

WORCESTER REPUBLICAN.-EXTRA.

WORCESTER, WEDNESDAY AUGUST 26, 1835

TO THE MEMBERS OF THE LEGISLATURE OF MASSACHUSETTS.

Gentlemen, I feel personally interested to procure a change in the laws relating to the admission of Attorneys to the Bar; and since no one, unless he be thus personally interested, will be likely ever to take the trouble thoroughly to inquire into, or fully to expose the injustice and absurdity of the restraints now in force, I take the liberty of addressing and sending to you this letter, and respectfully asking your consideration of the subject.

By the statute of 179-2 Ch. 4, establishing the Supreme Judicial Court, it is provided (Sec. 4) that said Court, "shall, from time to time, make, record, and establish all such rules and regulations of Attorneys ordinarily practising in said Court, and the creating of barristers at law, as the discretion of the same Court shall dictate - provided that such rules and regulations be not repugnant to the laws of the Commonwealth."

Pursuant to this authority, the Supreme Judicial Court have established such rules (see Bigelow's Digest - Title, Consellers and Attorneys,) that is now necessary for a graduate to spend three years, and a non-graduate five years, in the study of the law, before he can be admitted to practise in the Common Pleas, and then to practise four years in the Common Pleas before he can be admitted a Counsellor of the Supreme Court.

These rules, as to the time of study, are peremptory - and the custom is (whether the rules contemplated it or not,) after this time has been nominally passed in study or in idleness, to admit the applicant as a matter of course, without any further inquiry as to his attainments. It is true that the persons, with whom he has studies, certify that he has been "diligent" in the pursuit of the education proper for his profession - but this certificate is no evidence that such has been the fact, and is not so considered by the Bar, because it is given, and it is understood to be

given, indiscriminately, as well to those who have been grossly and notoriously negligent, as to those who have been diligent. So that, in fact, the time and money, expended in nominally preparing for the profession, and not the acquirements or capacity of the candidate, constitute the real criterion, by which he is tried when he applies for admission.

The Bar in this (Worcester) County, and I suppose in the other counties, have improved, in letter if not in spirit, upon the unjust and arbitrary character of the rules of the Court. The 12th of the rules of the Bar in this County is in these words. "No Student shall commence, or defend any action, or do any other professional business on his own account; and no Student shall be employed for pay, in any business for himself." And the Bar have substantially the power to prevent the admission of anyone, who shall infringe this rule; because the Court will not take upon itself to admit any one, who is not recommended by the Bar, unless the Bar shall "unreasonably refuse to recommend" him, (Rule 7th of S. J. C. See Bigelow's Digest, as before - also Rule 6th C. P. See Howe's Practice - appendix,) and it probably would not consider the conduct of the Bar, in refusing to recommend one, who had spent a part of his novicate in earning his subsistence, unreasonable. The Court would undoubtedly say that the spirit of their own rule required that the Student's exclusive business, during his novicate, should be the acquisition of the necessary qualifications for his profession.

Although we have the evidence of experience, yet we do not, in order to demonstrate that it must be a necessary operation of these rules, to exclude from the profession a class of young men, who, as a general rule, would be more likely to excel in it than any other - I mean the WELL EDUCATED POOR. I say this class would be more likely to excel in it than any other, because they generally do excel all others in whatever they undertake, that requires energy and perseverance. The access of this class to the profession, and their success in it, are made, by these, rules, actually impracticable. In the first place, if they have the perseverance to

go through the extreme and continued toil and exertion, that must be gone through, if they would defray, as fast as they accrue, the expenses of so long a course of preparatory studies as are now required, they must, of necessity, by that time have exhausted, in a great degree, the energies, that are indispensable to success in the laborious profession of the law; because it is not in human nature that a man should acquire, and at the same time earn money for the pay for, so expensive and long a course of education, and retain his energy fresh and unbroken. He must also, even after he has made all this effort, be so far advanced in life, that he must enter the profession under great disadvantages on account of his age, and must be little short of insane to imagine that, with his wasted powers, he can then set out and compete with those who commenced fresh and young.

