1886.

NEW ZEALAND.

SHORTHAND REPORTING IN SUPREME COURT

(CORRESPONDENCE AND MEMORANDA RELATIVE TO).

Presented to both Houses of the General Assembly by Command of His Excellency.

No. 1.

MEMORANDUM for MINISTERS *re* appointing SHORTHAND REPORTERS in the SUPREME COURTS.

I WISH to submit to the Cabinet the desirableness of making provision for the appointment of shorthand-writers to the Supreme Courts, and, in doing so, I think there are only two phases of the subject which I need bring under notice:—

(1.) The necessity for such appointments as proposed;

(2.) In what way to give effect to the proposal.

As to the first, I think it requires little, if any, advocacy. The loss of time, the mental and physical labour, involved in taking voluminous notes of evidence in cases whether long or short, and possibly the want of accuracy, as well as the inconvenience to legal practitioners engaged in judicial proceedings, and the delay to suitors, are alone, probably, sufficient reasons for establishing such a shorthand system. An advantage also not the least important is the absolute mental freedom afforded to Judges for devoting undivided attention to the legal questions usually incidental to a trial or other proceedings, and which require decision as they arise. Further, it makes all concerned—Judges, lawyers, and witnesses—exercise greater care in what they say and do.

Any disputes arising during a trial as to the alleged testimony of a witness are at once settled by reference to the sworn reporters' notes. Moreover, in cases of appeal and in *Banco*, absolutely reliable—indeed, indisputable—evidence will be thus secured, instead of trusting to Judges' notes, which, though beyond the right of controversy, may nevertheless possibly be inaccurate.

It is noteworthy—as showing the expedition and great pecuniary saving gained—that in the recent Bryce-Rusden Evidence Commission, held at Wanganui, over forty witnesses were, through the services of an expert shorthand-writer (Mr. Mitchell, of *Hansard*), during five days, enabled to be examined, cross-examined, and re-examined respectively by counsel. All the evidence was written out in longhand after each sitting, and ready for signature by the witnesses respectively on the morning of the day following its delivery. Had such quantity of evidence to have been there and then taken by or before the Commission in longhand, it is no exaggeration to say that the work could not have been accomplished in at least three times the period, and, in addition, would have made the proceedings intolerably wearisome.

As to the second—in what way to give effect to the proposal—I assume that the requisite skill is obtainable, for in this matter something approaching more to legal experience is required than is possessed by the ordinary newspaper shorthand reporter. I understand that a great many persons calling themselves shorthand-writers are totally incompetent, from want of general intelligence, experience, or mechanical efficiency, for the duties which reporting evidence in Courts of law requires. Hence, in its inaugural stage, the proposed reform will not, probably, run so smoothly as may be expected; but this difficulty will disappear in time, as the reporters become better trained in their work.

In America,* and also Canada, official shorthand law-reporting is carried on apparently on a very large scale, with a staff of reporters and a staff of transcribers, the chief reporter being a very highly-paid officer. He sends his deputies to each of the Courts, and the shorthand reports are

* In America (from 1860 to 1885, both years inclusive) the following States and Territories have made legislative provision for the employment of official stenographers in the law-courts, viz., the States of New York (the first to pass such a statute), Alabama, California, Colorado, Connecticut, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, Ohio, Pennsylvania, South Carolina, Vermont, West Virginia, and Wisconsin; and the Territories of Arizona, Dakota, Montana, New Mexico, Utah, and Wyoming.—J.A.T.

transcribed every evening by skilled operators, I presume on the "type-writer," and copies are ready to be furnished next morning to the litigants, on payment of certain regulated fees.

In England and in the colonies shorthand-writers are frequently employed solely by the parties to suits, or sometimes a Judge or Court may obtain the assistance of a shorthand-writer in long and important cases. In the former case the cost is borne, of course, by the parties, and in the latter by Government. But this is defective, because it is merely an occasional private arrangement, which is unofficial, uncertain, and unsystematic.

I think, as a beginning, there should be a reporter for each Supreme Court district, that is for each of the five Supreme Court Judges, as they hold sittings at other than the chief cities of the colony.

As to the character of appointment and remuneration, two methods may be suggested:—

(1.) A shorthand-writer for each judicial district might be appointed, receiving what might be considered a retaining fee of, say, £100 per annum, for which he might be bound to take notes in all "defended" cases, and to furnish the Court and parties with a transcript at per folio, according to prescribed fees payable into Court. From the aggregate of such fees the reporter's retaining-fee could be recouped, leaving the balance to be paid to the reporter.

This method might, for reporters, be attractive enough, as being the more lucrative, especially as population and business increased; but, though it would be apparently economical for the State, it would, nevertheless, I think, prove unsatisfactory, as the shorthand-writer could not be regarded wholly and solely, as he should be, an officer of the Court, or entirely at its service. Possibly, under this plan, and with some addition to present salaries, the skill of the *Hansard* and Parliamentary Committees' staff might be utilized during the recess.

(2.) Undoubtedly the best course to adopt (in the absence of a fully-organized double staff of writers and transcribers in connection with law-reporting, which I hope the colony at no distant date will possess) would be to appoint as an officer of the Court, under section 35 of "The Supreme Court Act, 1882," a skilled shorthand-writer to each judicial district, whose transcript of notes would be records of Court, and available at all times to the parties concerned and their solicitors on payment of a prescribed copying-fee.

In many short or minor cases or proceedings an expert writer would be able to take down in longhand the statements as they might fall from the witnesses or others. As such an officer as is indicated in this alternative proposal under consideration would be a permanent official, employed all the year round, I do not think that from £250 to £300 per annum could be considered excessive remuneration.

I accordingly ask the Cabinet to consent to a sum of £1,250 or £1,500 being placed on the estimates "Towards the establishment of official shorthand law-reporting in the Supreme Court."

Of this amount a considerable proportion would return in fees, but to what extent it is difficult, in relation to an untried scheme, to speculate.

I do not know whether or not the several Law Societies of the colony would be willing to contribute to this cost; but it is clear that the legal profession would derive considerable benefit from the appointment of shorthand-writers to the Courts. In compiling the authentic law reports it would be of special advantage. The fullest reports could be supplied, and not a single case throughout the colony need escape recording. At any rate, the payment of the £200 which is now annually voted as a contribution towards the publication of the New Zealand Law Reports might at once cease.

It has occurred to me that, if the system under consideration were once established, it is quite within probability that there would be found private enterprise sufficient to organize a firm or association of shorthand-writers, who would undertake, for a reasonable subsidy, derivable from copying-fees or otherwise, to supply a staff of reporters, and furnish reports with despatch.

The request I have submitted to Ministers is the minimum, but, if the Hon. the Colonial Treasurer would indulge me, I should like to strongly urge the appointment of at least two reporters—a writer and a transcriber—for each district, which would not only afford a convenient division of work and insure its expedition, but would also place the scheme, at its commencement, on a more successful footing.

In conclusion, I hope the Government will, in some shape, assent to the inauguration of this reform, which is real, and one which, from every point of view, will prove of incalculable value in the administration of our judicial system.

28th May, 1885. J. A. Tole.

Note.—In reference to the above, Cabinet has decided to place the sum of £500 on the estimates, with the view of inaugurating the scheme by (1) appointing reporters for the judicial districts; (2) charging a fee, to be paid into Court in each case by the parties; (3) fixing fees to be paid per folio for transcription.—11th September, 1885.

No. 2.

Messrs. Stott and Hoare to the Hon. the Minister of Justice.

Sir,— 80, Elizabeth Street, Melbourne, Australia, 29th April, 1885.

We are given to understand that you are about to give a trial to the system of official law-reporting as used in Scotland, Canada, and the United States. We carry on business in Melbourne as law reporters, and are well and favourably known to the legal profession here; and we thought it advisable to acquaint you with that fact, and to state that, if you desire any information regarding

our mode of operations here, we would be glad to give same. We supply transcripts of our notes verbatim—question and answer—at nine o'clock on the morning following the day on which the trial takes place. To get out our transcripts we employ a number of skilled operators on the type-writer, and our work has been favourably commented on. There can be no doubt but that the system you are about to inaugurate will not work smoothly at first. We are interested in seeing that work of such a responsible character is done satisfactorily in the other colonies, so that, in our attempts to introduce the system here, it may not be said that in New Zealand it did not work well.

We desire to intimate that we have copies of the different Acts of Canada and the United States relating to the appointment of official law reporters, and would be very pleased if you would allow us to offer suggestions as to the best mode of dealing with the subject. The work of law-reporting is one of the most delicate operations performed by skilled writers. It cannot be done with satisfaction by newspaper reporters, unless they have had great experience in verbatim reporting. The very nature of their duties as newspaper reporters renders them prone to seize only on what appears to them to be matters of importance, leaving the minor details of the subject to take care of themselves. Such treatment of evidence would not be tolerated.

We repeat that, should you think we could render any service to you in this matter, we desire that you will acquaint us with the fact, and we will give you all assistance in our power.

We have, &c.,

The Hon. the Minister of Justice, Wellington, New Zealand. STOTT AND HOARE.

No. 3.

The Hon. the MINISTER of JUSTICE to Messrs. STOTT and HOARE.

GENTLEMEN,— Department of Justice, Wellington, New Zealand, 19th May, 1885.

I have the honour to acknowledge the receipt of your letter of the 29th April last, and to thank you very sincerely for your offer to furnish suggestions as to the best mode of dealing with the subject of official law-reporting in this colony. I shall gladly avail myself of your offer, and beg to invite you to favour me at your earliest convenience with any information which you may be able to give, especially as to the requisite staff, and the cost, regard being had to the peculiar circumstances of this colony, where there are several Supreme Court centres, instead of as in Victoria only one.

In addition to general suggestions on the subject, I should also be obliged for a description of the mode of carrying-out the system in the United States and Canada.

I have, &c.,

Messrs. Stott and Hoare, 80, Elizabeth Street, Melbourne. JOS. A. TOLE.

No. 4.

Messrs. STOTT and HOARE to the Hon. the MINISTER of JUSTICE.

SIR,— 80, Elizabeth Street, Melbourne, Australia, 9th June, 1885.

We have the honour to acknowledge the receipt of your letter of the 19th ultimo, and, as requested, we send you herewith the result of our experience and inquiries on the subject of official law-reporting.

First, as regards America. That country, like New Zealand, has, as is well known, several Supreme Court centres, each State making and administering its own laws. In the great majority of the States the system of official law-reporting has long been a recognized institution. There are, of course, differences in points of detail in the working of the system in the different States; but the following are its main characteristics: (1.) The official shorthand-writer is required to make accurate shorthand reports of all proceedings in Court, except the arguments of counsel. (2.) A certified transcript of such report when made is taken to be *primâ facie* a correct statement of the testimony and proceedings. (3.) The official shorthand-writer to furnish—on application by the Court, the State's attorney, or any party to a suit—within a reasonable time, a transcript of the proceedings or any part thereof. (4.) The remuneration varies in the different States; but the general rule is to pay the official shorthand-writer a fixed salary for taking notes, with the privilege of charging a fee of so much per folio for a transcription where required by either the Court or any of the parties to a suit. (5.) The plaintiff on entering his suit pays a small fee, generally $3, in addition to the usual entering fees, as a kind of tax to provide for the shorthand-writer's salary.

As to Canada, the system in force there is based on the lines of that generally used in the United States.

In England the system has, to a limited extent, been in vogue for some years, there being two official shorthand-writers appointed by the London Bankruptcy Court. These officials, however, do not report every case arising in that Court, but only such of them in which either or both of the parties choose to obtain the direction of the Court that a shorthand note should be taken. This course is very frequently adopted, experience having shown the wisdom of it. In some of the American States, too—notably in that of New York—the system in force is exactly similar to that in the London Bankruptcy Court, viz., that an official reporter is appointed, who only reports such cases as the parties or the Court may require, and such report is the only one made, and is paid for, by the party requiring it, at the rate of $10 per day, and 20c. per folio for transcription.

In regard to our own method of procedure in Melbourne: As you are aware, there is no official system in force at present, the parties to a suit having to bear all the expenses themselves of the employment of the shorthand-writer, unless the Court shall by special order make it costs in the cause. Notwithstanding this drawback to the employment of members of our profession, we have ourselves been engaged by one or other of the parties, in many cases of importance,

to take verbatim notes of the trial. Our practice is to hand to the party employing us a transcript of our notes by nine o'clock on the morning following the day on which the trial takes place, so that, if, as is frequently the case, the trial lasts more than one day, our notes may be used by counsel as the case proceeds. Very often we give transcripts of portions of the evidence on the same day as it may be taken, while the case is actually proceeding. Our experience and that of our clients is, that by using the type-writer for transcription in lieu of longhand we turn our work out much quicker, and in a much more readable manner, than was possible under the old practice. We also bind our reports up in book form, in a strong but inexpensive cover. In the case of Malpas *v.* Malpas, the latest *cause célèbre* here, which occupied the attention of the Divorce Court here for twenty days, we were engaged by the petitioner's proctors to supply transcripts of our notes day by day as the case proceeded, and these were frequently referred to in the course of the trial. We might also mention that His Honour Mr. Justice Higinbotham, who presided at that trial, took his notes in shorthand, as is his invariable practice. Again, within the last fortnight, we did the same thing in connection with the case of Capper *v.* the Red-cross Preserving Company (Limited), which lasted eight days. In fact, as in England, although the parties themselves have, under the present system in this colony, to pay the shorthand-writer's fees, yet so much importance is attached to his services that they are constantly called into request. The remuneration received by us is as follows: Two guineas per day for taking notes, and one shilling per folio of seventy-two words for transcription. Practically the only difference between the course adopted here and that in the London Bankruptcy Court is, that there the shorthand-writers have an official position, which we have not, and also that here the Judges take up much valuable time in taking down the testimony of witnesses, which, of course, in the London Bankruptcy Court is rendered unnecessary in those cases in which the official shorthand-writer is engaged.

Those of our American correspondents to whom we have mentioned the matter tell us that it is a generally-recognized fact, that where the shorthand-writer is a part of the regular paraphernalia of the Court one-half to one-third of the time of that Court is saved, carrying with it, of course, a corresponding saving to the taxpayers in the cost of maintaining the Court, to litigants in expediting their cases, and to jurors and witnesses in a similar manner and equal ratio.

We beg to offer you the following suggestions as the basis on which to frame a law for the employment of official shorthand-writers for your Courts:—

1. The Government may appoint a competent shorthand-writer for each Judge of every Court in which it is thought necessary that a shorthand-writer should be appointed.

