the school accommodations, and there was an incessant call for additional room and more teachers. At a meeting of the committee held one afternoon, the usual application came in for additional accommodations and larger expenditure for that district. The members of the committee, having no means at their disposal, were eyeing each other in a somewhat perplexed state of mind, when I asked the member of the committee from the district in question, why it was he did not perform his duty under the circumstances with more efficiency, and reduce the number of children in a natural way by having the cover left off the reservoir, adding, meditatively, the words, ‘Oh, for one hour of good King Herod!’ I heard nothing more of the incident until the next annual town-meeting, when, to my intense delight, I was solemnly arraigned for the inhumanity of my suggestion. Since then, when I allow myself to indulge in a bit of jocosely irony, I am careful that it is not misunderstood; and for that reason, in view of Mr. HALE’S very pointed allusions, I now find myself on my feet.

“To demonstrate that the discovery of America has proved an unmitigated misfortune for mankind would be a

rather large contract for anyone to assume just at the close of a meeting of this sort, especially at the moment when the members propose to adjourn for that entertainment which our president has so kindly intimated is now prepared for us close at hand. Nevertheless, though I do not propose to demonstrate that the discovery of America has proved an unmitigated misfortune to mankind, I am prepared to maintain, after listening to Mr. HALE'S paper, that the discovery of America by Columbus in 1492, he then sailing in the employ of Spain, was a misfortune to mankind, and a misfortune of a very lasting, as well as serious, nature.

“I did not come here to-day prepared to hold forth on this thesis, and, indeed, I may add I never thought of it from any such point of view until I listened to what Mr. HALE has read. Nevertheless, I think I am quite safe in asserting that, at the time Columbus discovered America, that discovery was, so to speak, in the air, and would inevitably have taken place a few years later. This, I believe, is a familiar and accepted fact in history. I refer, of course, to the well-known voyage of Don Pedro Alvarez de Cabral in 1500, in which, on his way to the Cape of Good Hope, he suddenly brought up on the coast of Brazil. As everyone knows, when science and the intellectual movement of mankind reach a certain point, that which occurs is apt to be inevitable. The only variable thing in it is the way in which it comes about. Sometimes the light strikes one person, as in the case of Columbus; sometimes it strikes several almost simultaneously. For instance, everyone here present knows that, at the very time Darwin was developing his theory of the evolution of Man, Wallace, on the other side of the globe, conceived and put in writing the same thought. Again, only a few years ago in Boston, anæsthetics were discovered so simultaneously by Morton and Jackson that no mortal man has ever been able to say which used ether first. This fact, indeed, led to the

well-known witticism of Thomas G. Appleton,—‘Tom’ Appleton,—who, when asked what name should be inscribed on the monument to ether erected in the Public Garden at Boston, whether that of Jackson or that of Morton, replied that, upon the whole, it had better be inscribed simply ‘To E(i)ther.’

‘The discovery of America, therefore, I confidently submit, could not have been long deferred, if Columbus never had been born, or if his entire squadron had gone to the bottom of the sea in September, 1492. The only essential thing about the discovery was, consequently, that it was made in the interests of Spain. With equal confidence I submit that it was, as the result proved, in no way for the interest of mankind that, just at that particular period, the gold and treasure of the New World should be put at the service of Spain. I have not space now to follow this line of thought out, though I may recur to it in another form at some future time. But I do not hesitate to say that, if the history of the rise of the Dutch Republic and of the great Armada are referred to, it will be found that to England and Holland, at least, the gold of the New World in the hands of Spain was not a factor for good. Indeed, I take it to be indisputable that, coming to America as he did in Spanish caravels, Columbus brought with him Philip II. of Spain, Torquemada and the Roman Catholic Church of the fifteenth century, together with the inquisition and slavery, and let them loose on the land he discovered. Under these circumstances, however it may be as a whole in the subsequent four centuries, the immediate results of the discovery of America by Columbus, to which Mr. HALE has more particularly referred, by no means, I submit, resulted in that unmitigated beneficence which might be inferred from the poetry he has so forcibly quoted. If doubts are entertained on this subject by any member of the Society, I think such member would make some progress towards resolving these doubts by making a brief visit to Cuba, or

Mexico, or, indeed, to any of the southern republics, with the possible exception of Chile. After so doing, I fancy it not impossible that our doubting brother might reach the conclusion that, after all, it would have been a piece of not wholly unalloyed bad fortune for those countries at least, if Columbus had gone to the bottom of the sea on his westward voyage, if, by his so doing, it might have been left for some Dutchman or Englishman of a later period to discover the New World."

Mr. ANDREW McF. DAVIS presented a paper upon the "Lady Mowson Scholarship at Cambridge."

On motion of Hon. EDWARD L. DAVIS, the gentlemen who had made remarks were requested to reduce them to writing, and all the proceedings of the meeting were referred to the Committee of Publication.

Adjourned.

CHARLES A. CHASE,
Secretary pro tempore.

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