Take another case – that of a poor young man, who may be (what few can ever hope to be) fortunate enough to obtain credit and assistance, while getting his education, on the condition that he shall repay after he shall have engaged in his profession – so long is the term of study required, and such is the prohibition upon his attempts to earn any thing in the mean time for his support, that he must then come into practice with such an accumulation of debt upon him as the professional prospects of few or none can justify. Experience has shown the result to be what any one might have foreseen that it would be. The class of young men, before mentioned, the well-educated poor, have been, almost without a solitary exception, excluded from the profession, which many of them would have chosen and adored, had it been open to them, and have been actually driven into other pursuits – and the profession is now filled, with few exceptions, by men, who were educated in comparative ease and plenty; who have neither the capacity nor the energy necessary to success; who chose this profession, not because their minds were adapted to it, but because, having received a liberal education, it was necessary that they choose some profession, whether they were fitted for it, or not. – You, Gentlemen, as well as I, must be aware that as often as

one, with the requisite talents for a lawyer and advocate, can be found in the profession, five, if not ten, others can be found in it, who have not these talents – who are in fact palpably incompetent to anything but the minor and almost formal parts of professional business. I think you must also be aware that the present lack of able lawyers is not owing to any scarcity of talent among the people – but has to be attributed solely to the fact, that the laws of the State, and the rules of Courts and Bars are such as operate to admit many, who are unfit for the profession, and to exclude many who are especially fitted to excel in it.

Among the well-educated poor there are many, who have a passion for the profession, who have also an equal talent for it, and at least equal, if not more equal perseverance, with those few, who now stand at the head of the Bar – and were the access to the profession made as easy as it might be, there cannot be a doubt that on a little time the wants of the whole community would be supplied with lawyers equal to that of the few able ones, who are now to be found here and there.

If Attorneys were permitted to practise, and thus do something for their support as soon as they could qualify themselves for doing the minor business of the profession, few young men of character and talents are so destitute of resources as to be unable to obtain the necessary education – and why is it not as much a man's right, to avail himself of his earliest ability to earn his living by this employment, as by any other?

I am aware that there is a statute (1790 Ch. 58) that provides that any person of decent and good moral character, who shall produce in Court a power of Attorney for that purpose, shall have the power to do whatever an Attorney regularly admitted may do, in the prosecution and management of suits. But if once he commence in this way, he must always continue in it, for the Bar or Court will never admit him afterwards on the strength of any qualifications that he may acquire by practicing this way. (This fact shows how utterly arbitrary and reckless of right are the rules that are made to govern in this matter, and how inveterate is the

determination, on the part of this mercenary and aristocratic combination, to exclude, from competition with them, all who are unable to comply with certain conditions, which have no necessary, or (as experience has proved) even general connexion with an individual's real fitness for the profession.)

It is imposing upon an Attorney, who has any considerable business, a great and unnecessary inconvenience to oblige him always to take from his client, and carry with him a power of Attorney. There is also another objection – the people are unaccustomed to give powers of Attorney in such cases, and if a practitioner inform them that he must have one, before he proceeds in his cause, they do not exactly understand why it should be necessary – they are afraid there is something in the matter more than they know – the circumstances create a distrust against the counsel, and is therefore injurious to him.

The change I would propose is this – that a law be passed that any person, above the age of twenty-one years, of decent and good moral character, on making application either to the Common Pleas or Supreme Court for Admission as an Attorney, and paying to the Clerk his recording fees, be admitted, without further ceremony or expense, to practise in every court, and before every magistrate in the state, and that he then have the same right, that an admitted Attorney now has, of appearing in actions without a power of Attorney.

I would, however, have in the law a provision of this kind – which nearly resembles the provision now contained in the 27th Rule of the Court of Common Pleas, (see Howe's Practice, Page 572) – that “the right of an Attorney to appear for any party, shall not be questioned by the opposite party, unless the exception be taken at the first term,” (or, I would add, at the second term, when the opposite party lives without the Commonwealth.) “and when the authority of any attorney to appear for any party shall be demanded,” such attorney shall be sworn or affirmed to speak the truth, and if he “declare that he has been duly authorized to

appear, by application made directly to him by such party, or by some person who he believes has been authorized to employ him, it shall be deemed and taken to be evidence of an authority to appear and prosecute or defend, in any action or petition” – reserving however to the opposite party, on his or his counsels making oath or affirmation that he has, in his judgment, reasonable grounds for supposing that such attorney has not been duly authorized, the right to continue his action, and at the term to which it is continued, to contest, by evidence, the right of such Attorney to appear in the action – provided he give the party reasonable notice that his right to appear will be contested – the party making the objection, being held liable for the costs that may arise in consequence of his objection, if he fail to sustain it.

The principle argument, – and it is of itself, as I think, a sufficient and invincible one – on which I would insist in support of such a law as I have suggested, is that of strict right. If the admission be to anyone a privilege, all, who desire that privilege, have as good a right to it as any one can have. None of us are entitled to exclusive privileges; and therefore, if this privilege be granted to one, the obligations of equity are imperative that it also be granted to each and every other one, who may desire it. Even the ability, learning, or other peculiar qualifications of an individual, for the practice of law, cannot, with justice, be made a matter of inquire by the Courts or the Legislature, as a condition of his being permitted that privilege – because those are the matters, with which neither the Courts nor the public have any concern – they concern solely the lawyer himself and his clients. Any man, who is allowed to have the management of his own affairs, has the right to decide for himself whom he will employ as counsel – and if he choose to employ one, whom the public at large would not think the best or ablest that could be found, it is the right of the person so employed to have the same facilities afforded to him for discharging his service as counsel, that are afforded to others, whom the public may think much better or abler lawyers.

