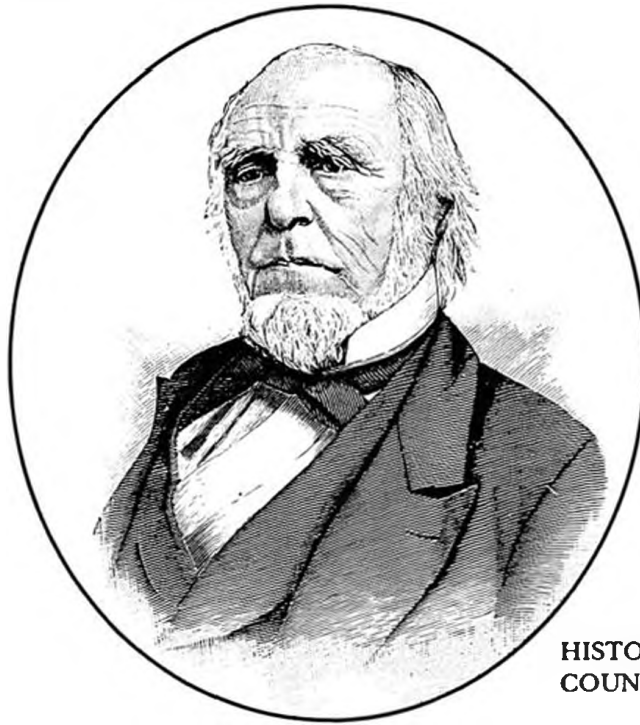


WILLIAM W. WELLS



HISTORY OF PENOBSCOT
COUNTY, MAINE (1882).

JOHN APPLETON: THROUGH HIS OWN WORDS

The founders of America's legal system have been studied rather arbitrarily. Some, like Oliver Wendell Holmes, have been thoroughly researched, while others have been ignored. One such case is here in Maine; when David M. Gold began writing about Chief Justice of the Maine Supreme Judicial Court John Appleton¹ in 1979, this important figure had been almost completely forgotten. Judge Appleton was an important figure, both in Maine and the nation. In addition to his position on the Supreme Court bench, Appleton was influential in organizing the Maine court system. Nationwide, he helped change evidence law and championed civil rights.

John Appleton served on the Supreme Court from 1852 to 1883. During the last twenty-one years of his tenure he served as chief justice, where his powerful intellect and personality shaped the development of the law in Maine. Appleton's appointment to the court might be considered his first major achievement. At

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a time when political affiliation was more important than legal expertise in securing a seat on the bench, Appleton was appointed by a governor who headed the opposing party. This was, no doubt, a testimonial to Appleton's labors directed toward reforming the court system.

In 1850 Appleton was appointed to a commission to study the judicial organization of the state and wrote the final report which was submitted to the legislature in 1852. The report suggested abolishing the District Courts and transferring their jurisdiction to the Supreme Court. The state was to be divided into three judicial districts, with the Supreme Court holding one law term in each district. Judges would not hear cases appealed from lower court trials over which they had presided. These changes were adopted and are still present in the court system today.

John Appleton's impact on American law is most apparent in the field of evidence. Between 1829 and 1860, in addition to a very busy law practice, Appleton wrote twenty articles which appeared in nationally circulated legal journals. The majority of these articles dealt with the law of evidence and culminated in the publication of Appleton's influential *The Rules of Evidence*.² In general, this great intellectual pursuit was to give juries the opportunity to judge the credibility of witnesses for themselves. Until that time, common law rules excluded many people from testifying at trial — atheists, husbands or wives, even the parties in the case. Appleton believed that common people were capable of evaluating and applying evidence given by such people. None of these suggested changes came quickly, but over the years Judge Appleton's position became the standard rather than the exception, adopted in every jurisdiction.

John Appleton's sojourn into civil rights came to the forefront in the Dred Scott decision.³ The strongest of the two dissenting U.S. Supreme Court opinions was written by Associate Justice Benjamin R. Curtis, a former pupil of Appleton's.⁴ The question concerning the rights of African-Americans arose in Maine three months later when the Maine Senate, energized by the decision, asked the Court whether Maine's black residents

were entitled to vote as U.S. citizens.⁵ The court answered in the affirmative, and Judge Appleton's lengthy opinion followed the same stinging terms as Justice Curtis' dissent.⁶

I first encountered Judge Appleton when David M. Gold's article appeared in the *Maine Bar Journal*.⁷ I became interested and did a little more research on the life of the man. The available published material was quite sparse. Aside from Gold's writing, most of the available literature was in the form of biographical notes, remembrances by members of the bar, and obituaries. All of these sources suggested a stereotypical judge: sober, somber, and sure of himself—a characterization Appleton himself endeavored to foster throughout his life. Even in his will, Appleton left instructions to his sons that illustrate his sense of propriety.