2. It shall be the duty of the official shorthand-writer to take an accurate shorthand note of the testimony, the objections made, the rulings of the Court, and all other proceedings on the hearing of a case, except the arguments of counsel; and, if requested by either party so to do, he must, within a reasonable time after the trial of such case, transcribe his notes, and verify and file the transcript in Court.

3. The certified transcript shall be *primâ facie* a correct statement of such testimony and proceedings.

4. The official shorthand-writer shall receive, as compensation for his services, a salary from the Government of £250 per annum for taking shorthand notes, and shall be authorized to make an additional charge to the party requiring the same of 1s. per folio of seventy-two words for a transcript of the whole or any portion of his notes, such charge to be allowed on taxation.

5. The official shorthand-writer shall not be required to transcribe his notes until the fee for so doing shall be tendered to him or deposited in Court.

6. On entering a cause for trial the plaintiff shall pay into Court, in addition to the usual fees, the sum of 15s., which shall go towards the payment by the Government of the shorthand-writer's salary.

7. The presiding Judge, on the trial of any criminal case, may make an order requiring the testimony to be taken down by the official shorthand-writer, and transcribed within such time as may be designated by him; and in such cases the fees of the shorthand-writer for transcription shall be paid by the Government, on the certificate of the Judge making the order.

8. No person shall be appointed to or be retained in the position of official shorthand-writer to any Court without first being examined as to his competency by the Attorney-General, or such other persons as he may appoint; and no person shall be appointed to or be retained in such position upon whose qualifications the examining party shall not have reported favourably.

9. The test shall be as follows: The party examined must write, in the presence of the examining persons, at the rate of at least 140 words per minute for five consecutive minutes, upon matter not previously written by him; and shall transcribe the same into longhand-writing with accuracy forthwith, in the presence of the said examiners. If he pass the said test satisfactorily, the examining persons shall furnish the successful applicant with a certificate, which shall be filed in the records of the Court.

10. The shorthand-writer must attend to the duties of his office in person, except when excused for a good and sufficient reason by order of the Court.

Alternative Rules.

1. Same as above.

2. In lieu of the words "It shall be the duty of the official shorthand-writer to" read, "The official shorthand-writer must, at the request of either party in any case, or of the Court."

3. Same as above.

4. The official shorthand-writer shall receive, as compensation for his services, the sum of £2 2s. per day for taking notes, and 1s. per folio of seventy-two words for transcribing the same; such sums to be paid by the parties requiring the transcript, and to be allowed on taxation.

5. The official shorthand-writer shall not be required either to take shorthand notes or to transcribe the same until his fee for so doing shall be tendered to him or be deposited in Court.
6. The same as No. 7 as above.
7. The same as No. 8 as above.
8. The same as No. 9 as above.
9. The same as No. 10 as above.

We enclose you an extract giving opinions of United States' Judges on the subject.

We have, &c.,
STOTT AND HOARE.

P.S.—If you think our services would be of use in organizing the system, will you please communicate with us.

The Hon. the Minister of Justice, Wellington, N.Z.

No. 5.

The Hon. the MINISTER of JUSTICE to His Honour the CHIEF JUSTICE.

SIR,— Department of Justice, Wellington, 11th September, 1885.

The Government has had under its consideration a proposal to establish a system of reporting, by competent shorthand-writers, the proceedings in the Supreme Court of the colony, and a Bill dealing with the subject has been prepared and introduced into Parliament. I now do myself the honour of enclosing copies of this Bill, and of a memorandum on the subject; and shall be obliged if your Honour will favour me with any remarks and suggestions which you may desire to make thereon. For enclosure, see No. 1.

I have, &c.,
JOS. A. TOLE.

His Honour the Chief Justice, Wellington.

[Similar letters to the above sent to their Honours Mr. Justice Johnston, Mr. Justice Richmond, Mr. Justice Williams, and Mr. Justice Gillies.]

No. 6.

His Honour Mr. Justice JOHNSTON to the Hon. the MINISTER of JUSTICE.

SIR,— Judge's Chambers, Christchurch, September, 1885.

I have the honour to acknowledge the receipt of your letter of the 11th September, relative to the proposal to establish a system of reporting the proceedings of the Supreme Court by competent shorthand-writers, enclosing a copy of a Bill which has been introduced into Parliament, and asking me to forward you, at my earliest convenience, any remarks or suggestions which I may desire to make thereon.

I very much regret that an opportunity has not been afforded to the Judges of the Supreme Court to consult together and to make a considered report upon a subject upon which their united experience must necessarily be able to throw so much light; and I should have liked also to obtain some information as to the practical working of the system adopted in America.

But, understanding that the Bill is now before Parliament, and that you are desirous to ascertain my views on the matter without delay, I shall proceed to make some cursory remarks upon your memorandum, suggested by the experience of twenty-seven years on the Judicial Bench of New Zealand, and many years practice at the English Bar, comprising twelve years during which I acted as a law reporter in Westminster Hall.

With regard to the necessity for such appointments as proposed I have no special experience. Shorthand-writers are, I understand, usually procurable in New Zealand when litigant parties desire to have shorthand reports. But I doubt whether there are at present many in the colonies who would be found to be thoroughly competent for the proposed appointments.

As to the relief which the system would afford to the Judges I have very considerable doubts. There are certain classes of cases, but comparatively few, which must necessarily occupy more than one day, in which it would be a great relief to a Judge not to be obliged to take down a great mass of evidence, and to be supplied from day to day with notes of the previous day's evidence—as in contested proceedings before the Committees of the Houses of Lords and Commons in England; but such cases are comparatively few, and by agreement of parties shorthand notes may now be taken and used in them.

In the great mass of cases, civil and criminal, however, I think it would necessarily cause much delay, inconvenience, and expense, without any corresponding advantage, to require that such notes should be used. In ordinary trials, civil or criminal, the shorthand notes could not be extended and ready for use in time for the summing up on the same day, and few cases could be concluded, as the greatest number now are, on the same day on which they are begun. Moreover, Judges and counsel would still have to take notes for themselves, and it would be of very doubtful utility to increase the speed at which the evidence is usually taken. Moreover, as shorthand-writers have to take down the questions as well as the answers, the time occupied in Court by the present system is not very materially longer than it would be with a shorthand system.

On ordinary trials I do not think the mental and physical labour to Judges of taking notes is of very appreciable amount, and I think that the taking of notes itself impresses the facts on the mind of the Judge and helps him in his summing up, which would have necessarily to be delayed if he had to wait for the extension of the shorthand-writer's notes. It would no doubt be convenient to have a shorthand-writer's note ready to be referred to, although in the great majority of cases such reference would be unnecessary.

As to "the mental freedom afforded to Judges for devoting undivided attention to the legal questions usually incidental to a trial or other proceedings, and which require decision as they arise," I am afraid I do not quite appreciate the suggestion in your memorandum, because, when questions of law arise, the taking of notes of evidence ceases during their discussion; and the Judge, when evidence is being given, has to attend to the facts as well as the law.

The suggestion that the taking of shorthand notes "makes all concerned take greater care in what they say and do" is certainly not consistent with my experience in England of parliamentary Committees, where all the proceedings are taken in shorthand.

As to the taking of shorthand notes in proceedings in *Banco*, I am of opinion that it would be generally useless or undesirable, except for reporting oral judgments, which, however, practical law reporters are usually capable of doing even without the use of stenography.

A shorthand verbatim report of an ordinary legal argument, except occasionally in cases in Courts of Appeal, I believe to be not merely undesirable, but embarrassing and unsatisfactory. The great art of legal reporting, for which none but persons well skilled in law can be competent, is in condensing, arranging, and excising parts of the argument, and giving its purport and effect, instead of merely reproducing the language used by the counsel; and an "extended" shorthand-writer's report of the usual proceedings in Courts of law, as distinguished from the evidence given on a trial, instead of being "absolutely reliable," would be embarrassing and comparatively useless; and the voluminousness of the reports, moreover, which is already too great, would be thereby increased to an intolerable extent. A very considerable proportion of cases in *Banco* need no report at all, as they can be of no use as precedents.

To make law reports of any value to the public or the profession they must be prepared by skilled lawyers, as it is the presumption that the reporter was present at the argument and is a member of the profession competent to report which gives an authority to the precedent.

I observe that the Bill, in clause 2, speaks of a "reporter" as a person "skilled in the art of stenography to make verbatim reports of evidence and other legal proceedings;" but I may remark that the skill of the stenographer will not enable him to make intelligible reports of what he does not himself understand. The functions and duties of a law reporter are, to my mind, quite distinct from those of a reporter of evidence or speeches.

On the whole, I am of opinion that there is no necessity for the appointment of public stenographic reporters for the purpose of reporting normally the evidence and proceedings at all trials, civil and criminal; and I think it is not desirable to appoint any but skilled lawyers to report proceedings in *Banco*.

But I believe it would be desirable, if practicable, that a sworn stenographer should be attached to each judicial district to take down evidence at trials in civil or criminal or compensation cases where the Judge, on account of the probable length or of the importance of the case to the public, desires it, or where either or both of the parties in a civil case are willing to pay the cost.

I doubt whether the advantage to the public of having every criminal case reported by official reporters would be at all commensurate with the cost; and, as to civil trials, I do not see why, on the one side, the litigants should be supplied with such reports *gratis*, or, on the other, why they should be obliged to pay fees for such reports when they do not require them.

As to "law reports," in the proper sense of the term, it would no doubt be a great boon to the profession and the public if provision were made for the remuneration, or contribution towards the remuneration, of regular and competent reporters out of the public funds, until such time as the ordinary sale of the reports would be sufficient for the purpose.

The whole time of the reporters would have to be at the disposal of the Court, and the work, having to be done promptly, could not be performed by a single person at each place. The shorthand notes taken in one day's sitting of any length would take several days to extend, unless the reporter could command the services of several assistants.

To conclude, I am of opinion that to carry out a complete system of reporting of all proceedings at trials, civil and criminal, and at sittings in *Banco* would require a numerous staff, at such a rate of remuneration that the whole cost would exceed the sums mentioned in your memorandum, and add greatly to the expenses of the establishment of the Supreme Court, whose Judges and officers are at present so very inadequately paid.

It seems to me a very significant fact, bearing on the subject of your memorandum, that, notwithstanding the frequent complaints made in England of the delays of trials and other proceedings in the superior Courts, and of the overwork to which the Judges are exposed, no suggestion, at least so far as I am aware, has been seriously made or entertained to the effect that such a system as you contemplate ought to be adopted there, or that it would materially tend to secure despatch and accuracy in the administration of justice.

I have, &c.,

The Hon. the Minister of Justice, Wellington.

ALEXANDER J. JOHNSTON.

No. 7.

His Honour Mr. Justice RICHMOND to the Hon. the MINISTER of JUSTICE.

SIR,— Judge's Chambers, Wellington, 12th September, 1885.

I have the honour to acknowledge the receipt of your letter of yesterday's date, covering your memorandum for Ministers of the 28th May last, with copy of the Bill which has been prepared in accordance with the suggestions of the memorandum.

The time allowed to the Judges for the consideration of this matter is short, as the Bill may, I presume, be expected to pass into law in a few days. Looking to the date of your memorandum, and to the fact that a Bill has already been introduced into Parliament, and a determination come to to place a sum upon the estimates for the purpose of carrying the scheme into effect, it is evident

that the subject must have been long and no doubt carefully considered by yourself and your colleagues. More than a few short observations is probably not expected from me upon a measure already determined upon and almost completed.

Apart from the question of expense, there can be no doubt that the addition to the Supreme Court of a staff of competent reporters would be a public benefit. The difficulty of obtaining such reporters, at any price, is, however, I am disposed to think, underrated. In general it will, I believe, be found indispensable that such a reporter should have received a legal education more or less complete. I say, in general, because I have, in my experience, found one reporter who, in my judgment, though not educated as a lawyer—so, at least, I understand—was yet thoroughly competent to report evidence, and even to give a fairly accurate statement of legal discussions. This gentleman constitutes, however, a rare exception.

All persons with any experience are aware of the truth of an observation lately made by Lord Blackburn in the House of Lords. "No shorthand-writer," he said, "however skilful, can be expected to take an accurate note of the words used, when he does not understand their significance." This disables laymen in general from reporting legal arguments; and such legal discussions as occur during the trial before juries of matters of fact are even more difficult to follow and report than regular arguments before the Court in *Banco*.

The disability extends in no small measure to reports by laymen of the evidence in a cause. Such reports, however useful they may be when checked by the notes taken by the Judge and barristers engaged, can seldom be entirely relied upon; because the reporter is seldom properly informed beforehand of the questions at issue, and so is very much in danger of missing the point of what is said. Besides which, he cannot have immediate access to the documents referred to in the examination of witnesses, and is thus at a great disadvantage in reporting the questions and answers which relate to them. Nor can he, like the Judge, insist upon repetition of what he does not hear or explanation of what he does not understand.

My purpose in these observations is chiefly to point out that, on the first introduction, at all events, of the proposed system, such an enactment as that of the 5th clause of the Bill, making the stenographer's notes conclusive evidence of the testimony and proceedings, is wholly inadmissible. Such an enactment would throw the procedure of the Court into confusion.

Every Judge must welcome the prospect of even partial relief from the most laborious part of his duties. The present system has no doubt the disadvantage of chaining down the Judge to his note-book, and preventing him from giving his attention to points of demeanour in the witnesses, and other by-play, which are often of significance. On the other hand, the full notes commonly taken by an English Judge have the advantage of rivetting his attention, and of giving him full command of the facts of the case in their minutest details; and, for my own part, I do not at present see that I could discharge my own duties satisfactorily to myself in a large class of cases, more especially in important criminal cases, without taking copious notes of my own. Nor do I see how, in cases which do not extend beyond one day, the shorthand-writer's notes can be of much use to the Judge.

I deprecate the withdrawal of the small amount of Government aid now conceded to "The New Zealand Law Reports." The work on these reports is of an entirely different character from that of a mere stenographer; and the proposed appointment of official shorthand-writers can by no means supersede the necessity for carefully-compiled reports of important cases by well-qualified lawyers. Law-reporting, in this sense, has, as you are of course aware, been pursued in England by the most eminent lawyers. To go no further back than our own time, it is enough to mention such names as Campbell, Alderson, Maule, Cresswell, and Blackburn. It is a work which requires for its satisfactory performance an accurate knowledge of law, united with great power of condensation and succinct expression. An acquaintance with shorthand, though highly desirable where oral judgments are delivered, is quite a secondary matter.

I trust these observations may reach you in time to be of some service.

I have, &c.,

The Hon. the Minister of Justice, Wellington. C. W. Richmond.

P.S.—I forward herewith a fuller extract of Lord Blackburn's remarks, to which I have referred.

