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Current Topics.

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"IT must be remembered that the majority of companies are honestly formed for carrying on a legitimate, though it may be a speculative enterprise or business, and the business is conducted with honesty and reasonable ability and judgment." Such is part of the report of the committee appointed to make recommendations and changes in the English Companies Acts, and if all corporations were formed honestly and conducted without any endeavor to take advantage of the public there would be little necessity to have any of the present relations, regulations and restrictions in the corporation laws of this State. There is little doubt, as Judge Dillon suggests in his letter published in these columns, that many of the present severe provisions of the corporation laws of this State should be modified to the end that a larger number of business interests may be induced to begin their legal life and existence under our State laws. How far we can loosen the restrictions which we now have is a difficult matter to determine, but the changes should at least attain the results which Judge Dillon suggests. After all, when we realize the practical results of the provisions of the New York Statutes in regard to corporate companies, we must appreciate that the seemingly severe prohibitions and restrictions which we have referred to, are partly only imaginative and that is only necessary to resort to subterfuges to evade laws which are shibboleths of regulations rather than actualities. Corporations are formed under the laws of other States and carry on business here with enormous capital stock much of which only represents the dreams of the incorporators. Are these restrictions in our statutes in many cases the result of the work of over-anxious patriots in the legislature who were not properly persuaded that their views and fears were wrong? Are these practical benefits pro-

portionate to their injury to the State in preventing companies from doing business within our boundaries? Will it not require the use of a flood of gold to secure there repeal? Gentlemen of the legislature, in time you may kill the goose that lays the golden egg.

Commenting on the Draft Companies Act Amendment Bill which Judge Dillon writes of the *Law Times* says:

Everyone will hail with satisfaction the report of this committee and its draft of a bill for amending the companies acts, and most will think that a very prudent middle course has been taken between the opposing dangers of leaving too much to the prudence of investors, and of laying too heavy burdens on the backs of directors. A few matters appear to call for comment.

The first clause, which makes the certificate of incorporation conclusive for all purposes, is of more importance than is generally known. For many years it was thought that associations could be formed into companies at common law, and then registered under Part VII of the Companies Act 1862. As this course involved a considerable saving of stamp duty, it was largely adopted down to 1890 when the board of trade refused any longer to allow it, a ruling which was upheld in the Court of Appeal in *Ex parte Johnston* (1891), 2 Q. B. 598. This case shows that such an association is one which cannot be registered, and accordingly the certificate of incorporation, which only deals with the forms and details of registration (see *National Debenture Corporation* [1891], 2 Ch. at 517), is no protection to the great number of companies already registered in this manner, and if the question were raised it would probably be held that they are unincorporated bodies, and that the shareholders' liability is unlimited.

The clauses of the bill which, however, arrest most attention are those which deal with the prospectus and the first allotment. No one will dispute the advantage of compelling fuller disclosure of preliminary contracts, of the profits of vendors, of the amount of promoters' remuneration, and preliminary expenses; but the result of a failure to make proper disclosure is dealt with in an unsatisfactory manner. The matters to be disclosed are in some cases of

great hardship on a purchaser of a mortgage or debenture not duly registered, and will make it necessary for purchasers to make inquiry before completing the purchase, thus checking the negotiability of such securities.

On the whole, however, the bill, if it becomes law, should do much to dissipate the evil odor into which the practice of company formation has come.

The *London Law Magazine* says: "It will be remembered that an Irishman, named Cleary, and his family, most cruelly burnt the wife of the former to death, under the belief that she was a witch, and that so soon as the victim was consumed the real wife would appear at the door of the cabin riding on a white horse. The man has just been sentenced at the Tipperary Assizes in Clonmell to penal servitude for twenty years, the jury having mercifully found him guilty of manslaughter only. The learned judge, Mr. Justice O'Brien, expressed surprise at the degree of darkness of mind, moral ruin, and superstition existing in the nineteenth century. Yet these are the people whom we are told are capable of exercising the parliamentary franchise."

On Monday, August 19, 1895, ex-Justice William Strong, of the Supreme Court of the United States, died at Lake Minnewaska, N. Y.

William Strong was the son of the Rev. William Lighthouse Strong, and was born in Somers, Tolland county, Conn., May 6, 1808. He was educated at the Plainfield Academy and Yale College, graduating at the age of 20 years. After a brief career as school teacher, he returned to New Haven and graduated from the Law School of Yale. Removing thence to Philadelphia, he was admitted to the bar in 1832. The young lawyer chose Reading, Pa., for his home, and entered upon the practice of his profession. In 1847, having taken an active interest in politics, he was elected to represent the district in Congress, and served two terms. He then returned to the practice of his profession, and in 1857 was elected a judge of the Supreme Court of the State of Pennsylvania for a term of fifteen years. On October 1, 1868, he resigned that office and resumed his practice at the bar. One of his decisions on the supreme bench of the State attracted great

attention. This was in the famous "Sunday Car" case, decided in 1865 in Philadelphia.