I exhort my sons to aid, assist, and watch over each other and ever to cultivate loving and fraternal feelings for each other. I leave them loving wishes for their prosperity and happiness, which temperance, industry and economy will always ensure.⁸

Such was the picture I held of Judge Appleton until the University of Maine Law Library obtained one of his letters, written to a very close friend. The letter reveals a dry sense of humor, a tendency to gossip, a somewhat sharp tongue, and an unabashed love for certain individuals. Although it does not contain a salutation, the evidence derived from its content leads to the conclusion that it was written to Edward Kent.⁹

This supposition is based on four facts: first, the letter begins with the phrase "My dear Judge"; second, the final page of the letter refers to the recipient as the Governor; third, the recipient was traveling somewhere in Europe; and finally, there is a sense of familiarity and forthrightness in the language—the letter was obviously written to a close friend. Edward Kent served as an associate justice on the Supreme Judicial Court¹⁰ with Appleton during the time Appleton was an associate justice and after he was appointed chief justice in 1862. Kent retired

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from the court in May 1873, so he was familiar with the other members of the court and would have had knowledge and interest in what they were doing four months after he retired. Early in his professional life Kent served as governor of Maine for two terms. This accounts for the titles Appleton used. The reference to Kent's previous governmental role has the feel of friendly respect as well as a playful sense of humor when the terms are extended to the members of Kent's family.

After Kent retired at the end of his second term on the court, there was a public jockeying by supporters of Kent and Nelson Dingley to gain the Republican nomination for governor for the 1873 election. Although Kent was not outwardly involved, he must have been disappointed when Dingley won the nomination. At that point he decided to take a well-earned vacation and "travelled for twelve months in Europe accompanied by his family."¹¹ Lastly, Judge Kent was a lifelong friend of Judge Appleton,¹² which would account for the intimate tone of the letter. All of these individual facts add up to the conclusion that Chief Justice John Appleton was writing to his old friend, the associate justice and former governor of Maine, Edward Kent.

This letter provides a rare opportunity to observe the man, not the Judge. Through the lens of Judge Appleton's own words, we witness his personality and his relations with those around him. We see how his relationships enabled him to reach into the foundations of our American legal history. The letter also demonstrates that his acquaintanceships span the globe and his interests encapsulate various topics, ranging from law and banking to railroads and international relations. His personal opinions on these matters sing out as loudly as his rulings from the bench.

The letter that opens this uncharacteristically honest and human view into the personal life of Judge Appleton follows. Notes to the transcription are provided to offer the reader some context to the references and personalities mentioned.

I do not know, my dear Judge, but that what is above written will tell you the whole story. Like the &c of my Lord Coke,¹³ who was not a real Lord I believe, it meaneth much. How much, you,

Rockland 17th Sept 1873
Paradise Regained
Court Room

I do not know, my dear friend, but that what
is above written will tell you the whole
story. Like the Ye of my dead folk, who
was not a real Lord's Belkin, it stands
much. How much, you who so well
know all the details of the story, I
need not tell. Thus far the main
business has been divorcing — the only
sort of cases, where parties are present
& where both sides get their cases.

But, first, I want history right.
I sent you an account of Jonas' troubles
with his wife's trunks — but I did not tell
but half of his misadventures — a rather
the trunk's misadventures. I told you
of its movements toward Newport Vt —

[PAGE ONE OF THE LETTER]

Rockland 17 Sept 1873

Paradise Regained

Court Room

who so well know all the de-
lights of a Knox Term I need
not tell. Thus far the main
business has been divorcing —
the only sort of cases, where
parties are prompt & when both
sides get their cases

But, first, I want history
right. I sent you an account of
Jonas' ¹⁴ troubles with his wife's
trunks — but I did not tell but
half of his misadventures or
rather the trunk's misadven-
tures. I told you of its movements toward Newport, Vt. —

[PAGE TWO OF THE LETTER]

I did not tell you how it
had previously started for New-
port R.I. & how multitudenous
telegraphing prevented its go-
ing to that seaside of fashion &
ultimately return it to its legal
owner — It is settled in family
council that Madame hereafter
in all her journeying is to be
confined to a valise — This much
for the rectification of history.