Extract from Judgment of Lord Blackburn in Bowen *v.* Lewis. L.R.—9. Ap. Cas. 890 (at p. 911).

Lord Blackburn.—My Lords, the only report which we have of the reasons given by the Judges in the Court of Appeal is contained in the shorthand notes, not revised by the learned Judges. It is apparent on the face of those notes that the writer, not being acquainted with the subject concerning which the Judges were speaking, was unable to take a note of the sense of what the Judges said; and no shorthand-writer, however skilful, can be expected to take an accurate note of the words used, when he does not understand their significance. . . .

Though I am not able from the notes to form an opinion as to what Cotton, L.J., said, I am sure he could not have used the words taken down as what he said. They are not intelligible; and no one who knows the clearness with which that learned Judge expresses himself can for a moment suppose that he used unintelligible language.

No. 8.

His Honour Mr. Justice Gillies to the Hon. the Minister of Justice.

(Telegram.) Auckland, 15th September, 1885.

Supreme Court Reporting Bill just received. It is absolutely useless so far as Judge is concerned, nor will it serve any purpose equivalent to its cost. Thos. B. Gillies.

The Hon. the Minister of Justice, Wellington.

No. 9.

His Honour Mr. Justice WILLIAMS to the Hon the MINISTER of JUSTICE.

SIR,— Judge's Chambers, Dunedin, 22nd September, 1885.

In reply to your letter of the 11th instant, I have the honour to enclose a memorandum on the subject of shorthand reporting. I should have written earlier, but I have been much engaged the last few days, and, as I noticed the proposed Bill had been postponed, an immediate reply seemed unnecessary.

I have, &c.,

The Hon. the Minister of Justice, Wellington. JOSHUA STRANGE WILLIAMS.

Enclosure in No. 9.

MEMORANDUM on Supreme Court Reporting Bill.

THE main object of the suggested employment of shorthand reporters in Courts of justice appears to be to take down the evidence, the reporting of other proceedings being of secondary importance. It is asserted that by taking the evidence in shorthand time will be saved, a complete and accurate record of the evidence obtained, and, as the Judge will be relieved from the labour of taking notes, that he will be able to give his whole attention to the case before him. The saving of time, and the consequent decrease of inconvenience to all persons attending the Court, and the diminishing of expense to suitors, is one of the chief benefits which, it is asserted, will accrue from the proposed change.

Now, in a case of any length or importance it is absolutely necessary, and in any case it may be necessary, that the Judge should have before him, when he sums up to the jury, the evidence given by the witnesses. At present his notes contain the evidence. If the evidence is to be taken down in shorthand, provision would have to be made for a sufficient staff so that the evidence transcribed in longhand could always, if required, be in the hands of the Judge before he summed up. Such a staff would be exceedingly costly.

In America, where a large sum is spent on reporting, it may be possible to have the notes so transcribed, especially as there is reason to believe that trials there are frequently spun out by objections and discussions on evidence to a much greater length than with us. I have before me an account, written by an American for Americans, of a celebrated trial at the Central Criminal Court in London. The author remarks that, although the Judge took down the evidence in longhand, yet, owing to the absence of objections to evidence and discussions on points of law, the trial got on as fast as in America, where the evidence is taken in shorthand.

I think, therefore, that no great saving of time will be effected by taking the evidence in shorthand, except at a cost which the Government would be unlikely to assent to. A complete shorthand report of the evidence by a competent reporter would, however, be of considerable value, as it would certainly be more full and probably more accurate than notes in longhand made by the Judge. In a shorthand report the evidence would appear in the form of question and answer, and the very words of the question and of the answer would be given. Judges' notes are and must be taken, unless at an inordinate expenditure of time and labour, in the form of a narrative given by the witness. It is only if at the moment the precise words of a question appear to the Judge to be important that he writes down the question and the answer verbatim. I think, also, that, if a shorthand reporter were employed, the labour of the Judge would be to some extent lightened, and, perhaps, time saved, even if the notes were not transcribed in longhand before the summing-up. The Judge would still have to take pretty full notes of the evidence to enable him to sum up, but the knowledge that he had at his elbow a person to whom he could refer in case of doubt for the precise words used, and that his notes were no longer necessary as a record of the proceedings, would enable him in many cases to curtail them. A good deal of the evidence elicited on cross-examination could probably be omitted or very briefly noted. If this were so it would allow the cross-examining counsel to proceed more quickly with the examination, and so give a dishonest witness less time to shape his answers.

To what extent a Judge could curtail his notes would, however, depend much on the nature of the evidence in the particular case and much upon practice. I do not, however, imagine that, under the most favourable circumstances, the duration of a trial would be diminished to the extent anticipated by some of the advocates of shorthand reporting. Evidence taken by a Commission for use before another tribunal could no doubt, as suggested in the memorandum of the Hon. the Minister of Justice, be taken with great rapidity by shorthand. Where, however, the tribunal which hears the evidence has to decide upon it it is necessary that it be taken with such deliberation as will allow the Judge and jury to master it. The present practice of the Judge writing the evidence out certainly tends to impress the evidence on the mind of the Judge, and the repetition which this frequently involves has a similar effect on the minds of the jury. So far, therefore, as taking evidence is concerned, I do not think that, for the purposes of the trial, the Judge's notes could be wholly superseded by a shorthand report, unless at a very large expense. As a record, however, and as ancillary to the Judge's notes for the purposes of the trial, a shorthand report would be of considerable value, and might be obtained at a moderate cost.

I think that experiments might well be made to test the efficiency of shorthand reporting, and I should be glad to assist in them as far as I am able. Experience on the subject would be a valuable aid to legislation, if legislation were considered necessary. Premature legislation might lead to mischief. It would be unsafe, for instance, at present to enact, as proposed, that a copy of a transcription of the shorthand notes should be conclusive evidence of the testimony given. If that were so, a person indicted for perjury committed at the trial of a cause would be bound by this copy as to what he said, and would not be able to cross-examine the shorthand writer who took his

words down, nor to adduce evidence to show that he did not use the words attributed to him. At present an authenticated copy of the shorthand transcription should stand on no higher footing than an authenticated copy of the Judge's notes, for which it is a substitute. Such last-mentioned copy is not, strictly speaking, evidence at all; but in subsequent stages of the same cause, whether in the same or in an Appellate Court, it is treated as a correct account of what took place.

While the matter is in its experimental stage it would be sufficient to provide, by rule of Court, that a Judge in any case might direct notes of the evidence to be taken by a shorthand reporter, and that a transcription of these notes might be used in substitution for the Judge's notes of evidence for any purpose for which the Judge's notes might be used. I think also that at present no permanent appointment should be made under section 35 of the Supreme Court Act, as suggested in the memorandum of the Hon. the Minister; but that reporters should be employed from time to time as required. Lastly, I think it would be highly unjust to suitors to saddle them with any part of the cost of shorthand reporting; all they should be called upon to pay for is for a longhand copy of the evidence, and only if they ask for it. The suitors' fees now are exceedingly high, and they already pay not only for the whole establishment of the Supreme Court, but for more than half the salaries of the Judges.

Apart from the reporting of evidence shorthand reporters would be of comparatively little service. It might be handy occasionally if a precise note were taken of the ruling of the Judge on disputed questions, of his directions to the jury on points of law, and of any objections to his ruling which counsel ask to be noted. In order to do this accurately, however, the reporter ought, if his report is to be treated as authoritative, to have some legal knowledge. Where also there is a trial before the Judge alone, or an argument in *Banco*, and the Judge delivers an oral judgment, a good shorthand report of the judgment may be useful. An ordinary newspaper report, however, taken in shorthand, and corrected by the Judge, is generally sufficient for every purpose. For what is known as law-reporting—that is, reporting legal arguments and decisions—an official shorthand reporter would be practically useless. The law reporter has to pack in a small compass the essence of the argument on both sides, to copy out the judgment, and then, in a head note, to extract as far as possible the legal principles involved in the decision. In this task he would not be in the least assisted by the shorthand-writer, and the task is one which it would be hopeless to expect any shorthand-writer to perform.

With respect to the suggestion in the memorandum of the Hon. the Minister, that Judges and others would be more careful of what they said if everything said was taken down, I would remark that, so far as Judges are concerned, any specially foolish utterance is, as a rule, noted by the newspaper reporters and appears in print the next day. If this does not deter Judges from making inept remarks, they will not be deterred by the knowledge that such remarks will be embalmed in the records of the Court.

Dunedin, 22nd September, 1885. JOSHUA STRANGE WILLIAMS.

No. 10.

His Honour the CHIEF JUSTICE to the Hon. the MINISTER of JUSTICE.

SIR,— Judge's Chambers, Wellington, 9th October, 1885.

With reference to your letter, stating the intentions of the Government with regard to a proposal for the appointment of shorthand-writers to take notes of evidence given and other matters passing in the Supreme Court, and asking for any suggestion I might wish to make on the subject, I have the honour to inform you that, in my opinion, the proposal to make the shorthand-writer's note conclusive proof of the evidence given would not unlikely be productive of injustice to suitors in many instances.

The advantages of having such a report are apparent, not, certainly, as superseding the taking of notes by the Judges and counsel respectively, but as an assistance to the Court and counsel. The whole question is one of expense. I should suppose that to obtain the services of competent reporters a very large annual outlay would be necessary.

I have, &c.,
JAMES PRENDERGAST,
Chief Justice.

The Hon. the Minister of Justice.

No. 11.

The Hon. the MINISTER of JUSTICE to S. C. RODGERS, Esq.

SIR,— Wellington, 7th November, 1885.

I am endeavouring to inaugurate, on a limited scale, in New Zealand a system of stenography in the Supreme Court, viz., one stenographer for each of our five Judges.

I have drawn a short Bill for Parliament, and introduced the measure last session; but, partly owing to want of time for consideration, and partly a want of sympathy on the part of some of the members of the legal profession, the Bill did not proceed.

The reason I write to you is, that I see your name mentioned in the Bureau of Education, No. 2, 1884—Teaching, &c., of Shorthand; and thought, from your apparently vast experience and labours on the subject, that you probably would not be unwilling to afford me such information relating to the Acts authorizing the system of stenography in the Courts, to its working, and such other information, reports, &c., as might occur to you to be of special service to me in trying to establish a similar system.

I may say that the Judges here do not sympathize with the introduction of the system, their main argument being, I think, that in numerous cases before juries it would be impossible, on the same day as the trial, to have the transcribed notes ready from which the Judge might sum up to the jury. From what I can gather such even is not expected in the States, where you have very large staffs; but that probably the practice is that the Judge addresses the jury from his own occasional (material points) notes, the stenographer's notes being ready for reference in event of question.

Would you be good enough to favour me with your views on the subject, and especially on this and other practical phases of the system. I beg to enclose you a copy of the Bill introduced.

Supreme Court Reporting Bill, 1885.

With apologies for troubling you,

I have, &c.,

S. C. Rodgers, Esq., Troy, New York.

Jos. A. Tole.

No. 12.

S. C. Rodgers, Esq., to the Hon. the Minister of Justice.

Sir,— Albany, 23rd January, 1886.

Your favour of the 7th November, 1885, is and has been before me since the 7th December, and I regret that a reply has been so long delayed, but pressure of business and other matters have conspired to produce what seems like negligence. But I trust that the quality of my answer and its fulness may partially, at least, compensate for my not more speedily replying. I thank you for the honour you do me in addressing me for the information, especially in view of the fact that so many others in my profession could and would do the subject better justice. I have, within a few days, mailed you copies of our State Association Proceedings for 1884 and 1885, together with a slip containing the expressions of various Judges and lawyers, and a copy of "Browne's Monthly," setting forth the views of our United States' Court Judges, being a portion of a long series of letters of like nature. I think I shall send you more of our State reports, for the paper which I have had the honour to prepare for the Association, covering a period of seven or eight years, contains a pretty consecutive history of legislation effected and attempted. If, when you have done with them, you may think proper to deposit these copies in your public library, they may possibly serve to interest an occasional reader.

Judging from your letter you are only contending with the same prejudices which every State here has to meet in introducing a shorthand law. In some States it is only accomplished after repeated attempts, for the great majority of our rural legislators have no idea what the term "stenographer" means. They are as likely to assume it to be something to keep the door from slamming as anything else, and, when once they do receive a glimmer as to what it is, they at once regard it as some new-fangled arrangement to skin the poor farmer. Then, again, where Judges and lawyers have had no experience with the system, but have more or less industriously scratched down the testimony all day long as best they were able, it is difficult to convince them that a fellow can jot down all that is said instantaneously and accurately; they cannot conceive how it can be done, while they are left to do nothing but listen. I may say, on the other hand, that, where the system has once had a fair trial, at the hands of competent men, and the Bench and Bar have had ocular demonstration of how the thing can be done, and have noted its accuracy, its time-saving and labour-saving course, they have been, with few exceptions, won over to the system at once. True, in a few instances the law has been repealed, and the legal profession has "back-slid" to the old laborious custom. My own State is the pioneer and the bright shining star of all the States in regard to the official employment of stenographers. They are used everywhere, always, and upon every occasion where legal proceedings are conducted. I have repeatedly heard Judges of our Supreme Court say that they could not and would not think of returning to the old drudgery of twenty years ago in writing books of evidence—that they would seriously be tempted to resign their positions were stenography to be taken from their aid.

It is the common remark with the Bar, "How could we get along nowadays without the stenographer, and how where they able to get along and make up cases on appeal when each one took his own notes of testimony?" The legislator who could now have the hardihood to introduce a Bill repealing the system would be met by a storm of no mean cyclonic proportions.

You say your Judges argue that the stenographer would be unable to furnish the notes transcribed upon the day of trial, from which the Judge might sum up. In the States the Judges simply take an occasional minute as the case proceeds of some point they may desire to touch upon. Our Judges say they can remember the testimony given much better and with greater accuracy where they sit and listen to it, and see the manner of the witness, unhampered by the physical and mental effort to note down the testimony. Our Judges charge the jury off-hand, at the conclusion of the arguments, sometimes reviewing all the salient points of evidence, and at other times simply charging as to the legal points, and occupying from ten minutes to half an hour, as the importance of the case demands, or perhaps an hour or two in a murder case. They rarely appeal to the stenographer for any testimony, and he is seldom called upon to read evidence, unless the jury fail to remember it alike, or the counsel misstate it, which they rarely do, it being a dangerous experiment, for they know that the other side will at once appeal to the official record to refute any wrong statement. In murder cases, which are expected to be protracted through two or three weeks, counsel arrange to have daily copy furnished each side, and by the aid of rapid type-writer operators we are able in the afternoon to furnish the morning session, and in the evening the afternoon session, for which we receive, of course, adequate compensation.

