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Letters from New England – No. 5

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Scholars in Virginia are not generally aware, that the classical Greek pronunciation is thought to exist still in Greece; and that (connecting this fact with the close resemblance of the ancient, to some of the modern dialects as written) that rich and elegant language is no longer to be regarded as dead. Thus confidently think two intelligent and accomplished natives of Greece, now in Connecticut, who are reputed (no doubt deservedly) to be thorough masters of both the ancient and the modern tongue. In a gratifying interview with one of them (Mr. Perdices, at New Haven), being curious to hear Homer in his native melody, I prevailed on Mr. P. to read me a few lines of the Iliad. They were by no means musical to my ear—vitiated, doubtless, by the faulty pronunciation to which I had been accustomed, and destitute of those associated ideas, which contribute so largely to the beauty of poetry. He sounds at diphthongs, like ει, ι like v and w, χ like a mere aspiration, as cut h. The word παλαπησιναι (palapetisai) so expressively sonorous to our ears when pronounced with the full, swelling roll of the diphthong, he would attenuate into palapetesai—to me much more like the whistling of the wind through a key-hole, than the hoarse, tumultuous roar of an agitated ocean. I spare you, here, a speculation that is passing in my mind, as to how far this diversity between different ears, proves the notion of the sound's echoing to the sense to be merely fanciful; and as to the influence of previous association upon our relish of poetical, and of other beauty—how much, for example, of the native Greek's rapture at Homer, is owing to love of country, and how much of an American's enthusiasm to classical enthusiasm, the pride of learning, or the influence of names. Yes, I spare you—partly, because I have not much that is new to say upon the subject; and partly because, if I had, it would be wholly out of season.

By special invitation, I attended a lecture (one of a series) delivered by Mr. Perdices, upon the literary and political history of modern Greece. It was marked by a rich yet chaste imagination, a generous glow of patriotic enthusiasm, and the eloquence which they naturally inspire. You may feel a curiosity, as I did,
to know somewhat of the outer men of a modern Greek. Mr. P. is about the middle height, or five feet nine; shoulders broad, and a stout frame; black hair, disposed to curl; large black whiskers, thickening a broad oval face, the complexion whereof is a darkish olive— as dark, at least, as Mr. Webster's. Having been eleven years in this country, he speaks our language fluently and intelligibly: indeed, as is usual with those who learn a foreign tongue from books, and from enlightened native speakers, his English is remarkably pure. A few rhetorical and grammatical faults there were—for instance, "he left dilhans" was curtailed (as he Yankee) to "he left." This is a New Englandism not confined to the vulgar: neither is the phrase "he conducted well," for "he conducted himself well?" nor "considerable of a phase," for "a considerable phase." We hear Yankees of respectable literary pretensions, too, saying when, where the English idiom certainly requires will: as, "shall you visit Boston during your tour?"—and clipping the infinitive mood, in a way equally contrary to the good customs of the realm—this— I have not written you yet," as Stevenson's "I have not written yet." But I am cleaning game that is hardly worth the powder.

I owe to Mr. P. another intellectual treat: the inspection of an Illiad, edited by Mr. Felton, Professor of Greek at Harvard. Of all the editions that I have examined, this is by far the best adapted to schools; and the most likely to justify the taste, or to aid the student, of all Illiad, edited by Mr. Felton, Professor of Greek at Harvard. Of all the editions that I have examined, this is by far the best adapted to schools; and the most likely to justify the taste, or to aid the student.

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once a year in each county, to decide questions of law, in the last resort. Some one of these judges, besides, holds annually a *Nisi Prius* term in each county, to try appeals from an inferior grade called "courts of common pleas," original suits in chancery, and upon the bonds of executors and administrators. The appeals to them from the common pleas, are as to both law and fact; a jury being empannelled, witnesses examined, &c., as if it were an original proceeding. The latter courts are held twice a year in each county, by some one of four judges; who hold office (like those of the supreme court) during good behavior. They have cognizance of all causes, except what I shall designate as vested elsewhere.

Proceedings and indictments for all offenses, are found only in the common pleas; where, alas, they are tried—*except in capital cases*. These, after the indictment is found, are certified and removed from the common pleas to the *supreme court*; at whose bar the culprit is tried by a *jury*: a special term being held on purpose, in any county where the judges are notified that a prisoner awaits trial for life or death. *En passant*—though *eight crimes* are, by the laws of Massachusetts, punishable with death, only twenty-six persons in the whole state have been capitally convicted, in thirty years! These are, in a few specified subjects of jurisdiction, those statutes—empowered the supreme court to administer it, in cases—mortgages, trusts, accounts between Joint-est's antl co-executors, waste, nuisances, two or three others: omitting the fruitful subjects of jurisdiction they are to expound:—what is most obviously defective and so easily remedied, (what is most) all three causes—waste, nuisances, have made those laws a dead letter. Prosecutions are conducted by *district attorneys*, of whom there are four in each state; prosecuting within his allotted district. In the supreme court, however, the attorney general is counsel for the commonwealth.