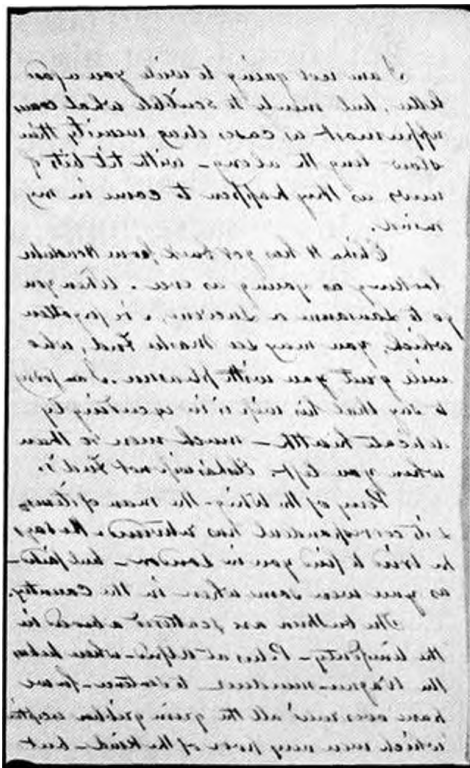
I am trying that Insurance
case, which you once tried —
Sleeper v Ins Co¹⁵ — & which is
trying me as much as I am the

I did not tell you how it had previously
started for Newport R.I. & how multitudenous
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of fashion & ultimately return it to its legal
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be confined to a valise — This much for the
rectification of history.

I am trying that Insurance case, which
you once tried — Sleeper v Ins Co — & which is
trying me as much as I am the case. In
fact here has nothing civil — but more
cases called civil — but it is worth in all
kinds of extremities — murder, rape,
arson, & all sorts of moral offenses —
Treason alone is excepted from the calendar —
In the murder murder case, & still being
is counsel for his friend — & he has
length men than his own — The case
was tried by Judge Peters without
result — so that it falls into my hands —
as does a great deal more than the
basket ought to contain —

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case. The docket here has nothing civil — not even cases called civil — but it rejoiceth in all manner of ennmities [sic] — murder, rape, arson, & all sorts of minor offenses — Treason alone is excepted from the calendar. In the Mink murder¹⁶ case, E F Pillsbury¹⁷ is counsel for Miss Mink — & he has length more than breadth — The Read¹⁸ [sic] case was tried by Judge Peters¹⁹ without result, so that falls into my basket — as does a great deal more than the basket ought to contain —



[PAGE THREE OF THE LETTER]

I am not going to write you a good letter, but merely to scribble what comes uppermost as cases drag wearily their slow length along — with tit bits of news as they happen to come in my mind.

Elisha H²⁰ has got back from Honolulu looking as young as ever. When you go to Lausanne or Lucerne, I've forgotten which, you may see Master Fred²¹, who will greet you with pleasure. I am sorry to say that his wife is in exceedingly delicate health much more so

than when you left. Elisha's wife not Fred's

Perry²² of the Whig²³ — the man of items & its correspondent has returned. He says he tried to find you in London — but failed — as you were some where in the country.

The bretheran are scattered abroad in the line of duty — Peters²⁴ at Alfred — where he has the Wagner murderer²⁵ to sentence — for we have overruled all the grim _____ exceptions which were very poor of the kind — but



[PAGE FOUR OF THE LETTER]

Barrows²⁶ brought a sixty-four pounder to bear upon a case where pigeon shot would have been amply sufficient. The points (pints) as Brother Godfrey²⁷ called them, are hardly visible in the smoke of the explosion. The opinion however was a very fine one —²⁸

Judge Barrows sent me your letter. How could Cutting ever eat his way to the bar? He might smoke his way through & stand ahead of the best of them — Then I suppose they have good dinners — & I think Jonas

has a predilection for poor dinners & bad cookery — at any rate he has no just appreciation of good cookery & its savory results. He is now at Houlton — for which place he started in ample season with strong hopes of a long term about which he may have an opportunity to brag a little on his vacation.²⁹ He took McCrillis³⁰ with him — I have Reuel Smith³¹ his Fidus Achates³² with me — much to his (Cutting's) regret — as murder must be phonographised for the benefit of the governor By the way, McCrillis came out of his Read [sic] better than anybody expected — a little better for the effort.³³ But he should not try the case again. He is not strong enough.