Your supposition as to the course ordinarily pursued here is just about correct. What your Judges need is to give it a fair trial, and I have no fear but their conversion will follow. Be sure, however, that you fix the compensation at such a rate as will secure the highest and most skilled

talent in legal reporting. Incompetent stenographers are as much worse than none at all as can be imagined. The interests involved in litigation are too great to experiment with cheap labour. A poor stenographer will prejudice the whole system. I think from some of the Acts set forth in our reports you may glean some points of value for your proposed Bill. I would recommend that you insert a clause providing for some test as to competency. It might also be wise to frame your law or Bill in such manner as that each Judge should have his own stenographer, and in that way, by being attached to the Judge's office, it would provide the Judge with a private secretary, who, out of term time, could receive dictation of the Judge's correspondence, legal opinions, &c.

It now seems to me I have sufficiently covered the scope of your inquiry, but, if I have not, and there is any point upon which you desire further information, I am at your service. I shall be glad to be advised of the progress of your Bill from time to time, and to receive a copy of it so soon as printed, for I take it that the Bill enclosed me is one which failed of passage at your last session.

Wishing you success in your proposed movement, and with apologies for my long silence,

I have, &c.,

SPENCER C. RODGERS,
Official Court Stenographer, Third Judicial District of New York.

The Hon. the Minister of Justice,
Wellington, New Zealand.

Enclosure A in No. 12.

OPINIONS OF JUDGES AND LAWYERS.

ECONOMIZES time, therefore the public money, in despatching a third more business. To everybody but the lawyer who has neglected to prepare his case a stenographer is of very great benefit in a jury trial.—Judge BUSH, New York.

I am entirely satisfied that it facilitates the disposition of business, and is greatly advantageous to the Court and counsel engaged in trials. It is also a matter of economy. The Judges in this district could hardly be induced to abandon it.—Judge INGALLS, New York.

The expense will be more than justified by the despatch given to the business of the Court.—Judge WILLIAMS, Illinois.

Has become an absolute necessity in expediting the presentation of testimony before a jury, and the despatch of business. It saves time and expense.—Chief Justice GARY, Illinois.

I am entirely satisfied of the facility which it affords to both Court and counsel in the rapid disposition of business and the saving of expense.—Judge JAMESON, Illinois.

Greatly facilitates business. Saves an immense amount of labour. The only way to try any important case. In my judgment it saves three-fourths of the labour required by the old system.—ELLIOT ANTHONY, Illinois.

We try cases now in just about half the time consumed under the old longhand style. The system has become with us well nigh universal. We are relieved from all annoyance in making up bills of exceptions.—EMERY A. STORRS, Illinois.

Alike beneficial to the public, the Bench, the Bar, and to litigants, in the saving of time.—Judge HULBUT, New York.

Looking at it in any aspect it is a great advantage to have a stenographer. I could not for any consideration be induced to part with one.—Judge MURRAY, New York.

Our cases are now, I think, uniformly made up from the reporter's notes, and it saves us much time and labour in settling them.—Judge BACON, New York.

I believe the system must become universal in the taking of evidence.—Judge BOARDMAN, New York.

I would not part with the services of a reporter on any consideration. A bad one is a nuisance.—Judge MULLIN, New York.

The business of a Court is expedited one-third, and consequently a large item of expense is saved. The Bar as well as the Judges in this district would not consent to do without a reporter at the circuits.—Judge SCHOONMAKER, New York.

If you have not tried this system of stenographic reporting in the Courts you have little idea how much of the hard labour, the mere drudgery of a circuit, it takes from the Judge. I have no doubt at all that it is an economical system, in the matter of time and expense, to any county.—Hon. THOS. A. JOHNSON, New York.

Besides the advantage to Court and counsel and the cause of justice, by having an accurate record of the proceedings in a cause, there is a manifest economy resulting from the presence of a

stenographer. Trials are concluded in much less time: witnesses and jurors are not compelled to lose their time by prolonged attendance upon the Court; and Court expenses are in a large measure reduced. Wherever the system is tried with competent stenographers I am confident it will never be abandoned.—Hon. EDWARD PIERREPONT.

The stenographer is of far more importance in expediting the despatch of business in the Court of justice than any other accessory. It is a fact now fully conceded that causes which without stenography would require three days to try are now tried in one day. The satisfactory results thus far achieved are more than a compensation for the expense of an official stenographer.—Judge TAPPEN, New York.

We would as soon think of abolishing it as of abolishing telegraphs. I have yet to hear the first whisper of dissent. Jurors like it, for it saves their time; lying witnesses do not like it, because the questions are fired at them so fast that they have not time to stop to lie; lawyers like it, because they can try cases rapidly; the cause of truth requires it, because exactitude is reached. —A. OAKEY HALL, New York.

I can try from one-third to one-fifth more causes at a circuit with a stenographer than without one. It is a matter of economy for the taxpayers of counties that stenographers be employed. It usually costs $75 dollars per day to hold a circuit without a grand jury, saying nothing of the expenses of parties, witnesses, and lawyers; and three days' time, at least, can be saved in every two weeks' circuit with a stenographer.—Judge BALCOM, New York.

I consider the services of a competent stenographer quite invaluable at the circuit. I should hardly know how to hold a circuit without one. I think it saves much time, and is a great relief to a Judge, as he can have at any moment the precise words of a witness, and the precise terms of all questions presented for decision to the Court. This saves great trouble to a Judge, both in the trial and in the settlement of a case.—Judge SMITH, New York.

Enclosure B in No. 12.

[Extract from "Browne's Phonographic Monthly."]

THE UNITED STATES COURTS.—(By E. D. York, St. Paul, Minn.)

THE opinion of various States District Attorneys was also obtained, and used in the endeavour to obtain favourable action on this subject. Some of their replies are as follows:—

"New York, 29th December, 1881.—DEAR SENATOR,—In reply to your favour of the 22nd December, there are certainly some of the circuits and districts where there ought to be official Court stenographers. If allowed, I think the appointments ought to be left to the Judges and ought to be during the pleasure of the Judges: in fact, with the possible exception of compensation, I think it would be safest to leave selection, term of office, and limit of duties to the discretion of the Court. It would be well to require the Judges to officially approve of the amounts of the bills of the stenographers. Competent men could be obtained in this district for from $1,500 to $2,000 per annum.—Very respectfully yours, STEWART L. WOODFORD, United States District Attorney for the Southern District of New York."

"Troy, New York, 26th December, 1881.—DEAR SIR,—In response to yours of 22nd December, asking my views in respect to the appointment of stenographers for the United States District Courts, I have the honour to say that three years' experience has led me to believe that the appointment of stenographers for these Courts would be a great saving to the Government by diminishing the length of trials and thus diminishing the expenses for juries, witnesses, bailiffs, and the like, and not only in the case on trial, but in every case awaiting trial. Second, as the Courts named are largely peripatetic, and the stenographer would almost universally be from home while attending to his duties, his pay should be, I think, $10 a day. In nine-tenths of the criminal cases, and nearly all the equity cases, tried at the circuits no copies of the evidence would have to be called for; but, if parties desired copies of the evidence, the stenographer should be paid such a sum as you shall see fit to prescribe. Stenographers in our State are paid 10c. per folio for copies. Third, I think the appointment should be made by the District Judge, as he is authorized to hold both the Circuit and District Courts, and the great mass of the trials are held by him. The stenographer would be a district officer and not a circuit officer, and the District Judge would know best whom to appoint. I think the stenographer should hold for a fixed term, as he would become a better officer after acquiring experience, but should be removable upon the joint order of the District and Circuit Judge at any time.—Truly yours, MARTIN J. TOWNSEND, United States District Attorney for the Northern District of New York."

"Louisville, Kentucky, 27th December, 1881.—DEAR SIR,—Since the receipt of your letter I have spoken to the most prominent members of our Bar as to your suggestion to provide by an Act of Congress for the appointment of stenographers in the United States Circuit and District Courts. Every one agrees as to its propriety, and that you would be doing a great service to the lawyers and facilitate largely the trial of causes by introducing and securing the passage of such an Act of Congress. The opinion expressed here is that the stenographer should be appointed by the Court and hold his office, as do the clerks, during the will of the Court or Judge. As to compensation, we think it would be best left to a system of fees to be fixed by the Judge, so much per one thousand words taken down in shorthand, and an additional fee for the shorthand notes to be written out in full. Very often we have stenographers take down proceedings which we do not care afterwards

to have written out. I would say, let either party have the right to demand a stenographic reporter, the fee for mere shorthand to be taxed as to that party's costs, and then let either party have the right to require the notes written out in whole or part, the fee to be paid by the party demanding the copy; the fee to be paid before delivery. It ought to be in the power of the Court to order stenographic notes taken and transcription made on its own motion, if deemed proper and necessary: in such cases the fees to be taxed as general costs in the suit, and paid, on the order of the Court, out of any money or deposit to cover costs. Some favour the idea of the stenographer being made an officer of the United States, and paid a salary, say, of $1,000 here, out of the Treasury of the United States, the Court being authorized to compel his attendance to take notes in such cases as it may be made to appear it is necessary. In case of appeal or writ of error the stenographic report of evidence, proceedings, charges, &c., should go up as an authentic record. I enclose our State law on stenographers, which works well.—Very respectfully, GABRIEL C. WHARTON, United States District Attorney."

"Omaha, Nebraska, 26th December, 1881.—DEAR SIR,—Yours of the 22nd December is received. I favour the appointment of stenographers in United States Courts. I think the compensation should be $1,500 in most of the districts, and $2,000 or $2,500 in the larger districts, embracing New York City, Philadelphia, and St. Louis. The appointment should be made by the judges. A Bill, prepared by N. G. Strife in this city, and sent to Senator Van Wyck with the request that he introduce it in the Senate, in the main meets my approval. It also was examined and approved by Judges McCreary and Dundy.—Respectfully yours, G. M. LAMBERTON, District Attorney."

"Portland, Maine, 25th December, 1881.—DEAR SIR,—I have the honour to acknowledge the receipt of your letter of the 22nd instant in regard to the appointment of stenographers in the United States Circuit and District Courts. In Maine the statute provides for the appointment of such an officer in the Supreme Judicial Court by the presiding judge. Their compensation is fixed at $5 per day, and 10c. a page for longhand copies furnished the parties to the suit—copies paid for by such parties. Copies furnished the Court gratis. These stenographers have employment a great part of the year. In the United States Circuit and District Courts in this State about one hundred days a year may be counted upon as the minimum time consumed in trials before the court and jury. We have sometimes hired stenographers in cases of importance, paying $5 per diem, and liberally for copies. The service of a stenographer will save much time and greatly facilitate business. The stenographer, I think, should be appointed as commissioners are, and hold office during the pleasure of the Judge so authorized to appoint. He should be required to attend all trials when requested by the Court, or furnish a satisfactory substitute; the United States to pay him a salary of $1,000 per annum: copies to be furnished the Court gratis, and to parties who request copies at 10c. a page.—Respectfully, WILBER F. LUNT, District Attorney."

"Indianapolis, Indiana, 26th December, 1881.—DEAR SIR,—Your circular letter of the 22nd December, 1881, asking my opinion as to the propriety of providing for an Act of Congress for the appointment of stenographers in the Federal Courts was received and considered. I think there should be legislation on the subject-matter. An Act of Congress, properly guarded so as to prevent abuses, &c., I think would receive the support of the Bench and the Bar. The employment of stenographers expedites the business, shortens trials, and saves considerable time. It insures accuracy, and an orderly and dignified conduct of Court business. It is also a check upon lawyers and Judges, who are necessarily more careful and considerate of themselves and others, and their rights and limitations, when they know that their very words are taken down. Our State Legislature has provided in this behalf for the State Courts. It may be of some use to you in the premisses to read our State laws upon the subject. I call your attention to the Acts of the 7th March, 1873, and the 10th March, 1875, concerning the appointment of shorthand reporters, which you will find in Vol. I, Statutes of Indiana, Davis's Revision of 1876, pp. 769–770, &c., and to the Act approved the 14th April, 1881, Acts of 1881, Indiana, page 599. I think the provision of our State law as to the appointment of reporters judicious. Of course the majority of cases may not require a reporter. The appointment of a shorthand reporter in a given case is left to the discretion of the Judges, saving where both parties to the suit agree, and then the Court must employ a reporter. In my own judgment, the fees of the reporter should be fixed by law, and taxed as costs, saving that each party should pay the reporter so much per folio for longhand transcripts, if requested to be furnished. I would suggest that you do not overlook in your Bill proper provision for reporting United States' cases, both civil and criminal, and the payment therefor, so that there might be no hitch with the accounting officers; and also for the reporting, whenever necessary, of evidence before the grand jury and United States Commissioners, or such provision for grand jury investigation can properly be made so as to obviate any legal question.—Very respectfully, CHARLES L. HALSTEIN, District Attorney."

"Milwaukee, Wisconsin, 23rd December, 1881.—DEAR SIR,—I have the honour to acknowledge receipt of your favour of the 22nd. We have felt the need of a law such as you suggest in this district very frequently, and there can be no doubt it would meet with general approval. The District Judge has several times expressed regret, in my hearing, that he had no authority to employ a stenographer. It seems to me that, as far as this district is concerned, the statute authorizing the Circuit or District Judge to employ a stenographer whenever in his judgment the condition of business pending in his Court or district is such as to render the services of such stenographer necessary, at a compensation not to exceed $10 a day, or at that rate for not less than a day, would accomplish the object. There is no difficulty now in obtaining the services of a reporter at $10 per day in this part of the country, and I presume that the same is true elsewhere. The law should provide that copies of the testimony and proceedings shall be furnished to either party at a cost not exceeding that allowed by the statutes of the State where the service is rendered,

and that the per diem allowed by the Act should be paid by the marshal, on the certificate of the Judge by whose order the stenographer is employed. I think a law such as I have indicated would be more likely to pass than one creating a salaried office, and equally effective. These views are hastily written, but I think they embody the simplest plan for meeting the want at the smallest expense.—Very truly, GEO. W. HAZLETON, District Attorney."