Chancery, or *equitable relief*, is rarely sought in the Massachusetts courts. Indeed it was unknown, until, within a comparatively recent period, two or three statutes empowered the supreme court to administer it, in a very few specified cases—mortgages, trusts, accounts between partners and co-executors, waste, nuisances, and two or three others: omitting the fruitful subjects of *fraud*, *accident*, *deceit*, *at error*—and especially the *awful power* to relieve whatsoever there is no remedy at law or equity, *by the multiplication of causes* of cases, have made our chancery, like that of England, the *dormitory* of the grave of justice. And even as to the few specified subjects of jurisdiction, those statutes rigidly restrict the relief to cases in which there is not a plain and complete remedy at law. Before these enactments (and since, too, in cases without their scope,) the rigor of the law was mitigated only by the sense of justice in judges; and by sundry expedients—curious enough, to Virginian eyes—*which seem to have left few wrongs unremedied*. For instance—if I am unjustly cast in a trial at law, by accident or surprise, or for want of testimony which I did not know of till the term was over; not a bill of injunction, but a petition to the judge in vacation, within a limited time, will procure me a new trial. If my debtor fraudulently dispose of his property; instead of a bill in chancery to restrain the fraud, I may have, along with my execution (if I have obtained judgment) a summons to the colluding purchaser as *garnisher*, to disclose orally on oath, in open court, what effects he has, of the debtor.

Rents are laid off by a board of commissioners, established for that purpose in each county; and invested with judicial powers, in controversies on the subject.

The pleas of wills, the granting of administrations, the appointment of guardians, and the supervision of the accounts and conduct of guardians, executors, and administrators, are confided to an officer, called the *Judge of Probate*, appointed in each county for those purposes only; and holding his court monthly, in several convenient places of the county, to hear motions and decide disputes on those subjects. His records and proceedings are kept by a distinct clerk, called the *Register of Probate*; and an appeal lies from his decisions immediately to the supreme court. We, in Virginia, sorely need some tribunal like this; specially charged with the interests of widows and orphans.

Equally worthy to be copied, is the Massachusetts mode of constituting juries. Lists of all persons qualified to serve, are kept by the town-clerks; from which, just before a court, the town quota of jurors is drawn by lot: and no one is compellable to serve oftener than once in three years. *They are paid for their service.* Against juries thus formed, I heard no complaints, of that species. (What is it, more, in cases without their scope,) the *ludicrous*? They require a compensation, which at least defrays their reasonable expenses; and if there be still some burthen, it is borne equally by all, and returns at such long intervals, as to be absolutely unfelt. How different is our plan, of sending out the sheriff just before a trial, to gather in the sweepings of the court-yard! Suitors and witnesses, attending perhaps for the tenth time, in hopes of having their causes determined—strangers from other counties, many, travellers from other states—tipplers from the tavern porches—the nearest merchants, mechanics, and farmers, torn suddenly and capriciously from their employments—such is the medley, produced by a system as oppressive to most of the jurors themselves, as it is subservive of the important ends for which they are unconnected. One is really tempted to believe, that in adhering so perniciously to a system so obviously defective and so easily remedial, our statesmen have been governed by a fixed design to bring jury-trial itself into disrepute.

Wiser in another respect also than we, these "Bay, foolz!* have courts exceptional for cases of twenty dollars (or less) held by men who have not themselves studied the science they are to expound; no parallel to our county courts—those *creek tribunals* of some great men, whose administration arises either from the want of intimate knowledge—they have ranged generally in a higher sphere—or from their enjoying over that bench an influence, flattering to their vanity, and blinding to their judgments. How long will the public attention sleep—how long will the hand of reform be paralyzed—when we will an attempt made to cure the unfitness of these courts for the weighty, instituted, and difficult functions entrusted to them?—the ludicrous, if it were a less miscellaneous, uncertainty of their decisions, owing to their ignorance of any fixed rules by which to decide?—the delays, so fatal to justice, that attend their undisturbed administration?—the vain accumulation of costs, besides harassment and loss of time in dancing attendance upon them through years of litigation?

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The Massachusetts and Connecticut plan, of an illustrious supreme court, cannot be commenced to imitation. The common arguments, of bringing justice home to the people, and enabling suitors to see in person to their causes, are not pertinent, where the whole case is contained in the record; where no witnesses are to be summoned or examined—no cause to be instructed in the cause.

Then, the loss of time in travelling, and the want of so extensive a library and so able a bar, as would be form'd if the court sat always in one place, must essentially impair the correctness of its decisions, and lower the superiority of its intellect.