[PAGE FIVE OF THE LETTER]

What a learned bar we have on these ____ days. One of them wanting to ____ a little law (he could not stand much) and thinking it might be impertinent, apologetically remarked that there was no case pending to which it related & he was sure none would pend. There would not be much harm done if he were to pend.³⁴ How degenerate the bar is as compared with the days of

What a harvest we have within
 these days. One of them waiting to lay
 a little law (he could not stand much)
 and thinking it might be important,
 apologetically remarks that there was
 no case pending to which it related &
 he was sure none would pend.
 Then would not be much harm done
 if he were to pend. How disgraceful
 the bar is compared with the days of
 Parsons & Mellen — indeed as compared
 with our younger days. It is so, all
 over the land — Even! I never then
 half suspect the same deterioration
 is going on over the water —
 In the occasional extracts from
 the proceedings in the Titchbourne trial
 I should think counsel for the defendant
 transgresses the rules of courtesy
 to the Court more than would have

Parsons³⁵ & Mellen³⁶ — indeed
 as compared with our younger
 days. It is so, all over the land —
 Eheu! I more than half suspect
 that the same deterioration is
 going on over the water—

In the occasional extracts
 from the proceedings in the
 Titchbourne³⁷ [sic] trial I should
 think counsel for the defendant
 transcended the rules of cour-
 tesy to the court more than
 would have

[PAGE SIX OF THE LETTER]

been permitted here. I am in-
 clined to think his opening is
 the longest ever made in any

judicial proceeding³⁸ as well as
 the most remarkable. I hope
 you had the benefit of a taste.
 Heaven forbid, you should be
 doomed to a hearing of the
 whole. The Lord Chief Justice³⁹
 must have more patience than
 Cushing⁴⁰ accorded to him⁴¹ —
 to have stood it all as well as he
 did. I think he would hardly
 object to see Dr. Keneally⁴² [sic]
pend.⁴³ I should imagine he
 had a little of Jewetts⁴⁴ persis-
 tence — though a little more
classical. Think of Jewetts clos-
 ing argument after Keneally's
 [sic] opening.

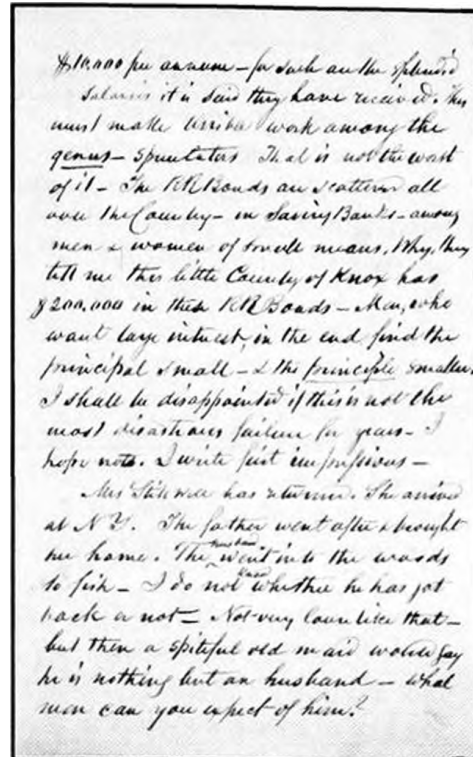
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 forbid, you should be doomed to a hearing
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 have more patience than Cushing accorded to
 him to have stood it all as well as he
 did. I think he would hardly object to
 see Dr. Keneally pend. I should imagine
 had a little of Jewetts persistence — though
 a little more classical. Think of Jewetts
 closing after argument after Keneally's
 opening. The telegraph just brings the announcement
 of the failure of Jay Cooke & Co. at Washington
 Philadelphia & New York & wherever
 else they may be doing business. Well,
 I never had faith in the Northern Trust.
 Indeed I generally distrust moonshiners.
 He will feel bad to lose his \$2,000,000
 but anxious to his son in law, Keneally

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The telegraph just brings the announcement of the failure of Jay Cooke & Co. at Washington, Philadelphia & New York & wherever else they may be doing business.⁴⁵ Well, I never had faith in the Northern Pacific. Indeed I generally distrust moonshine. Rice⁴⁶ will feel bad to loose his \$20,000 per annum & his son in law Goodwin⁴⁷

[PAGE SEVEN OF THE LETTER]

\$10,000 per annum — for such are the splendid salaries it is said they have received. This must make terrible work among the genus — speculators. That is not the worst of it — The RR Bonds are scattered all over the country — in Savings Banks — among men & women of small means. Why, they tell me this little county of Knox has \$200,000 in these RR Bonds — Men, who want large interest, in the end find the principal small — & the principle smaller. I shall be disappointed if this is not the most disastrous failure for years — I hope not. I write first impressions —