"Wilmington, Delaware, 24th December, 1881.—DEAR SIR,—Your letter of the 22nd instant, relative to the appointment of stenographers in the United States Circuit and District Courts, addressed to William C. Spruance, Esq., my predecessor in the office of District Attorney, and by him referred to me for answer, is just received. In reply, I would say that I am thoroughly convinced of the propriety and expediency, not to say necessity, at this day, in the administration of justice, that there should be a faithful, accurate, and prompt taking-down of testimony, in every case on trial in a Court of justice, by a competent, sworn, and impartial officer, both as a means of settling questions in relation to the evidence both in the progress and after the hearing, and of arriving at the truth, as that upon which the law acts in the administration of justice. Seldom, owing to its laboriousness and time required, do either the presiding Judge or the attorneys in the case take down the evidence in detail as given, but in brief notes; and the result is often much difference, spuabbling, and controversy as to the precise words and exact character of the testimony. This would all be disposed of on an authentic and authoritative taking-down such as you propose. I strongly approve of it; but, inasmuch as I never have employed a stenographer, save upon one occasion, and have never studied the question in its relations to the Courts at large, either as to the manner of appointment, term of service, compensation, or limit of duties, without advancing any crude ideas upon the subject, I would prefer leaving these matters to those who have, like yourself, thought upon the matter and formed definite conclusions.—Very respectfully, JOHN C. PATTERSON, United States' District Attorney."

No. 13.

The Hon. the MINISTER of JUSTICE to S. C. RODGERS, Esq.

SIR,— Department of Justice, Wellington, New Zealand, March, 1886.

I have the honour to acknowledge the receipt of your letter of the 23rd January last, and beg to express to you my sincere thanks for the valuable and interesting information with which you have been good enough to furnish me, and which I hope will materially aid in the establishment of a system of official shorthand reporting in our Courts.

I have also to gratefully acknowledge the receipt from you of a copy of "Brown's Monthly," together with copies of your State Association's Proceedings for 1884 and 1885, which I shall have much pleasure in depositing in our General Assembly Library.

Thanking you again for your courtesy, and for your invitation to avail myself of your kind services in affording me further information,

I have, &c.,

S. C. Rodgers, Esq., Troy, New York. J. A. TOLE.

No. 14.

The Hon. the MINISTER of JUSTICE to Messrs. STOTT and HOARE.

GENTLEMEN,— Department of Justice, Wellington, 4th February, 1886.

As you were good enough to afford me information respecting my proposal to introduce stenographic reporting into the Supreme Court of this colony, I have taken the liberty of forwarding to you a *précis* of the chief objections made by our Judges to the scheme, and I have ventured to believe that you would be willing to give me the benefit of your criticism on these objections.

Of course there are some patent answers to the objections raised, to which undue weight may possibly be given; but I am anxious, in relation to them, to have the benefit of your large experience.

Trusting that you will excuse the trouble I am imposing on you,

I have, &c.,

Messrs. Stott and Hoare, Melbourne. J. A. TOLE.

Enclosure in No. 14.

PRÉCIS OF OBJECTIONS BY JUDGES *re* OFFICIAL REPORTING IN SUPREME COURT.

1. REPORTING is absolutely useless. . . . It will not serve any purpose equivalent to its cost. Besides, there is no analogy between English and American trials at *Nisi Prius*, as in American Courts the Judge does not direct on facts or evidence, which are entirely a matter for the jury.

2. "A staff of competent reporters would be a public benefit;" doubts whether such can be obtained. Reporter should be one who should generally have more or less legal education, as reports of laymen can seldom be relied on, from their missing the point of what is said. Strong objections to the reporter's notes being conclusive proof of evidence. Judge must continue to take notes. Does not see how reporter's notes can be made use of in short (one-day) cases.

3. Doubts if competent men could be found for the work, or if reporting would relieve the Judges except in particular cases which are of rare occurrence, and in such cases the parties can agree to have the evidence reported stenographically. Judges must still take notes. Doubts reporting will shorten cases: Judge's notes help him in summing up, and reporter's notes

could not be extended and ready for use on the same day, and few cases could therefore be concluded on the day they were begun. Does not think reporting will make all concerned more careful in their utterances; moreover, as question and answer would have to be taken down, it would not be materially quicker in point of time than the present system. Taking notes impresses the facts on the Judge's mind. In *Banco* proceedings shorthand notes useless except for judgments, which law reporters can do. Litigants, should not be required to pay for reports which they may not require. Notwithstanding the alleged delay of trials, &c., in England, no suggestion such as shorthand system has been made. No necessity for official reporters, but it would be desirable to have such officers for each judicial district to report cases when either the Judge or the parties desire it.

4. If evidence is taken by reporters, staff must be sufficient to put transcription in Judge's hands before he sums up. Does not think much of American precedent, as trials are spun out in the United States. No great saving of time, "except at a cost. . . . Government unlikely to assent to." Reporting will not shorten cases, as evidence should be given slowly for Judge and jury to master it.

No. 15.

Messrs. Stott and Hoare to the Hon. the Minister of Justice.

Sir,— Melbourne, 13th April, 1886.

We have the honour to acknowledge the receipt of yours of the 4th February, requesting us to forward to you our criticism of the objections made by your Judges to the scheme proposed to be introduced by you in the Supreme Court of your colony for stenographic reporting.

We trust you will pardon the delay that has taken place in replying to your letter; but pressure of work has hitherto prevented our devoting the necessary time to its consideration.

As the result of our experience, we have concluded that the enclosed extracts, which we have carefully made from all available materials, go a long way to prove that the assistance of competent shorthand-writers is indispensable to the proper administration of justice.

In reply to the objection 1, the memoranda enclosed, marked "A," will apply. A great part of the information contained in that memoranda was supplied by us to Mr. B. C. Harriman (who is so well known as the able Secretary of the Law Department here), when, last year, he proposed to introduce the system of law-reporting into this colony. His proposals were embodied in a Bill, which was favourably received by the Legislature, and doubtless would have passed but for the fact that the Bill proposed other reforms not so acceptable to the majority. On our informing Mr. Harriman that you desired certain information on the subject, he courteously supplied us with an extra copy of the memoranda.

In reply to objection 2 we enclose a copy of part of an able article, marked "B," written by one of the leading American stenographers, in which he quotes the opinions of Mr. G. W. Hemming, Q.C., and Lord Justice Lindley. The conclusion to be drawn from those opinions is, that it is absolutely necessary to employ competent shorthand-writers, for the reason that the barristers who supply the law reports are not sufficiently practised in the art of shorthand to follow a rapid speaker. Therefore, in the delivery of oral judgments, the competent shorthand-writer should be employed; and then, if it is considered necessary, the barrister could revise. The reporters for the law journal in England are constantly in the habit of referring to the notes of the professional shorthand-writers.

In reply to objection 3, in short cases the Judge's own brief notes would be sufficient for summing-up, while the shorthand-writer's notes would be the record for appeal. They need not be transcribed if not required. The great delay in trials is caused by the fact of the Judge taking such full notes for appeal purposes. In this connection the papers marked "C," "D," and "E" respectively bear on the point.

The paper marked "C" contains a copy of the resolution arrived at by the American Bar Association in August last year. It is a necessary proviso, for the reasons stated in the paper, and should be inserted in any Bill providing for shorthand reporting.

We send also the December number of our own magazine, and direct your attention to pages 82 and 88A thereof, as containing information bearing on the subject.

We trust the information now supplied will be found of value. We will gladly render any further assistance in our power. We have, &c.,

The Hon. the Minister of Justice, Wellington, New Zealand. Stott and Hoare.

Enclosure A in No. 15.

Memoranda on the Subject of Official Shorthand-writers in Courts of Law.—Extracted from English, Australian, and American Papers.

[From the "Phonetic Journal," English.]

The success which has attended the introduction of shorthand reporting into the superior Courts of Canada has been so marked as to justify the Government in extending the system by appointing additional reporters for them, and also introducing them into the County Court of the County of York and City of Toronto. Those Judges who have had practical experience of the working of the system are, we believe, unanimous in the opinion that it economizes time, as well as saves the presiding Judge a vast amount of manual labour and mental toil, which are far more irritating and exhausting than his own proper work. Amongst the advantages resulting from its introduction his is by no means the least important. It seems, on the face of it, absurd that the functionary

whom, above all others, it is desirable to leave disengaged, in order that he may be able to give his full attention to every point as it comes up, should be compelled to take down the evidence, not only for his own use, but to serve as a record to be used in cases of appeal. The amount of time thus consumed in taking down evidence in longhand is very great, and the increase in the labour of the Judges far more than those who have not looked into the matter are aware of. With a shorthand reporter to take down important evidence *in extenso*, and to make a fair summary of what is less essential, the Court is in possession of a record as accurate as it is possible or desirable to obtain—far more accurate than any Judge who is not a shorthand-writer himself can produce under the circumstances. Should he deem it necessary to take notes for his own use, time is still saved, because he can afford to make them much briefer than if they are to be the only record of the evidence preserved. It is not too much to say that, even if there were no saving of time or diminution of expense by lessening the duration of Courts as the result of shorthand reporting, the introduction of the latter would still be justifiable, on the ground that it lightens the labours of the Judge, produces a more perfect record of the evidence, and facilitates the administration of justice in cases of appeal.

Ever since 1871 shorthand reporting has been in use in the Courts of Quebec, but its employment there is optional, and there is no staff of reporters permanently engaged for the purpose. The Dominion Controverted Elections Act of 1874 empowers the presiding Judge at any election trial to employ a shorthand-writer to take down evidence, and the expense thus incurred is added to the costs in the case. There are, of course, many cases tried at our ordinary assizes quite as important as election trials, and, with this precedent before them, it is not surprising that the Benchers of the Law Society should soon after have moved in the matter. In a report on the subject drawn up by Mr. Hodgins, Q.C., and adopted by the Benchers in convocation towards the close of 1875, the benefits to be derived from the introduction of a regular system of shorthand reporting in the Courts were so clearly set forth that the Attorney-General promised soon afterwards, in the House, to make provision for trying the experiment on a limited scale. One year's trial has been sufficient to convince all parties, except Mr. M. C. Cameron and the political opponents of the Government, that the success attending the experiment has been such as to warrant an extension of the system in the superior Courts and its introduction into the County Court. The latter step has proved, so far, as great a success as could have been anticipated. A shorthand reporter was employed, for the first time, during the session of the County Court which commenced on the 13th of the present month (March). During the session of twelve days seventy-six cases were disposed of, leaving none untried; while in the December session, which lasted seventeen days—as long as the law allowed—there were only fifty-two cases disposed of out of sixty-one. At the rate of progress secured under the old system it would have required twenty days this year to dispose of the seventy-six cases, and, as the expenses of the Court amount to about $300 per day, the result is a saving of $2,400. Should there be as large a saving at each of the four sessions of the Court, the shorthand reporter's salary will be a mere bagatelle compared with the amount saved in the course of the year as the result of his appointment. The system might be extended throughout the County Courts of the province with the most beneficial results. It is not unlikely that a hundred thousand dollars per annum may be saved to the country by this single measure of a reform Government.—*Toronto Daily Globe.*

At the examination of the prisoners concerned in what has come to be called the "Penge Mystery"—simply, I suppose, because all the circumstances connected with the case are so clear—the depositions of the witnesses were taken in shorthand. The result was, the business was greatly facilitated. Phonography has now come to be an universal art, and I have often wondered why it has not been more largely introduced for official purposes into our Courts of inquiry. The saving of time if not of trouble would be immense if Magistrates would adopt the use of shorthand in taking evidence. All the delay that would have happened at the hearing if the clerk had been required to record the testimony of the witnesses in longhand was avoided; the witnesses themselves were able to go on with their stories without stopping, and their answers must certainly have been put down more correctly than they otherwise would have been. I know several coroners who have for years past used phonography for taking evidence, by which they have been enabled to get through their work, not only in less time, but much more efficiently. The present Nottinghamshire coroner, for instance, is one of them. His plan, I believe, is to take his shorthand notes on wide lines, leaving room for subsequent transcriptions on the same sheet, which are signed by the witnesses after the characters have been interpreted to them.—London correspondent of the York *Herald.*

[From the *Otago* (New Zealand) *Daily Times.*]

THE plan of employing sworn shorthand-writers in the New Zealand higher Courts of justice will prove a very valuable reform, provided it can be carried into effect without interference with the other machinery of the Courts. The advantages of the system are, that Supreme Court Judges will be relieved of the mechanical and wearisome task of writing out the evidence for themselves as a case proceeds, and that greater accuracy and rapidity will be obtained. But, on the other hand, difficulties present themselves which are only apparent to those possessing some practical knowledge of the subject. It would never do to allow a practice introduced for the purpose of facilitating Court procedure to be itself the occasion of inconvenience and delay. And yet, if the Government propose to appoint two shorthand-writers to each Court, and if an attempt is made with this staff to secure full records of proceedings, some delay and consequent inconvenience must ensue. Shorthand notes are, of course, utterly useless to the Judge until they are transcribed, and it must not be forgotten that, when the actual work of note-taking is completed, the record of the case so far as it has gone will not be more than a quarter completed. A shorthand-writer will occupy at least three or four hours in transcribing the work of one hour's continuous note-taking, and the notes must be written

up by himself or at his dictation. Presumably, it is not intended to report a case with the same precision as a platform speech, and a small portion of the work of transcription may be done between the intervals of note-taking, but not much. It must be remembered that one result hoped for from the new departure is increased rapidity in the disposal of business. At present the time of Judge, counsel, and witnesses is deplorably cut to waste. A counsel puts a question to the witness, which is replied to. He then checks the latter, and a sufficient pause is made to allow his Honour to write down the reply. With a shorthand-writer no such pause will be necessary, the next question will follow immediately, the thread of the examination will not be lost; and it seems reasonable to expect that two cases will often be got through in the time hitherto occupied in hearing one. But this entails double the record-writing, and the question is, will the two shorthand-writers be able to overtake the work? If it is intended that they should record the argument of counsel, it would be manifestly impossible; but probably this would not be attempted, and the Judge would himself, as at present, note down such points and references as he requires. Still, in cases where a great deal of evidence is called, it is doubtful whether two shorthand-writers, relieving each other alternately, could have their notes written up by the termination of the case—that is, if the words of counsel and witnesses—question and answer—were taken as spoken. In civil cases this might not be a matter of much importance. A Judge could reserve his decision, as he often finds it convenient to do at present. But the services of the shorthand-writers would be also utilized in criminal cases, and here the machinery of the Court would be seriously thrown out of gear if the evidence were not ready to the Judge's hand when required. He would be unable to commence his summing-up without it, and jury, counsel, and prisoner would be kept waiting in consequence. In practical details like this serious difficulties may arise with such a slender staff; but they are difficulties which it will be worth while overcoming by some means. They have been successfully overcome in America; but there the expense of the system is much greater than any our Government propose to go to. The idea of a shorthand-writer dictating to two or more amanuenses simultaneously from different places in his notes is better in theory than in practice. Save in the instance of a few peculiarly-qualified men it would be found utterly unworkable. Greater rapidity in writing-up may be obtained by means of type-writers such as are now used by the *Hansard* staff, but there is not much saving of time except to those thoroughly proficient in their use. If two writers only are to be attached to each Court the better plan, to avoid delay, will probably be not to aim at taking too full a record of the proceedings. If a record only a little more elaborate than that at present taken by the Judge is required, then no doubt two men would be equal to the work, even though cases were disposed of in half the time they are at present. However, the Government at present intend merely making a trial of the system; and, if the arrangement at first proposed does not answer, improvements should suggest themselves with experience that will place the matter upon a satisfactory footing. The advantages it is hoped to secure are sufficiently substantial to call for the exercise of some effort and ingenuity.