While a member of the Supreme Court of the State, Justice Strong won a reputation for judicial learning that extended far beyond its limits, and when, in 1870, President Grant transmitted his name and that of the late Justice Bradley to the Senate for confirmation as associate justices of the Supreme Court of the United States, there was a very general feeling of satisfaction among the members of his profession. On January 15, 1872, Mr. Justice Strong announced the decision of the court affirming the constitutionality of the legal tender act, and Justice Bradley concurred in a lengthy opinion.

But the legal tender question was not the only one of importance growing out of the war in the settlement of which Mr. Justice Strong took a prominent part. The constitutional amendments, intended to crystallize and preserve the results of the war, and the congressional legislation necessary to give these constitutional provisions force and effect, were before the court. In *Bigelow v. Forest*, Mr. Justice Strong prepared the decision announcing that under the Confiscation Act of July 17, 1862, a decree and sale only established a confiscation during the life of the one for whose offence the land was condemned and sold. In *Tennessee v. Davis*, he delivered the opinion of the court establishing the principle that the judicial power of the United States embraced alike civil and criminal cases arising under the Constitution and the laws of the United States, and that their removal from a State to a federal court was no invasion of State domain and power. In *Virginia v. Rives*, he also prepared the opinion of the court, holding that the object of the Constitution, which authorized the enactment of statutes for the removal into the federal court of civil suits or prosecutions against any person who was denied, or could not enforce, in State courts any rights secured to him by any law providing for the equal rights of citizens of the United States, was to place the colored race, in respect of civil rights, upon a level with the whites.

In *ex parte Virginia*, Judge Strong announced the decision of the court that whoever, by virtue of public position under a State government, deprived another of life, liberty,

or property, without due process of law, or denied or took away the equal protection of the laws, violated the constitutional inhibition; that his act, as such officer, was the act of the State; that power was given to Congress to enforce its provisions by appropriate legislation, and that such legislation must act not upon the abstract thing called the State, but upon the persons who are agents of the State.

Justice Strong was designated by the Electoral Commission Act of 1877, as one of the judicial members of the famous tripartite tribunal which passed upon the contested presidential election of 1876. In 1880 Mr. Justice Strong, having reached the age at which retirement from the bench after ten years' service thereon is permitted, retired, and had since made his home in Washington.

It is always of importance in determining the value of oneself or of a condition of affairs to secure the opinion of others and to regard their view in passing and forming judgment.

The *Law Magazine*, of London, in its review on works called the "Sources of the Constitution of the United States," by Ellis Stevens, and "Adoption and Amendment of Constitutions in Europe and America," by Charles Borgeau, shows how our English cousins regard the Constitution of the United States and its history. The *Magazine* says:

Mr. Gladstone has observed that "as the British Constitution is the most subtle organism which has proceeded from progressive history, so the American Constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man." There is some truth in this, for the American Constitution, established as a written document by the convention and in circumstances quite unique, has many elements peculiar and characteristic; but it is beginning to be realized that the American Constitution, though possessing elements of novelty, is not after all the new creation that Mr. Gladstone would imply. It is not the original composition of one body of men nor the outcome of one definite epoch. It rests upon very old principles, laboriously worked out by long ages of constitutional struggles; it looks back to the annals of the colonies and of the motherland for its sources and its explanation. The constitution has been made what it

is by the political development of many generations of men, and it is not the mere sole creation of the Philadelphia convention.

Mr. Ellis Stevens, in the work before us, treats of that document which goes by the name of The American Constitution, and avoids all side issues. He deals with the making of the constitution, its legislative organism, its legislative powers, points out in what manner its executive is related to the ancient executive of England, discloses the popular feeling of Americans against kingship—an opposition largely due to the fact that the struggle for emancipation had been forced upon them by their sovereign in person—and describes the derivation of the American courts from the English colonial courts and judges, and explains, in a very lucid manner, the continuity of our bill of rights in acts of American legislation. An excellent treatise on an interesting subject, well digested and clearly evolved.

"Mr. Borgeau devotes his work to the process of Constitution-making in those States which admit of an isolated treatment, and render possible the attainment of a general theory. He points out that a constitution is the fundamental law according to which the government of a State is organized and the relations of individuals with society regulated; it may either be a code or a collection of texts promulgated at a certain time by a sovereign authority, or in the second place it may be the result of a series of legislative acts, judicial decisions, precedents and traditions of dissimilar origin and unequal value.

"The English Constitution—the oldest of all constitutions—belongs to the second division. The private law of the United Kingdom is uncoded, and her fundamental law is unwritten. An unwritten constitution does not, as a whole, furnish innovators with a definite concrete point of attack; but as it lies within the ordinary competence of Parliament to increase or diminish it by mere statutes, indirect blows may be aimed at it all the more dangerous, because not immediately and generally apparent. Mr. Borgeau directs his study to those countries which may be said to fall within the first division; they are becoming more and more numerous, their public law may be considered apart from the power which creates it, and