\$10,000 per annum — for such are the splendid salaries it is said they have received. This must make terrible work among the genus — speculators. That is not the worst of it — The RR Bonds are scattered all over the country — in Savings Banks — among men & women of small means. Why, they tell me this little County of Knox has \$200,000 in these RR Bonds — Men, who want large interest, in the end find the principal small — & the principle smaller. I shall be disappointed if this is not the most disastrous failure for years — I hope not. I write first impressions —

Mrs. Stilwell has returned. She arrived at N.Y. The father went after & brought her home. The husband went into the woods to fish — I do not know whether he has got back or not — Not very loverlike that — but then a spiteful old maid would say he is nothing but an husband — what more can you expect of him?

Mrs. Stilwell⁴⁸ has returned. She arrived at NY. The father went after & brought her home.⁴⁹ The husband went into the woods to fish — I do not know whether he has got back or not not very loverlike that — but then a spiteful old maid would say he is nothing but an husband — what more can you expect of him?⁵⁰

[PAGE EIGHT OF THE LETTER]

The jury send me word they are so conscientious they can't agree. Gould⁵¹ will ultimately prevail — Persistence and audacity are strenth & success.⁵²

The jury said me word they are so
conscientious, they can't agree. Force
will ultimately prevail - Resistance
& audacity are strength & success.

I am glad to know you are enjoying
your studies so well - but my dear
Governor I want to see you - You
don't know much you are missed -
And will you say to the Governor of
the Governor, that every body
wants her to return just as soon
as she possibly can - consistently -
& the same to the young heir apparent.
Wishing health & pleasure & a safe
& speedy return to you all, I am
as ever - Yours very affectionately
John Appleton

N.B. This is my signature -
Don't you wish you were in Knox?
You may get another letter, I can't tell.
They move slowly here - & not very surely.

I am glad to know you are
enjoying yourselves so well -
but my dear Governor I want to
see you - You don't know [how]
much you are missed - And
will you say to the Governor of
the Governor, that everybody
wants her to return just as soon
as she possibly can - consis-
tently - & the same to the young
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NOTES

¹See David M. Gold, "Chief Justice John Appleton," *Maine Historical Society Quarterly* 18 (Spring 1979): 193-216; Gold, "John Appleton and Responsible Individualism in Nineteenth Century Law," Ph.D. dissertation, Ohio State University, 1982; Gold, "John Appleton and the Practice of Law in 19th Century Maine," *Maine Bar Journal* 1 (May 1986): 132-38; Gold, *The Shaping of Nineteenth-Century Law: John Appleton and Responsible Individualism* (Westport, Connecticut: Greenwood Press, 1990).

²John Appleton, *The Rules of Evidence: Stated and Discussed* (Philadelphia: T. & J.W. Johnson, 1860).

³*Dred Scott v. Sanford*, 690 U.S. (19 Howard) 393 (1857).

⁴Curtis was a student of Appleton's when he taught at the Watertown Academy before he began his study of the law. See Gold, "John Appleton and Responsible Individualism," p. 217.

⁵ Resolution, March 26, 1857 [1857], Me Res.95.

⁶ *Opinions of the Justices*, 44 Me 505, 521 (1857).

⁷ Gold, "John Appleton and the Practice of Law," p. 132.

⁸ Will of John Appleton, Penobscot County Probate Records, vol. 94, pp. 33-38.

⁹ Edward Kent, Maine lawyer, governor and judge. Born in Concord, New Hampshire, in 1802, he graduated from Harvard in 1821 and taught school until he began the study of law in the offices of Benjamin Orr. In 1827 he was admitted to the Penobscot bar. In early 1831 he formed a partnership with Jonas Cutting which lasted for eighteen years. He was elected to serve as governor of Maine for the 1838-1839 and 1840-1841 terms. After service he went back to the practice of law, which was periodically interrupted for political appointments. In 1859 he was appointed associate justice of the Maine Supreme Judicial Court (hereafter MSJC), a position he held until his retirement in 1873. He died in Bangor in May 1877. See H. Clay Williams, *Biographical Encyclopedia of Maine of the Nineteenth Century* (Boston: Metropolitan Publishing and Engraving Company, 1885), pp. 86-87.

¹⁰ Kent served two terms on the court, 1859-1873.

¹¹ Williams, *Biographical Encyclopedia*, p. 87.