[From the "Phonographic Monthly," American.]

SIR,— Keokuk, Iowa, 14th January, 1880.

I have your favour requesting my views upon the merits of a Bill now pending in Congress to provide for the appointment of stenographers for the United States Circuit Courts. In reply, I have to say that I regard the passage of such a Bill as very important. In the actual trial of causes in the Circuit Courts, in which witnesses are orally examined, the services of competent stenographers have come to be regarded is indispensable. Even with all possible aids to the rapid despatch of business, the work of the Circuit Courts is generally far behindhand. A thoroughly-qualified stenographer, with fixed compensation, always subject to the call of the Court, would be a great improvement on the present mode of transacting business. If the expense is objected to, perhaps it might be thought advisable to tax a small stenographer's fee as part of the costs in each jury trial, to be collected and turned into the Treasury. I have, &c.,

GEO. W. MCCRARY,
Circuit Judge, Eighth Circuit.

SIR,— Washington, Pennsylvania, 13th January, 1880.

I am indebted to you for your favour informing me that your committee has in charge a Bill providing for the appointment of stenographers in the Circuit and District Courts of the United States.

I earnestly hope the measure may receive the favourable consideration of both branches of Congress. I have long been convinced, by both my professional and judicial experience, of its great value. While the employment of a stenographer relieves both counsel and Court from the laborious drudgery of taking notes of evidence, the public is more largely benefited by the saving of time in the trial of jury causes. It is really, then, a measure of economy, as I am satisfied that the cost of a stenographer will be more than compensated by the reduction of the general expenses of the Courts resulting from the more rapid transaction of business.

There is another consideration which is not without weight. It has happened not infrequently, in my experience, that important testimony of deceased witnesses has been entirely lost, by the failure of recollection of those who heard it, or by the loss or defectiveness of notes taken at the trial in which it was given. All such contingencies are provided for by the stenographer's reports. They are perpetuated by being preserved among the archives of the Courts, and so may be completely available for any proper future use. The only objection I have heard urged against such a measure is that stenographic reports are very often inaccurate. I think the objection may be entirely obviated by the observance of two conditions: first, that only proficient and experienced

stenographers be employed, to which end the provision of an adequate compensation is indispensable; and second, that they be required to write out their notes in longhand as soon as possible.

I am decidedly of the opinion that the general public interests, as well especially as economy in the expenses of the Courts, will be promoted by the enactment of a properly-framed law for the appointment of stenographers.

I have, &c.,
W. McKennan,
Circuit Judge, Third Circuit.

Sir,— Baltimore, Maryland, 12th January, 1880.

So far as the convenience and, I might say, necessity of a shorthand reporter for the United States Courts is concerned, it is demonstrated by the fact that almost all the State Courts are provided with them. When you consider the time taken by counsel to take down the language of a witness, and remember that the United States is paying $2 a day to forty-eight men who are serving as jurors, and to any number often who are witnesses, you can readily see that any means of shortening a trial would be an economy on the part of the Government. Besides, we ought to consider the greater accuracy of shorthand reports, and the facility offered by it in making exceptions to evidence, and the rulings of the Court certain and accurate. I am clearly of opinion that to have a shorthand reporter on one's circuit would save the Government money every year.

I have, &c.,
Hugh L. Bond,
Circuit Judge, Fourth Circuit.

Sir,— Baltimore, 23rd January, 1880.

I have your esteemed favour of the 14th, with reference to the Bill for the appointment of stenographers for the United States Courts. I think there can be no doubt of the wisdom of such a provision. The use of shorthand reporting is getting to be an acknowledged necessity in all *nisi prius* Courts, and the time it saves in the trial of a cause, and the consequent lessening of the expense of the attendance of jurors, witnesses, &c., is very great, and has been found to amply justify the expense of the reporter.

In the United States Circuit Courts, in which there are but few jury cases which do not involve considerable sums, and in which there is no appeal where the amount involved is less than $5,000; and in the Admiralty, in which it is often of the utmost importance that the language of witnesses should be taken verbatim, and in which the whole testimony goes up to the Circuit Court on appeal, a stenographer is of peculiar importance, and, I have no question, would be a most valuable adjunct to the Court. It can hardly be expected that the first legislation on the subject will result in a perfect scheme; but, if we once get a law providing for their appointment, it will be easy to amend anything which may be found from experience to need correction.

I have, &c.,
Thos. J. Morris,
District Judge, Maryland.

Sir,— Brooklyn, New York, 16th January, 1880.

I have no hesitation in saying that it is, in my opinion, important that some provision be made which will enable the Circuit and District Courts to avail themselves of the services of competent and responsible stenographers. The methods of conducting trials in the Courts of this State and other States have accustomed the Bar to the use of a stenographer, and I feel confident that most of the counsel that appear before me would prefer to have a stenographer in every case conducted by them in the Courts of the United States. Indeed, the necessity compels the frequent employment of private stenographers, a course which, especially in Government cases, involves a risk, arising from the negligence, or it may be the wilful misconduct, of a man selected by the parties for the particular case. This risk is considerable, and some day or other may involve serious consequences. I sincerely hope some proper Bill will be passed.

I have, &c.,
Chas. L. Benedict,
District Judge, New York.

Sir,— Charleston, South Carolina, 15th January, 1880.

Yours at hand touching the expediency of appointing stenographers to the United States Courts. I am most earnestly in favour of such appointments, and it has been a matter of deep and constant regret with me that such provision had not been made from the commencement of my administration of the law in the United States Courts, dating with the restoration of the civil authority of the United States in this State. It is and has always been my painful conviction that the administration of the law, and its illustration and vindication before the people, has been crippled and greatly defective because of the lack of the provision which now engages the attention of Congress.

It is my judgment, also, that such provision is necessary to the despatch of business, and would be a great economy in the saving of time, in securing full and accurate reports of testimony and the oral opinions delivered by the Court on the points made in the progress of a trial.

In enforcement of the expediency of such help in the administration of justice in the United States Courts I would add, that such provision recently extended to all the Courts, in their several Circuits, in this State, and, though by subsequent legislation it has been limited to the Charleston Circuit, yet it has been stated to me by a highly-distinguished member of our Legislature that there is a cry from all over the State for the re-enactment of the old law and the full provision it made for all the circuits of the State. The consequence of this provision for the State Courts is, that the

fullest reports are made of all the proceedings in the State Courts; and, in painful, mortifying contrast, the most defective, irresponsible, misleading reports (if made at all) of the business transacted in the United States Courts.

Trusting that your Committee may provide fully for this just now pressing want in our judicial system, and that Congress may further establish it as a permanent part of the organization of our

I have, &c.,
GEO. S. BRYAN,
District Judge, South Carolina.

SIR,— Philadelphia, Pennsylvania, 20th January, 1880.

I have no hesitation in saying, in answer to your letter, that I think the employment of well-trained stenographic reporters in the Courts would be of great value, and, in the saving of time, be found a saving in expense greatly in excess of their compensation. But experience leads to the belief that such reporters of Court proceedings are scarce. I think, however, it would be wise to pass the Bill, leaving the Courts to employ them or not as they deem best. I certainly would employ one if I could find an individual competent, and I should make the effort.

I have, &c.,
WM. BUTLER,
District Judge, Philadelphia, Pennsylvania.

SIR,— Chicago, Illinois, 14th January, 1880.

I have your favour of the 10th instant. Bills of the kind you describe have so often been introduced in Congress, and failed, that we have nearly despaired of anything ever being done on the subject. I am of the opinion that the Circuit and District Courts ought each to have its official shorthand reporter. It is true that in most of the important cases which are tried there are reporters present who take the testimony, and sometimes the opinion of the Court; but they are paid by one or both the parties, and are in no sense officially attached to the Court, and over them the Court has no other power than it has over any person who may be present taking notes of the testimony or of its action.

There ought to be a shorthand reporter whom the Court would have a right to call upon to act officially for it, both in taking testimony and in reporting any action of the Court. Of course the employment of such an officer ought not to be an expense to the Judge. Independent of the great value of such reporter to the Court in all its proceedings, there is yet another aspect of the case, where I think the reporter may be of even greater assistance to the Judge, and that is in what constitutes a large part of his labours—namely, Chamber work; and in this such an assistant would be invaluable: in fact, it is almost impossible for the Judges in the more crowded districts to get along without some such aid. We are called upon to examine cases and give opinions in them where, without the aid of a reporter, it would be impossible almost for us to take the time to write out our opinions; and therefore we need, when we have examined a case and made up our minds in relation to it, and the subject is fresh, to have a reporter at hand to take down our views as they may be dictated. In this district it would be impossible for us to do the work we now do without some such assistance. I do not know how it may be with the other Circuit Judges, but a very considerable portion of my time is taken up in answering letters of inquiry in relation to cases and legal matters from other parts of the circuit—a large part of this is connected with railroad litigation—and it seems impossible to avoid this; every one can understand that, in answering letters which are addressed to the Judge about legal matters, it is a great aid which is furnished by the reporter.

Now, it seems to me, if there were an official reporter to each Court, the Judge would have the right to call upon him, not only during the sittings of the Court, but while transacting the business pertaining to his office in Chambers. And I have no hesitation in saying that, if the reporters were appointed, and were made available in the way I have suggested, double the work could be done by the Courts from what could be accomplished without such assistance. I do not think the appointment of such reporters would be attended with any very great expense; certainly it would be trifling in comparison with the facilities which it would afford to the Judges in the transaction of the business of the Courts and in their Chambers.

It will be seen from what I have said that I consider the most important object to be accomplished by the Bill that you refer to is to give assistance to the Judge in the discharge of his duties. It is hardly practicable that one reporter would be able to take the place of those that are now selected and paid by the parties in suits that are tried. That practice will necessarily have to be continued, and it cannot be expected that the appointment of a reporter to the Court will take their place, because it would require several reporters to report the testimony taken in any case in Court where the testimony must necessarily be used immediately after it is closed; but I cannot too strongly recommend the appointment of a reporter as an aid to the Judge in the way I have stated.

I have, &c.,
THOS. DRUMMOND,
Circuit Judge, Seventh Circuit.

SIR,— St. Louis, Missouri, 15th January, 1880.

In response to your inquiry, I state that, in my opinion, economy and despatch of business in United States Courts will be greatly promoted by the passage of a Bill authorizing said Courts respectively to appoint shorthand reporters. I have, &c.,

SAMUEL TREAT,
District Judge, Missouri.

Enclosure B in No. 15.

Re Opinions of Mr. Hemming, Q.C., and Lord Justice Lindley.

It may be inferred that it is intended to be implied that for such work, viz., law reporting, an inferior degree of speed in the writer will suffice, if he be only skilful in apprehending the meaning and noting down the substance of what he is attempting to report. No such implication or intimation is intended. On almost anything that one may be engaged in reporting, a very high speed is likely, at least for a few moments, to be required, and no amount of intelligent appreciation of the subject-matter can wholly supply the place of the ability to write at a very rapid rate, however much it will enable one to smooth over and conceal the shortcomings incident to lack of speed. In many cases, as in taking extracts from papers read, some of which you are sure you can never get access to, the slow writer is absolutely lost. The question is what the rapid writer, with full notes before him, can do to improve the form of that which he reports, and so render his record more acceptable.

And now, just as I am writing what I supposed were the last words of this already long paper, comes the July number of an able English law Review, in which I find an article by G. W. Hemming, Q.C., who is intimately connected with the Council of Law Reporting in London—in which article, besides answering some strictures on certain features of the reports that are brought out by the council, he states facts and makes observations that are very interesting. One of the four causes which, he says, operate to render the issuance of their numbers less prompt is "the delay in obtaining the necessary papers and shorthand notes." This incidentally serves to show the constant recourse had to the shorthand-writer in the production of this great series; though, in Lord Lindley's article—which is the one containing the strictures referred to—the Lord Justice says, "In cases of real difficulty the Judges take time to consider their judgments, and then they usually reduce them to writing."

In these two articles the subject of the reporting of cases for the use of the legal profession is discussed—in the one from the standpoint of a great jurist, in the other from that of a barrister, who has, from the inception of this series of reports, about twenty years ago, been the editor of about half of the volumes. The latter, looking at the subject from his editorial and non-judicial standpoint, does not favour so great latitude in condensation and revision as does the distinguished jurist; but he presents, in a few lines, the two sides of the question so well that I think the space occupied in quoting them could hardly be better employed. He says, "No doubt Lord Lindley is quite right in saying that oral judgment will generally admit of improvement by vigorous condensation and careful revision, and he is possibly right in thinking that even written judgments may in some cases admit of compression. Few men were greater masters of polished diction than Lord Westbury; no style could well be more terse and graphic than Vice-Chancellor Bacon's. And yet I have heard each of them say that a mere shorthand note of his judgment might with advantage be pruned and condensed before publication. . . . No (other) modern reporter, I believe, ever used as much freedom in condensing and re-writing judgments as I was in the habit of using when I reported in the Court of Vice-Chancellor Page-Wood. . . . So far as I prudently could I have urged the reporters in this direction; but, without being assured that the Bench desired it, I could not encourage them to introduce more than a very trifling measure of compression and emendation. Even to the small extent which I thought permissible, I have found no great alacrity on the part of the staff to avail themselves of a legitimate liberty in this respect. The safer practice of relying on verbatim notes seems to have attractions too powerful to be overcome. Some of the reporters, I have no doubt, possess both the courage and the literary aptitude to undertake the duty."

Mr. Justice Lindley takes a view of the writing of opinions which may at some time so impress our own Judges as to cause them to introduce in our own Courts the practice prevailing in England of delivering them orally. Should they ever do that, it would necessarily very much widen our field of labour; because the making of our volumes of reports would then depend on the taking-down of those oral opinions stenographically. The nearest approach to such a system of which I am aware as existing in this country is reached in the dictation, to a shorthand reporter, of many of the opinions of our first department Supreme Court general term, by Presiding Justice Noah Davis, who, as one of his associates has informed me, possesses a remarkable facility in expressing himself readily and accurately for that purpose. On the respective merits of written and oral opinions generally Lord Justice Lindley says, "If an oral judgment is taken down, and afterwards carefully revised, it is for all practical purposes as useful as if it had been written beforehand." In these words he recognizes the necessity for that for which I have been contending—namely, intelligent revision by a person competent to make it.