The common-law of England is made the basis of Massachusetts law; not, as in Virginia, by a legislative declaration that it shall be so, but by adjudications of the courts, recognizing and adopting it as such. By a still broader stretch, the courts have acknowledged as generally binding, English statutes made in amendment of the common-law—not only before, but since the foundation of the colony: may, the terms of the decision do not exclude English statutes subsequent to the American revolution.

This comprehensive notion of a foreign code upon the domestic, not by professed and authorized law-givers, but by mere judges, is perhaps one of the most remarkable instances of judicial legislation, any where to be found; and must have arisen in most cases, masters yielded where there were twenty-one thousand readers of law-schools, as heavily as our's has done. Its decisions fill twenty-seven or twenty-eight octavo volumes.

The chief court of Massachusetts has tasked the readers of law-books, as heavily as ours has done. Its decisions fill twenty-seven or twenty-eight octavo volumes—about our number. The supreme court of New York has issued more than thirty; the supreme court at Washington eighteen or twenty; Pennsylvania, Connecticut, South-Carolina—but I forbear the appraising list. Every good law library, however, should have at least the five sets first named; and they are as yet but just begun. If the monstrous increase be not checked, what purse can buy, what head can read (much less remember, nay what room can hold them, a century hence? Already, indeed, we are grievously over-pressed; for besides the thousands of tomes, English and American, now accumulated, it is impossible to keep pace with the daily ascensions, poured forth from a hundred manufactories of legal nudes. Some powerful condenser, or another Caliph Omar, is our only hope. The oppressive bulkiness of law-reports is owing partly to the reporters; but more, to the judges—who, apparently more intent on the display of learning and ingenuity, than upon adjusting the rights of the parties, often swallow the simple and clear page or two, which the case requires, into a rambling and voluminous disquisition of twenty pages. Nay, not content with one such disquisition in each case, each judge presents his own; and the reporter spreads them all at length in his next volume. I wish that both judges and reporters could be obliged to study, as models of lucid brevity, Elverton's Reports, and the still more admirable decisions of Chief Justice Tindal, of the English Common-Pleas—frequently compresses into half a page or less, what our American judges would wire-draw into half a dozen pages.

Lawyers are very numerous in Massachusetts—somewhere about seven hundred; of whom one hundred and sixty or one hundred and eighty are in Boston. Their intercourse appears to be marked by the same fraternal spirit, which strews the toilsome path of the profession in the south with so many sweet and flowers. Admission to the bar is procured, not by examination, but by leave of court, on recommendation of those who are already practising there; provided the candidate has studied five years in some lawyer's office; or have practised three years, and be a graduate of some college. He has, besides, to pay for admission into the supreme court, a fee of thirty dollars, and for the common-pleas, twenty dollars; to be expended towards a joint library, for the use of the bar in each county. These libraries are sometimes large, and well selected. The emotions of practice, except to the very leaders of the profession, seem far inferior to those of practitioners occupying correspondent grades of talent and fame in Virginia: indeed, I doubt whether any but Mr. Webster receives an amount comparable to the incomes of several there, whom I could name. Yet the life of a lawyer is probably more pleasant in Massachusetts. From the pre-requisites to admission, you may infer that well-stored minds abound more with the frivolity: at least it was so, till our university, and our several excellent law-schools, began to give a clearer and more expanded ken to the mental optics of our young lawyers. Thus, in society at large—certainly in the towns and villages—there is more literature abroad in Massachusetts: amusements are of a more rational cast, Where we have a horse-race, a barbecue, a whist-party, or a pool at back-gammon, our Yankee brethren have a meeting of some lyricum, or other society for mutual

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*Hardly less startling an exertion of legislative power by the judiciary, was in the abolition of slavery. The Bill of Rights provided to the constitution of Massachusetts, adopted in 1780, absolute, as most of our state constitutions do—substantially copying the Declaration of Independence—"that all men are born free and equal, and have certain natural and unalienable rights of enjoyment their lives and liberties, etc."

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† In the late English Common-Law Reports.
Improvement, at which a lecture is given or a debate held, upon some interesting subject, of economy or morals: or an unceremonious evening visit is dedicated to conversation, in which politeness engrosses no reasonable share. The newspapers—even the most violent political ones—at once attest and foster the prevalent taste for universal information, in which politics engross no ulterior character and institutions, than the months spent in whirling along the highways, and attending formal dinner parties. Unless he is a hardened pedestrian, he will obtain a deeper insight into their customs, character and institutions, than from months spent in the practice of a Massachusetts lawyer; he rarely attends more than two counties; for the most part, only one. This, if he loves domestic life, is a great point for him. And in the ordering of a New England home-stead, there is a quiet, smooth depend—
a neatness—a happy fitting of means to ends—a nicety of contrivances for comfort—an economy of trouble in every thing—all calculated daily to endear it to a home-loving man. When to all this we add, that though the prime necessaries of life are cheaper with us, those elegancies and luxuries which as the world goes have become necessaries, are so much more accessible in New England, as to make a smaller income yield a larger store of comfort; it will not seem wonderful, that the balance of enjoyment is on the Massachusetts lawyer's side. I turn for granted, you see, that he is not insensible to intellectual pleasures; and that they conduce the most of all to happiness.