¹² At the Penobscot Bar's memorial proceedings for Judge Kent, John Appleton referred to Kent as "the friend of my youth, the companion of my mature years, the associate in judicial labor [who] is no more, and in him is severed almost the last link connecting the past with the present" See *Proceedings of the Penobscot Bar in Relation to the Recent Death of Hon. Edward Kent*, 66 Me 602, 610 (1877).

¹³ Edward Coke, English lawyer, jurist, and parliamentarian, whose defense of the supremacy of the common law against the claims of royal prerogative had a profound influence on the development of English law and the constitution. The "&c" was used frequently in Coke's writings to include many things not specified. See Catherine D. Bowen, *The Lion and the Throne: The Life and Times of Sir Edward Coke* (Boston: Little, Brown, 1956).

¹⁴ Jonas Cutting, associate justice of the MSJC, was born in Croydon, New Hampshire, in 1800 and graduated from Dartmouth College in 1819. He taught school for a short time and eventually moved to Augusta. There he read the law under Reuel Williams. In 1826 he joined the bar and entered into partnership with Edward Kent, which lasted for eighteen years. Cutting was appointed an associate justice in 1854 and was repeatedly reappointed until his retirement in 1875. See Williams, *Biographical Encyclopedia*, pp. 374-75.

¹⁵ *Alfred Sleeper v. Union Insurance Company*, 61 Me 267 (1873). Union Insurance issued a policy to a Captain Alexander for the value of a schooner. The ship and the captain were lost at sea and the company paid the benefits to the wife of the captain. Sleeper then sued the company, claiming that he was the intended beneficiary. The trial court allowed the testimony from third parties as to what Captain Alexander told them about the policy. This

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testimony supported Sleeper's claims. The company then filed exceptions to the admission of this evidence. The MSJC, in an opinion by Chief Justice Appleton, sustained the exceptions on the grounds that the testimony was hearsay and improperly admitted into evidence.

¹⁶*State of Maine v. Lucy Ann Mink*. Mink was indicted for the murder of Payton Randolph Baker. She was tried before Chief Justice Appleton, sitting as a trial justice, and found not guilty. See Knox County Supreme Court Trial Records, vol. 8, p. 400, Criminal Docket no. 25, September Term 1873.

¹⁷Eben F. Pillsbury, Augusta lawyer and editor of the *Maine Standard*.

¹⁸*State of Maine v. Elbridge W. Reed*, 60 Me 550 (1873); 62 Me 129 (1874). Elbridge Reed was indicted and tried for murder. Prior to final resolution, the case bounced between the trial court and the MSJC four times. At the first trial Reed was found guilty of murder. He filed exceptions over the improper admission of testimony from certain prosecution witnesses. The MSJC sustained these exceptions, set the verdict aside, and sent the case back for another trial. The second trial, Judge Peters presiding, resulted in no verdict from the jury and required a third trial. The third trial was held, and the jury found Reed guilty of the murder. Again Reed filed exceptions to the MSJC, this time alleging improper jury instructions by the trial judge. The MSJC overruled these exceptions, bringing the case to an end.

¹⁹John A. Peters, associate justice of the MSJC. Born in Ellsworth in 1822, he graduated from Yale University in 1842 and studied law at Cambridge Law School. He was admitted to the bar in Maine in 1844 and practiced law and served in the state legislature and the U.S. Congress. He was appointed to the bench in 1873 to replace the retiring Edward Kent and served with Appleton. He was appointed chief justice in 1883 when Appleton retired. He himself retired in 1900. See Williams *Biographical Encyclopedia*, pp. 158-59.

²⁰Elisha H. Allen, attorney, politician and judge. Allen was Appleton's law partner in Bangor and the brother of Appleton's first wife, Sarah. Active in politics, Allen moved to Hawaii, entered the government, and rose to the office of Chancellor and Chief Justice. In 1876 he returned to the United States as the Hawaiian ambassador. See Gold, "John Appleton and Responsible Individualism," p. 39.

²¹Frederick Appleton, one of two surviving sons of Sarah and Judge Appleton.

²²Edwin A. Perry, a correspondent for the *Bangor Daily Whig and Courier*, was appointed honorary commissioner from the State of Maine to the World's Exposition in Vienna in 1873. He traveled extensively in Europe and wrote numerous lengthy letters to the paper describing his travels.

²³The *Bangor Daily Whig and Courier* was published from 1834 to 1900. It was acquired by the *Bangor Daily News*.

²⁴Justice John A. Peters.