And, while I am not contending that a stenographer could often hope to so successfully revise his report of a Judge's oral opinion as to make it as perfect in style or as clear in meaning as it would be if thoroughly revised by the Judge himself, still some approach to that might be made, and the value of a report thus very much enhanced. For this, unquestionably, a very high degree of ability on the part of the stenographer, independently of mere shorthand ability, would be required. But, holding as I do that to make a first-rate report of anything whatever, except something the most simple, the reporter should know a good deal about the subject that is talked about—that to be a good law stenographer he ought to know at least the general principles of the law, and as much more as he can possibly find time to learn, in order that he may appreciate all the points, technical and other, that arise—this seems to me not to be an unattainable thing. The report of a lawyer's argument would certainly often be worth more to him if it came to him in such shapely form that he would feel compelled to apply to it only a minimum of revision. I have an idea, which may, of course, be very chimerical, that our "profession," as I think we may call it, will never attain its highest dignity and usefulness until, coupled with the ability to write shorthand rapidly and accurately, there shall be also the ability to present in our reports a pretty close approximation to what Lord Justice Lindley contemplates in the words I have last quoted.

Enclosure C in No. 15.

WHAT SHALL THE "RECORD" BE? (By E. D. YORK, Washington, D.C.)

AT the meeting of the American Bar Association held at Saratoga, New York, in August, 1885, much of the time was spent upon the report of a committee which had been appointed to consider "whether the present delay and uncertainty in judicial administration can be lessened, and, if so, by what means?"

In the first aspect of this report—the delay in judicial administration—law stenographers have a practical interest, which is my excuse for this reference thereto. The full report is well worth the attention of every law reporter, having been prepared by the eminent counsel, David Dudley Field and John F. Dillon. They sum up the results of their investigations in a table of fourteen conclusions by which the desired end may be attained, of which the sixth is as follows: "VI. The record of a trial should contain shorthand notes of all oral testimony, written out in longhand and filed with the clerk; but only such parts should be copied and sent to an Appellate Court as are relevant to the point to be discussed on the appeal, and, if more be sent, the party sending it should be made to pay into Court a sum fixed by the Appellate Court, by way of penalty." This was amended by the association so as to read as follows: "VI. The record of a trial, in every Court in which official stenographers are in attendance, should contain shorthand notes of all oral testimonys, which notes, if the Court shall so order, shall be written out in longhand, and filed with the clerk; but only," &c. The rest as above.

This recommendation is important, not so much for what it contains, as indicative of the tendency of thought among the best legal minds of the country. And these amendments are illustrative, too, of some ideas which are taking root and may soon bear fruit. It would seem that, as originally prepared, it was presumed that all oral testimony in Courts of justice would be stenographically reported. It doubtless had not occurred to the learned New York attorneys who fashioned this article that there were still some benighted regions, not a thousand miles from Chicago, upon which the benign smile of an "official stenographer" had never rested. It was no doubt some legal luminary of such outer darkness who suggested the amendment, in order to make the recommendation more precisely conformable to the practice with which he was familiar. Any person with a talent for drawing inferences can draw as many as he likes as to what is meant by the first amendment, but it would seem to a disinterested observer that the article had been weakened rather than improved thereby. Certainly it could not be supposed that the report of a private stenographer could be made a part of the record. The first statement is at least more concise. It contemplates the taking of all oral testimony by means of shorthand, and that from the notes so taken the record shall be in part made up. This record is the full history of the proceedings had in any legal proceeding, and, when complete, it should contain, not the shorthand notes themselves, but the transcription of those notes in longhand. If no further proceedings are had after the first trial or hearing—that is to say, if judgment is given and execution issues, or the matter in controversy is finally and definitely settled or concluded—then no record will be required; and there will be, in the sense in which the term seems to be here used—that of a prepared history or word-photograph of the legal proceeding—no record beyond such as may appear on the dockets of the Clerk of the Court. This is true of a considerable proportion of the cases tried in our State Courts, and it would seem as if the clause "if the Court should so order" was inserted to let the Court, instead of the stenographer—who would be an interested party to the extent of his pay for the transcription—decide whether the notes should be written out in longhand. From my experience during six years' steady reporting as an official in the Trial Courts of Eastern Pennsylvania I would estimate that about one-quarter to one-third of the cases reported in the ordinary run of business need not be transcribed.

The next recommendation is one of serious interest, and is becoming, in some States, a vital question. Many Judges of Appellate Courts are appalled at the enormous quantity of matter presented to them in cases for review. The testimony taken by question and answer, with all the extraneous matter set forth at length by the conscientious (?) verbatim reporter, often swells the record to hundreds of pages, through which the weary Judge, burdened with a long vista of many such cases before him, is expected to patiently wade, and in which he often helplessly flounders in search of the few stray facts in the case. No one denies that a large part of the testimony taken in the lower Court is entirely useless for the purposes of an appeal. Therefore such facts and such only as bear directly upon the question upon which the appeal is based should be printed for the ultimate tribunal. Why should parties be burdened with the useless expense of copying and printing a great mass of redundant matter? Why should the appeal be clogged with it, and the Judges burdened with useless verbiage?

It has many times been made an argument against the introduction and use of shorthand in the Courts that it made the record so voluminous and expensive. This is a true indictment. And it has been an open question at times whether the advantages of the use of shorthand compensated for these drawbacks. The remedy would seem to lie in the suggestion of the Bar Association.

I am under the impression that this method has been to some extent adopted in one or more States; but I can give, at present, no definite data. It would be interesting if some one conversant with any practice of that kind would describe it in detail. It would seem that, if properly guarded and systematized, such a practice would confer a great benefit upon the litigants, the Judges, and, by no means least, upon the reporter. It would not deprive him of any lucrative folios in the lower Courts, would make the Appellate Judges once more his friends, and strengthen that foothold which the stenographic profession has already attained in the conduct of legal proceedings.

Enclosure D in No. 15.

PRO AND CON. OF OFFICIAL STENOGRAPHERS.

SIR,—

In compliance with the request of some persons interested in our profession, I send you this; but I can assure you that my views do not meet with much favour among either those reporters who are at present "officials" or those who would like to become officials. Among the latter may be counted nearly all those living in States that have no official laws as yet, Illinois, for example, but who will secure an "official" law in some shape as soon as the would-be officials can delude their respective Legislatures to enact such law. As the majority of the members of legislative bodies are lawyers, who can see through a grindstone as far as the next man, they can at once perceive that it will give them "free reporting" of their cases in the Courts, as the taxpayers will then pay the reporter, instead of their clients.

The question arises, Is reporting a profession? On the answer to this question depends whether I or any one else in the business of reporting have the right to complain of the enactment of official reporting laws. Judging of my own experience in acquiring the art, I think I am safe in saying that I could have secured a diploma to practice either law, medicine, dentistry, or pharmacy in one-half the time that has been necessary for me to acquire the skill and knowledge to do reporting.

If it is a profession, and I maintain that it is, can any "official" tell me why all the reporting of a particular Court or of a circuit should be done by one person, to the exclusion of every one else; and that every other reporter is excluded needs no proof, for lawyers are not, as a rule, going to employ outside men to report their cases, and pay them, when the circuit or county furnishes them with a reporter to do the same work for nothing, as far as attendance is concerned.

If a law could be (?) enacted by a Legislature appointing and paying out of the circuit or county funds two official lawyers for each Court to conduct the two sides of each case, the plaintiff and defendant tossing up for head or tail for first choice of these two officials, there would be a howl among lawyers at once, and they would insist that their profession was being interfered with and one of their means of livelihood cut off, as litigants would not pay them for services that would be rendered them for nothing by the official lawyers. This would be a somewhat analogous case to that of having official reporters. How long, think you, would lawyers submit to such an unjust discrimination in favour of two of their members? And yet those reporters who are not "official," although there may be better reporters among them than the "official," have to content themselves with the crumbs falling from the "official's" table, or else move into some other State where the reporter has no "official" existence as yet; and it will puzzle him somewhat to find that State, for one can travel from the Atlantic to the Pacific Ocean and travel every foot of the way on "official" soil.

Some of the very reporters who have assisted in securing the passage of official laws in some States are now looking around for some one to assist them in giving proper expression to their feelings in regard to these laws by reason of the amendments which have been added thereto since the laws were passed in their pristine glory, which amendments have made the official crib so meagre that the "official" is glad to emigrate to a "free" State. The truth of the matter is, these official laws have been engineered through the various Legislatures by "selfishness," which is one of the great vices of humanity.

Reporting is one of the grandest accomplishments known to our day, and the crack reporter can do more brain and handwork in the same space of time than any other human being; and why they should not be permitted to practice their profession in a supposed-to-be-free country, and why every member of this profession should not stand upon his own merits for employment, is something that our Courts will have to investigate in many States before long.

I notice an effort is now on foot to induce Congress to pass a law appointing official reporters for all the United States Circuit and District Courts. In the language of Patrick Henry let me say, "Forbid it, Almighty God." "Officials" have waxed so bold and arrogant by reason of the fat salaries and perquisites they enjoy that they now want to go into the very halls of Congress and ask that body—each member of which is sworn to support the Constitution of the United States, which instrument guarantees to every citizen life, liberty, and the pursuit of happiness—to increase their powers. Are reporters to be excluded from that guarantee? Congress is about to be petitioned to debar all but "official" reporters from practising in Federal Courts.

Will some one please furnish the amount in dollars and cents which Uncle Sam is going to be asked to put into the pockets of favourite reporters? Will some one please furnish the amount in dollars and cents which the taxpayers of the States of New York and Pennsylvania pay into the pockets of their favoured "officials" per annum? I will venture to say that the people of those States have but a very faint idea of what it costs them annually to have every "cow case" adjudicated and sat upon by Judge and jury reported.

How much would the appointment of an official reporter to either the District or Circuit Court of the United States for the Northern District of Illinois be worth to the appointee? If one man can gobble up and secure the appointment on five circuits under a State law, one man ought to be smart enough to gobble both the above Courts, as they are only about one hundred feet apart, under the same roof, and on the same floor of the building; and what would such an appointment mean? It means, if it means anything, that he shall have the exclusive reporting of all the cases tried in either one of these Courts, and the furnishing of transcripts of the evidence, to the exclusion of every other reporter; and he need not do the work himself, either, if it means anything.

When "official" legislation was brought to the attention of the Supreme Court of the State of Illinois the members of that Court did not have to rummage through many law-books for precedents

to determine that such a law was void, as being unconstitutional, to say nothing of the many other reasons they could have given for squelching "official reporters" along with the laws passed by the accommodating Legislatures in their behalf.

C. L. D., Shorthand Reporter.

Enclosure E in No. 15.

REPLY TO PRO AND CON. OF OFFICIAL STENOGRAPHERS.

SIR,—

On the subject of official reporting, discussed by Mr. Driesslein, I should like permission to offer a few suggestions. The matter is always of interest to stenographers, because of all the vocations to the needs of which the stenographic art ministers that of the law is the chief, both with reference to the amount and the quality of the service required. As to the latter, its exaction, as we know, is accuracy, as great as can be obtained. It must be so from the nature of the case. In other departments of shorthand work, in reporting lectures, orations, the proceedings of conventions and of legislative bodies, and from these down to the quieter and less-exciting labours of the amanuensis and corresponding clerk, the shorthand-writer works more or less in conjunction or in sympathy with those whose utterances he records, and his patrons are usually more solicitous of elegance than of verbal accuracy. If the stenographer can make his transcript an improvement on his notes he is generally welcome to do so, and will get thanks for fortunate changes. I have seen a book which the author dedicated to a stenographer in grateful recognition of his value in that respect. But in legal employment the situation is entirely changed. In this as in other matters the law is jealous, and will make no concessions. The law reporter works in an atmosphere of hostility—his work is scrutinized by interested eyes, to see that through no error or correction of his are their owners subjected to loss. The parties themselves nowadays are witnesses, and the manner and the matter of their testimony are often infected with the vices which have brought them into Court. They, as well as other witnesses, are sometimes tricky, willing to be misunderstood, unwilling to tell the truth, equivocating. The foreigner, too, is lagely prevalent on the witness-stand, and, often speaking our language imperfectly, the art of the lawyer entangles him in errors, the cure of which, by explanation, is generally worse than the disease—to the stenographer. The counsel, absorbed in the struggle for present victory, frequently become unmindful of the record, or indulge in the hope that they will never read it. They sometimes do not want a matter made clear, and are then very ready to resent any attempt on the part of the stenographer to get it made so, being apt to say that they do not want him to help try the case. Under such circumstances, when they occur, the reporter must endeavour to make a record which will commend itself, and, if official, upon which one side or the other may rely for the maintenance of their rights, or on which the Court can reasonably trust in endeavouring to mete out justice. The law stenographer therefore requires to exercise more care than any other—the interests at stake demand it; and this care and the necessary qualifications should be properly compensated.

The basis upon which legal patronage shall be fixed and dispensed is therefore important to all who propose to make a business of shorthand. They naturally desire that the field of employment should be as extensive as possible, and eagerly inquire whether existing arrangements favour that wish. It is right and proper that they should do so, for out of such inquiry improvement probably will come. Whether it will come in the shape of the abolition of official positions may well be doubted. While by no means of the opinion that the existing system, as established in most of the States, is the perfection of human wisdom, or even as advantageous to stenographers as it might be made to be by judicious modifications, I think it well to recall the fact that its introduction was an extension of the field of employment which the stenographers of the time regarded with great favour. It is not long since the newspapers were the chief patrons or our art, and its adoption by the Courts was the occasion of pride and pleasure, and, let us admit it, of profit also, to shorthand men. Properly so, because, as I have already suggested, it brought with it greater responsibilities and severe and less agreeable labours.

