

ered the validity of the indictment as judicially established and empanelled a jury to try it. Judge Chetlain was under no obligation, of course, to regard Judge Tuthill's decision as binding; he had the legal right to reverse that decision. But when the consequences are considered, his doing so affords an excuse at least for questioning the integrity of his purpose. Had he accepted Judge Tuthill's decision as the law of the case until reversed by a higher court, the case would have gone to the jury. If a verdict of "not guilty" had been rendered all errors of law would have been cured and the accused would have been exonerated. If the verdict had been "guilty," Judge Tuthill's error, if an error, could have been corrected by the higher courts. But Judge Chetlain chose to reverse Judge Tuthill, and consequently to order the jury to acquit. By doing that, he prevented all possibility of rectifying errors, and allowed men apparently criminal to escape. The higher courts are prevented from deciding whether Tuthill or Chetlain is right, and the accused are shielded from the danger of a trial on another indictment for the same offense. This has every appearance of a miscarriage of justice for which the intricacies of the law are less responsible than the inclinations of a judge.

Postal censorship in the United States.

An address issued from New York by the Free Speech League (Dr. E. B. Foote, treasurer, 120 Lexington avenue), calls attention to the development in this country of a usurpation of power of the most threatening character—censorship of the press. The particular instance referred to is the case of a Chicago publication named "Lucifer," edited by Moses Harman, and charged with publishing something obscene; but neither the particular paper or its editor, nor the particular charge, is important, in view of the arbitrary method of suppression. The vital issue raised by this case is not whether obscene publications

shall be suppressed; it is whether the postal department shall be permitted to pass judgment, *ex parte*, on the question of obscenity, and, without due process of law, to destroy newspaper properties upon the ipse dixit of postal clerks.

This is what appears to have been done in Harman's case. Having deposited a regular edition of his paper in the mails, he supposed it had been distributed to his subscribers; but he learned later that, instead of being distributed, it had been sent to the dead letter office and confiscated upon a charge of containing obscene matter. Whether the matter was obscene we are in no position to judge, for the paper is not before us; but every intelligent citizen is in a position to judge of the importance of the right of a newspaper publisher to a fair trial on any accusation, even of indecency, before being deprived of his property. If postal clerks may at will suppress and confiscate any edition of any periodical which they are ordered or are pleased to regard as obscene, then no periodical which in any respect offends the powers that be, is quite safe from censorial malice.

It is easy to convict of crime when the accuser is also prosecutor, judge and jury, and the accused is given neither opportunity to be heard nor notice of the accusation. Especially is this true when the same authorities who thus confiscate property without due process of law, refuse to disclose in advance of publication what their judgment as to the legitimacy of printed matter may be. For illustration: The editor of a perfectly clean periodical, feeling called upon to discuss in a decent manner some question relating to the philosophy of sex relationships, might in good faith submit his article to the proper postal authorities with a view to avoiding the penalties of censorship. But the authorities would refuse to advise him, although, as their functions are ex-

ecutive and not judicial, there is no reason for such refusal. Yet, after the article had been published, and the edition of the periodical deposited in the mails, the same executive bureau which had refused to disclose its attitude toward the article in advance of publication, would promptly confiscate the edition without allowing the editor any opportunity to be heard. This is precisely what is said to have occurred in Harman's case. It is precisely what the postal authorities assert the right to do in any case. It is absolutely in contravention of American principles of jurisprudence, and it is a most dangerous usurpation of censorial power.

THE MEMORY OF JOHN HAY.

Now that the papers are full of John Hay's services and his fame, it is well to recall what past experience has to say of the fame that waits on human deeds. If his name survives in the memory of man for a century, will it be by his statesmanship, or by his verse? Will it be from the events that have put his name in great headlines of the daily press, or from the corners of columns where stray verses are found?

Very few "statesmen" live long on common fame. Statecraft is temporary, and built on expediency. It has rarely been constructive, or based on any great original principle that would set the world forward. Such principles alone can make abiding fame in real statesmanship, and they have usually come from the outside and been adopted slowly and grudgingly by professional statesmen.

Officers of government have their reward in their own day, which means generally that they have done little to merit the reward of future fame and gratitude.

Who knows anything of the statesmen of Europe when Dante was struggling with his *Inferno*? John Milton was a conspicuous and efficient secretary of state, but would he be remembered for this alone? How many great officers of state were flourishing in London when Wordsworth stood unknown on Westminster bridge and wrote his immortal sonnet? Who were the great ones in Scot-