²⁵*State of Maine v. Louis H.F. Wagner* 61 Me 178 (1873). Wagner was indicted and found guilty of the murder of Anethe M. Christensen. At that

time, the trial was quite a sordid affair. There were a number of individuals involved in allegations of adultery and other titillating issues. Wagner filed exceptions to the admission of many pieces of evidence. The MSJC, in an opinion by Associate Justice Barrows, overruled all of the exceptions and sent the case back to the trial judge for sentencing. Judge Peters sentenced Wagner to be confined for one year and then executed for the murder of Miss Christensen. The sentence was completed on January 29, 1875.

²⁶William G. Barrows, associate justice of the MSJC. Born in 1821 in Yarmouth (North Yarmouth today), he graduated from Bowdoin College in 1839 and studied law in the office of a future chief justice of the MSJC, John S. Tenney. Barrows practiced law in Bangor and was appointed to the court in 1863. He served until 1884. See Williams, *Biographical Encyclopedia*, pp. 159-61.

²⁷John Edwards Godfrey, an influential Bangor attorney and friend of Judge Appleton and Judge Kent. In addition to his practice, he served as probate judge in Penobscot County from 1856 through 1881. See Williams, *Biographical Encyclopedia*, pp. 395-96.

²⁸In the opinion for the court in *Wagner*, Judge Barrows wrote a lengthy opus overruling all of the defendant's objections to the admission of various pieces of evidence. Although Appleton apparently agreed with the result, he thought that the opinion was excessive.

²⁹This vacation is probably the same journey Appleton obliquely refers to in the beginning of the letter when he describes Cutting chasing his wife's trunks around New England. The reference to eating his way to the bar indicates that Cutting journeyed to England and had one or more meals at one of the Inns of Court in England. One of the requirements for persons to be called to the bar is that they eat in the Inn's dining hall three times each term for three years. See Robert R. Pearce, *A History of the Inns of Court and Chancery* (c. 1848; Littleton, Colorado: F.B. Rothman, 1987).

³⁰William H. McCrillis, Bangor lawyer. Born in 1813, McCrillis studied law in the office of Allen and Appleton in Bangor. He was admitted to the bar in 1834 and became county attorney for Penobscot County during Governor Kent's administration. See Williams, *Biographical Encyclopedia*.

³¹Reuel Smith, a Bangor lawyer and official stenographer of the MSJC, wrote *Smith's Short Numerals, or Quick Way of Writing Figures* (1889), based on his experiences as court stenographer.

³²Faithful Achates, the companion of Aeneas, was noted as a "true friend."

³³William McCrillis was counsel for the defendant Reed. Appleton's comment apparently refers to the success McCrillis had in the appeal of the first *Reed* trial and the subsequent lack of verdict in the second trial.

³⁴This is a pun on the word "pend." The general usage in the legal world means waiting for disposition, but it also includes "to pen up or to hang." See

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James A.H. Murry, editor, *A New English Dictionary on Historical Principles* (1893).

³⁵Theophilus Parsons, chief justice of the Massachusetts Supreme Court, left college in 1769, moved to Falmouth (Portland) as a teacher, and began to study law with Theophilus Bradbury. He was admitted to the bar in 1774. Shortly after the destruction of Falmouth in October 1775 he left for the Boston area. In 1806 he succeeded Dana as Chief Justice of the Massachusetts Supreme Court. Chief Justice Parsons was known as a judge who “was particularly rigid in repressing any discursive displays of rhetoric” in his court. See William Willis, *A History of the Law, the Courts and the Lawyers of Maine* (1863), p. 299.

³⁶Prentiss Mellen, the first Chief Justice of the MSJC. Born in 1764, he entered Harvard in 1780 and graduated in 1784. After graduating he went to Barnstable, Massachusetts, and studied law with Searjashub Bourne. He was admitted to the bar in 1788 in Taunton and practiced in numerous towns before settling in Portland in 1806. In 1820 he was appointed Chief Justice of the MSJC and served until 1834 when he retired from the bench. He was known for running trials in as pure form as possible. “There were times when the judge’s patience gave way before the tedious prolixity of some advocates....” One of Mellen’s sisters, Charlotte, was the mother of Edward Kent. Williams, *Biographical Encyclopedia*, pp. 163-73.

³⁷*The Queen v. Thomas Castro, otherwise Arthur Orton,*, (1874) L.R., 9 Q.B. 350. Up to the date of the letter, this was the longest criminal trial ever held in England. It began on April 23, 1873 and ended on February 28, 1874.