Your correspondent, Mr. Driesslein, however, averts forcibly to amendments which have, in several cases, robbed official enactments of their pristine glory. Indeed, one has but to look over the legislation of the various States to see that there is a pretty general disposition to deal closely and sharply with stenographers. I de not know that the temper of the times is any more exacting with them than with others who seek public employment. Still, the disposition is a little surprising, in view of the saving of time which their labours effect—often the time of many whose compensation is out of all proportion greater than that of the shorthand-writer. It might be expected that that compensation would prevail, and prompt to liberality. That it does not is largely due to the notion that the art is of easy acquisition. In the intellectual sense it is not very difficult; in the physical sense it is decidedly so. The difference is the difference between knowledge and skill. It is one merit of shorthand that it furnishes employment for many of different degrees of dexterity, who all, properly enough, call themselves and are known as stenographers. That circumstance has misled many into the belief that the best capabilities of the art were within easy reach. I once knew a young lawyer who was a candidate for appointment as an official stenographer to a Court. I had not supposed that he wrote shorthand, and said so to him. He replied that he did not, but that, if he got the place, he would engage some one to do the work until he was himself qualified, which he supposed would be in about three months! This underrating estimate of the time and effort required to become proficient lies at the root of much trouble experienced in the matter of compensation, and it is a duty to impress upon the mind of the puplic (already prepared for the information by some sad experiences) that one stenographer differeth from another in glory. Whatever may be the cause of it, the tendency pointed out by Mr. Driesslein certainly exists, and he has not over-

stated its force. Admitting its existence, the question which properly arises is whether it would be better for the craft to have the system abolished, or retained and gradually improved. The mere growth of the system would seem to imply that it has merits. Remedies are not apt to spring into favour which cure no disease. So far as the public is concerned the merits are tolerably obvious—the saving of time and money in the ratio of the increased efficiency of a Court, and the advantage of an impartial record. It is here that I think Mr. Driesslein falls into error. He intimates that the cost of reporting trifling cases—"cow cases," as he calls them—could it be aggregated, would appall the taxpayers of New York and Pennsylvania. If it would, then the cost of trying them without reporters would appall them still more. The cow-case is sooner got off the track, where it would obstruct more important business. That consideration is without any bearing on the question whether official reporting laws are good or bad for stenographers at large, unless, indeed, he has in mind the notion conveyed by the amusing picture which represents two clients tugging away one at each end of a cow, and only succeeding in keeping the animal in position while the lawyer sits upon a stool between them serenely milking. Perhaps he means that the stenographer should sit alongside the lawyer "in the free exercise of his profession." A more ancient image likens Courts of justice to the bush "whereunto while the sheep flies for defence in weather, he is sure to lose part of his fleece." The truth is that the lawyer wants all that the client feels able to pay, and, as he gets the first hold, if the stenographer depends upon him he will fare but ill. It is better for him, perhaps, to form part of the Court. There is this great difference between him and the lawyer, that, whereas it is absolutely essential to the eliciting of facts and to the due presentation of a controversy that the opposing parties shall be represented by counsel acting in their interest, it is by no means essential that they shall be supported in their endeavours by opposing records also made up in their interest. Make the stenographer the paid employé of either party, and then, remembering how easy it is, by the mere effect of punctuation or by the change of a word or two, to alter the meaning of a sentence, it will be apparent that the value of his transcript may be materially lessened. A Court would hardly be justified in accommodating its proceedings to the increased rapidity attainable by shorthand-writers not under its own control, and should properly, if not provided with a stenographer for the purpose, take its own minutes. That was the practice once, and, before the great development of shorthand in recent years, even expert longhand-writers were occasionally appointed to aid the Court in keeping its memoranda. It is, therefore, one thing or the other—longhand or shorthand—until "the fairy tales of Science and the long result of Time" show us both superseded by the perfect phonograph!

Suppose it were decided to abolish the system of "official" stenography? Then, if a shorthand report is to possess any weight and authority, it must be conferred on it by legislation. Such legislation would have to be carefully guarded by provisions for examination as to competency. That the law might secure; but, in return for the privilege conferred, the law might reasonably assume to fix the rate of compensation, and it does not follow that stenographers would be any better off than at present. But I fail to see how such a law could secure impartiality, which is an element of value, as well as competency. For each side to employ its own stenographer would not supply that element, and, while it might increase work, it would not tend to increase emolument, because it implies a waste of labour, two men doing work which one in the most important feature of could do better. I believe the laws might be modified so as to secure a better distribution of the labour than at present, and so as to obviate the disposition to reduce compensation. That, however, I should prefer to speak of hereafter, and in the meantime I hope to have the pleasure of seeing a full expression of my brethren's views on these matters, pro and con., in your publication.

Fraternally yours,
T. BIGELOW.

Mr. Tim Bigelow, of Brooklyn, thinks that the substance of the "Alabama" law, as given below, comes nearer an equitable distribution of the expense of official reporting than any other law governing official stenographers' fees. Mr. Bigelow's idea, if we remember exactly his explanation of it made some years since, is to let the stenographer's fees, made from charging the standard rates for work, together with a certain levy made on the plaintiff and the defendant in a cause, be turned into a fund from which the stenographer can draw a certain percentage, while the balance should go towards paying the expenses of the Court. If our recollection is at fault we shall be glad to be corrected. The clipping from the "Alabama" law is as follows: That the official reporter shall receive as compensation for his services in all proceedings the sum of $10 per day for taking notes, and for the transcript of his official notes 15c. per folio of one hundred words for the first copy, and 7½c. per hundred words for each duplicate thereof. The shorthand notes so taken shall, immediately after the cause has been submitted, be filed with the Clerk; but for the purpose of writing out said notes the reporter may withdraw the same for a reasonable time. The reporter's fees for taking notes in civil cases shall be paid by the party in whose favour the judgment was rendered, and shall be taxed up by the Clerk of the Court as costs against the party on whom judgment is rendered. In the case of a failure of a jury to agree the plaintiff must pay the reporter's fee for per diem, and for transcription ordered by the plaintiff, which have accrued up to the time of the discharge of the jury. In cases where a transcript has been ordered by the Court the expenses thereof must be paid equally by the respective parties to the action, or either of them, in the discretion of the Court. In no case shall a transcription be paid for unless ordered in writing either by the plaintiff or defendant, or by the Court; nor shall the reporter be required, in any civil case, to transcribe his notes until the compensation therefor be tendered to him or deposited in Court for that purpose. The party ordering the reporter to transcribe any portion of the testimony or proceedings shall pay the fees of the reporter thereof. In criminal cases, when the testimony has been taken down upon order of the Court, the compensation of the reporter must be ascertained by the Court, and paid out of the Treasury of Mobile County in which the case is tried upon the certificate and order of the Court.

Enclosure F in No. 15.

[Extract from the Administration of Justice Bill, Victoria.]

THE following is the proposition of the Government in regard to this matter now under consideration by Parliament: "The Governor in Council may appoint from time to time as many fit and proper persons as are required who have obtained certificates from a board of experts, to be from time to time appointed by the Governor in Council for that purpose, that they are duly qualified to be shorthand-writers, and may remove any of such persons so appointed. The number of such persons shall be determined by the Governor in Council, and they shall be appointed in accordance with and shall be subject to the provisions of 'The Public Service Act, 1883;' and every such person, before entering on the duties of his office, shall take, before a Judge of the Supreme Court, the following oath: 'I swear that I will faithfully report all proceedings which I am required by law to report in any cause or matter:' and every Judge of the Supreme Court is hereby authorized and empowered to administer such oath, or cause the same to be administered, to every such person."

These shorthand-writers are to be officers of the Supreme Court, and their reports are to be received as *primâ facie* evidence of proceedings. If a shorthand-writer wilfully misreports proceedings, or permits any one to tamper with his reports, he is to be guilty of a felony, and, on conviction, is to be liable to imprisonment for any period not exceeding ten years. The Judges are to prescribe the system of shorthand to be used, and the Governor in Council may fix the fees payable for a copy of the report. The shorthand-writer is to read from his notes, when requested by the Court or counsel so to do, any part of the evidence as the case proceeds.

No. 16.

[Extract from Introductory Notes to the Administration of Justice Bill, submitted in August, 1885, to the Victorian Assembly.]

"It is proposed in the Bill to enable shorthand-writers' notes to be taken in certain proceedings, which will, it is thought, expedite the business of the Court. It will be optional either with the Judge or the parties to take advantage of this provision. The Judge's notes are, by law, his private property, and it is not intended by this proposal to interfere with the Judge in taking notes as he may think fit; but it will be found desirable in many cases to have a fuller report of an authorized character than a Judge usually thinks it necessary to take on his notes; and this will now become almost an essential feature in cases which may probably be carried into the appellate tribunal, for the reason that the Judge who tried the cause will not be present to advise the appellate tribunal, and to give information with respect to the proceedings which transpired before him. The system of taking authorized shorthand-writers' notes obtains in England and in Scotland in the Bankruptcy Court and the Sheriff's Court, and the rules of our own Court of Insolvency have at present a provision of a similar kind, whilst the rules of the Vice-Admiralty Court admit of the employment of sworn shorthand-writers for taking the evidence of witnesses. The various codes of the United States make provision for such reports being taken in the Courts of that country, and the system is being largely adopted in Canada and other countries. An accurate report, it is thought, will prevent any conflict arising as to what really did take place before a Puisne Judge or in the appellate tribunal, which will of itself prove a saving of time, trouble, expense, and anxiety to suitors."

No. 17.

The Hon. the MINISTER of JUSTICE to Messrs. STOTT and HOARE.

GENTLEMEN,— Department of Justice, Wellington, 30th April, 1886.

I have the honour to acknowledge the receipt of your letter of the 13th instant, with its enclosures, for which I beg you to accept my best thanks. The further information with which you have courteously furnished me will, I trust, greatly assist in promoting the initiation of official shorthand reporting in the Courts.

Thanking you again,

I have, &c.,
JOS. A. TOLE.

Messrs. Stott and Hoare, 80, Elizabeth Street, Melbourne.

No. 18.

EXTRACTS of Letters from Mr. THOMAS SCOTT, Shorthand Reporter to a Sheriff's Court in Scotland, to Mr. Wood, Reporter at Dunedin for "The New Zealand Law Reports."—Forwarded to the Hon. the Minister of Justice by His Honour Mr. Justice Williams.

"Now, regarding your questions on the method of taking and transcribing evidence—for in what are known as the inferior Courts here it is only the evidence that is taken. The debates in cases are only taken in the higher Courts when they are specially wanted and they are intended for publication. Where a case proceeds from day to day—which is very seldom, there being an interval of a day or so between the diets—the evidence is taken by the one official shorthand-writer, and he writes it out as best he can for the next day. This can be done where the leading of evidence has not extended over five hours, though it means hard work on the legal reporter's part. According to the average amount of business done in a Court in a year so will be the number of shorthand-writers. If I had, say, an average of two proofs (leading of proof in a case) a week all the year round, I

should require to get another writer as assistant, letting him take a proof in turn, or I taking the proof and afterwards dictate it to him, to be written out as soon as possible. In cases where the evidence is wanted at the immediate close of the case, relays of men must be employed, as in the cases you indicate; but in these cases increased fees are paid, to cover that large staff. However, these cases here are not the rule, save in jury trials on civil causes, and then it is printed or set up in type, just the same as in the case of parliamentary reports for newspapers.

"The average fee to cover all the shorthand-writing in such cases is at from £3 to £4 an hour, 'or part thereof'—ten minutes, say, being counted as an hour. The fees fixed by the Court of Session in Scotland are 5s. per hour for attendance and noting evidence in all cases; 1s. 6d. per sheet (250) words for extending notes where the sum sued for is £25 and upwards, and 1s. per sheet where the sum is under £25. An easy average of extending notes may be made at eight pages of foolscap an hour.

"There are two ways in taking evidence, (1) question and answer, (2) dictation by the Judge. The practice in inferior Courts, as insisted on by the Court of Session—though not always followed—is for the Sheriff to dictate the evidence to the shorthand-writer. In the Court of Sessions itself the shorthand-writer just takes it question and answer; but in that case it is the Judge who certifies the evidence as correct. In the lower Courts it is the duty of the shorthand-writer to certify the evidence as a faithful transcript of his notes. I have as often taken it question and answer as to dictation, though our Paisley Sheriff follows closely the dictation rule. There are many cases, such as depositions to be signed by the party in a bankruptcy, where I take it question and answer. Here at the close of a proof the Judge seldom gives decisions, but makes *avizandum* to consider his judgment, allowing reasonable time for extension of evidence-notes should he wish it. The great purpose, however, of the recording of evidence is for appealing to the higher Courts. Where the Judge sums up for a jury then the relay system must be adopted. I should not care to go on salary for the job, unless it were a good salary.

"The scale of fees I have given you is the basis of all remuneration; but where the transcribed evidence is wanted by the next morning 1s. a page is charged to cover the extra outlay, regarding dictation by the shorthand-writer to an assistant. In cases where the evidence is to be kept abreast and transcribed for every evening, the £3 to £4 an hour, to cover the expenses of relays, is adopted. At present the fees here for shorthand-writers are paid by the parties to the cause, the lawyers appearing in the case being held personally liable. Government will not take up the heavy task of paying the shorthand-writer in the Courts. He is appointed by the Judge, though he does not get his salary from the same Exchequer.

Shorthand is employed only in civil causes. In criminal trials whatever note is taken is by the Judge. In what is known here as the small-debt Court, where the sum sued for must not exceed £12, no notes whatever are taken. In the Debts Recovery Court (£12 to £50) there is no note taken if parties agree to accept Sheriffs' Substitutes' decision as final. In the ordinary Court there is no limit as to sums. It is compulsory that notes be taken of all cases in this Court. In jury trials in civil causes shorthand notes are taken, and the evidence printed and in the hands of Judge, counsel, and jury the next morning. Extra aid is necessary in these cases. The Judge, being relieved from recording the evidence, is left free to take a comprehensive view of the evidence as it is led, taking whatever jottings he thinks needful for summing up, and referring to the extended notes placed in his hand if necessary to quote long or particular passages. If the last day of leading evidence is pretty well used up it is customary to adjourn the addresses of counsel and summing-up till the following day.

In cases heard before a single Judge in the Court of Session shorthand is also employed. Judgment is very seldom given at the immediate close of the case. The evidence is written out and placed in the hands of the Judge as soon as possible, where he may find it necessary to refer to the extended evidence before issuing judgment. When this decision is appealed to a full Bench, the evidence thus written out and lodged is printed before the hearing of the appeal, each Judge having a copy supplied to him. It happens, where a case is not going further than the Court of first instance, that the notes so taken are not extended. Where that is necessary the evidence in particular cases is extended, question and answer. The Judge always sits out the case. He is, however, often employed improving the time writing letters, &c., on the Bench. This occurs where the Judge does not dictate, and it is only in inferior Courts that the evidence is expected to be dictated: Court of Session Judges do not dictate the evidence. In jury trials in inferior Courts the evidence is not dictated. For ready reference the sides of the pages of evidence are marked with capital letters at intervals of about five lines.

[*Approximate Cost of Paper.*—Preparation, Nil; printing (1,350 copies), £17 14s.]

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