The six weeks it has occupied, have been crowded with more mind-stirring incident, than any six months of my previous life. Vivid indeed is the contrast, between the plodding, endless tenor of the preceding eight years, and the exciting, the feverish interest of these six weeks. Yet they have afforded scarcely a describable adventure; nothing, at all calculated to make an auditor's eyes stretch wide, or his hair stand on end. In truth, the interest is explicable in great part by the simple case of a plough-horse, turned loose to kick up his heels for an hour. He enjoys the recreation (if his spirit is not broken by excessive work,) five fold more than a daily round of the pasture could do. Judge how the sport of keeping my faculties aroused, by the fact, that though habitually a great sleeper, requiring seven or eight hours for being thus elementary, I will presume further upon it, and add: that the latter term comes from Count Rumford, who invented that improvement. The sides of a New England fire-place often slope at an angle of 120 or 130 degrees with the back; so as to make the width of a cord of green wood, there are about 110 or 120 gallons of water;—how vastly further any given quantity of the former will be evaporated—that is, converted to steam—that is, rendered useless, so as to hinder the part of the fire-place. The wood is usually sawed, so as to fit the hinder part of the fire-place.

The wood is cut 12, sometimes 18 or 20 months, before it is burned. If cut in the summer, it is seasoned for a few months, and then put away till the second winter, in the wood-house; a constant and close apposition to every dwelling. Sometimes we have no idea, though Yankees have experimental knowledge, of the saving and comfort there is in using till, instead of green wood—how vastly further any given quantity of the former will go, in producing heat. It has been satisfactorily shown, that in a cord of green wood, there are about 140 or 120 gallons of water;—all of which must be changed to steam—that is, evaporated;—the ant of over-colored my limnings, or of having wantonly—much less ill-naturally—disparaged our good old commonwealth. Without wishing to lower the generally just and salutary (though sometimes amusing) pride her children feel at the bare mention of her honored name, I have aimed to draw their attention to some traits of Yankee life and character, which we may advantageously copy—say, the word of which is the main cause of our legions of students, and the numberless improvements, that distinguish this age, and appear so fruitful of blessings to mankind. My aim too has been, to disabuse them of a few of the prejudices, which ignorance and misrepresentation have fostered against our Northern brethren. Let any one who thinks I have exaggerated their excellencies, only come among them, and see for himself; bringing to the scrutiny a candid mind, prepared to allow for unavoidable differences.—Indeed our people ought to travel northward oftenest. It would be a good thing if exploring parties were frequently sent hither, (as to a moral terra incognita,) to observe and report the particulars deserving of our imitation. Our independent planters, and shrewd, notable housewives, could not make such an excursion, without carrying home a hundred notions, for which they and their neighbors would be the richer and better all their days. Nor might they profit less, by sending their statesmen and law-givers, to take lessons in civil polity. There are admirable things of every magnitude; from township governments, common schools, and courts of justice, down to closed doors, splashed and runwilted fire-places, seasoned wood,

* When the sides of a fire-place are slanting, instead of being square with the back, they are said to be slanting. When the back leans forward at top, approaching the inner side of the arch or front of the wood, the fire is made the only six or eight inches wide, it is said to be Rumfordized. If my readers permit me for being thus elementary, I will presume further upon it, and add; that the latter term comes from Count Rumford, who invented that improvement. The sides of a New England fire-place often slope at an angle of 120 or 130 degrees with the back; so as to make the width less, by sending their statesmen and law-givers, to take lessons in civil polity. There are admirable things of every magnitude; from township governments, common schools, and courts of justice, down to closed doors, splashed and runwilted fire-places, seasoned wood,
and cold light-bread.* Some things, too, they would see, to be shunned: I need only name excessive banking—enormously multiplied corporations, for manufacturing, and other purposes—and, what strikes yet more fatally at the foundation of popular government, the caucus system. But the strongest reason for a more frequent intercourse, is the liberalizing of mind that would result; the unlearning of our long cherished prejudices, from seeing the Yankees at home—that place, where human character may always be the most accurately judged. They too, have some (though fewer and less bitter,) reciprocal prejudices, to be cured by a more intimate acquaintance. No mind but must see the unspeakable importance of weeding away these mutual and groundless dislikes. The perpetuity of our union—and the liberty, the peace, the happiness of its members—in a great degree depend upon the accomplishment of that expurgation. There cannot be a simpler recipe. The North and the South need only know each other better, to love each other more.