³⁸Dr. Edward V. Kenealy, barrister for the defendant, spoke for twenty-one days in his opening statement. Counsel for the Crown spoke for twelve days. The opening and other orations were widely acclaimed for their quality, as well as their length. See Geddes MacGregor, *The Tichborne Impostor* (Philadelphia: Lippencott, 1957), p. 188.

³⁹Sir Alexander James Edmund Cockburn, 10th Baronet, Lord Chief Justice in England. As a barrister and a judge, he was involved in many cases which, at the time, were quite sensational, two of which had some lasting impact upon the United States.

⁴⁰Caleb Cushing, American lawyer, politician, and diplomat. Cushing was born in 1800 and educated in Massachusetts. Admitted to the bar in 1821, he served in the state legislature and the U.S. Congress (1835-1843). In 1853 he was named attorney general of the United States by President Franklin Pierce. He served in various political and diplomatic positions, including U.S. counsel in the “Alabama claims” arbitration, which arose out of the damages caused by Confederate raiders constructed and outfitted in Britain. He died quietly in early 1879. See Claude M. Fuess, *The Life of Caleb Cushing* (c. 1951; Hamden, Connecticut: Archon Books, 1965).

⁴¹Cushing and Cockburn were well acquainted with each other, as they both served on the “Alabama claims” arbitration, Cockburn as the British delegate and Cushing as Counsel for the United States representative. Cockburn

opposed the settlement. Cushing's feelings about Cockburn must have been the result of his behavior throughout the arbitration proceedings. See Fuess, *The Life of Caleb Cushing*, vol. 2, p. 324.

⁴²Dr. Edward Vaughan Kenealy, counsel for the defendant in the Tichborne case, overstepped the bounds of courtesy and respect in pressing his client's case. As a result, he lost his patent as Queen's Counsel and was disbarred by the members of Gray's Inn. See Douglas Woodruff, *The Tichborne Claimant: A Victorian Mystery* (New York: Farrar, Straus & Cudahy, 1957), p. 390.

⁴³A second pun on the word pend.

⁴⁴Albert G. Jewett, Belfast Attorney and lifelong Democrat.

⁴⁵Jay Cooke and Company was an important investment bank known for financing much of the northern cause during the Civil War and for sponsoring the issue of Northern Pacific Railroad's securities. Cooke and Company had almost a patriotic and emotional zeal in sponsoring the railroad securities and continued to support the securities when caution would have dictated otherwise. The collapse of the bank and the onset of the "Panic of 1873" occurred on September 18, 1873.

⁴⁶Richard D. Rice, former associate justice of the MSJC. Born in Union, Maine, in 1810, Rice read law with James W. Bradbury and in 1840 entered into partnership with Bradbury. He was appointed associate justice in 1852. He resigned in 1863 and became president of the Portland and Kennebec Railroad Company and later officer of the Northern Pacific Railroad Company. See Williams, *Biographical Encyclopedia*, pp. 167-69.

⁴⁷Judge Appleton may be mistaken about Goodwin being Judge Rice's son-in-law. Rice's daughter, Abbie E. Rice, married Captain Samuel Dana of the U.S. Army. She died in California in 1868.

⁴⁸Mrs. Mary T. Stilwell, wife of Bangor attorney and state commissioner for fishing, Elias M. Stilwell. See John Edwards Godfrey, *Journals of John Edwards Godfrey*, edited by James B. Vickery, vol. 2 (Bangor, Maine: Bangor Historical Society, 1984), p. 147.

⁴⁹The source of this little bit of gossip may well have been John E. Godfrey. Godfrey's journal entry for September 7, 1873, states that "Mrs. Stilwell returned from Europe last Wednesday. Her father went to NY for her. Her husband was at Katahdin Iron Works, and is there still." See Godfrey, *Journals*, vol. 2, p. 147.

⁵⁰As a side note on the marital status of the Stilwells, an entry in Godfrey's *Journal* dated April 25, 1875, states that "My friends, Elias M. Stilwell and Mary T. Stilwell were divorced by Judge Appleton last Monday, on her petition." Vol. 2, p. 209.

⁵¹Could, the attorney for the plaintiff in *Sleeper*.

⁵²C.J. Appleton was known to have strong opinions as to the merits of a case and was not adverse to showing them from the bench. This is confirmed by Chief Justice Cornish's address to the Maine Bar Association in which he tells

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of a letter, written by Associate Justice Jonas Cutting, that states that "he had just visited the leaning tower of Pisa and that it reminded him of one of Judge Appleton's Charges in a liquor case." See *Report of the Maine State Bar Association for 1920-1921* (1921), p. 138.

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