It may be proper however that a decent moral character be a requisite for admission, and for this reason solely, as far as I can see, that otherwise individuals might sometimes out themselves there from whom the Court would be in danger of insult.

Another ground, on which I would advocate a change in the law, is that the present rules operate as a protective system in favor of the rich, or those who at least have a competency, against the competition of the poor. Some people have thought that a protective system in favor of the poor, against the competition of the rich, was a wise policy – but no one has ever yet dared to advocate, in direct terms, so monstrous a principle as that the rich ought to be protected by law from the competition of the poor. And if such a principle is to be sustained by the laws of this Commonwealth, it would justify an open rebellion to put down the Government.

My own doctrine also is, and I have no doubt that it is also that of the most of your number, that the professional man, who, from want of intellect or capacity for his profession, is unable to sustain himself against the free competition of his neighbors without the aid of a protective system, has mistaken his calling – and the public ought not, looking solely to their own interest and rights, to tolerate laws, that will place them under any necessity whatever of employing such incompetent men, when abler ones can be employed. – They (the public) ought, on the contrary, to have the most full and unqualified liberty of employing in their service, without let, hindrance, or any invidious distinction or disadvantage whatever, the best talent they can command, the present laws and rules, considering them as the acts of the community, are in fact specimens of the most wretched and self-serving policy – for while they probably have the effect to invite into the profession few or no able men, who would not otherwise enter it, they exclude many able ones, who, but for them, would enter it. The community therefore take the trouble to make laws, whose natural and necessary operation is to produce a

scarcity, where there would otherwise be an abundance of the very services, which they want – they actually go out of their way to do themselves an injury.

Another consideration entitled to weight in favor of the change, is, that if the profession were made accessible by the poor, the practice of the Bar would be more likely to be more uniformly humane (I mean no imputation upon the profession at large) than it now is. Who are the Attorneys, whose rapacity has heretofore filled our jails with honest debtors? Who are they, that have ever been ready to extort, in the shape of bills of costs, poverty's last shilling, and to feed and clothe, if not to pamper and bedeck, their own families, with food and dresses snatched and stripped from the mouths and bodies of the poor man's children? I think they will rarely, if ever, be found to have been those, who had been reared in poverty themselves; who had known by experience the difficulties of that condition, and who had witnessed and participated in the disheartening embarrassments, occasioned to the poor man's family, by the deduction of the lawyer's bill from their scanty earnings. The poor and those who have been poor, have too much fellow-feeling to get wealth, or even their subsistence, by grinding each other's faces.

The present rules ought to be abolished for the further reason that a compliance with them, by those who can make good lawyers at all, is not necessary. I have heard, from men of great experience at the Bar, sentiments equivalent to this, that as an almost universal rule, it is not until after a person has entered the profession, and has a character to maintain, and a business of his own to attend to, that he studies the law with any considerable intentness of effect. Now if this be so, much of the time, that is now spent in preparation, is little better than wasted.

But further – in a considerable portion of the cases, the compliance with the rules, when it is observed, is more nominal than real. The time, designed by the rules to be devoted to study, instead of being thus devoted, is, probably by a majority of students, given much more to



amusements than to books. Indeed a really industrious law student would be considered, by other students, a great curiosity. But even if all did study diligently and zealously, that fact would be no evidence that they were suitable persons to be admitted, in preference to others; because, to excel in the profession of the law, abilities are required, peculiar almost, as those that are necessary to enable one to excel at painting, music or mechanics; they cannot be acquired by three years of study, if indeed they can be by the studies of a whole life. On the other hand, if a man have them, he will succeed, even though he should commence practice before he has studied half the time that our laws require – as is provided by the cases of some of the most eminent lawyers and advocates that the country has ever produced. According to the criterion in Massachusetts, Henry Clay, Patrick Henry, William Pickney and Chief Justice Marshall, when they commenced their career, must have been unqualified for a place, which the next moment would have been given perhaps to some stupid fop, whose only recommendation was, that he had spent three years, not in attending to his brains or his books, but in twirling his cane and brushing his whiskers. Indeed I think that experience has proved that the direct tendency of our present rules, is to introduce into the profession more fops and fools than lawyers. The lawyers would enter it, without the rules – but the fops and fools would not find it profitable to do so. These facts illustrate the miserable policy of prohibiting one set of individuals from the pursuit of that art or profession, for which nature and inclination fit them, and of attempting to supply their place by offering to others, who have naturally neither the capacity nor inclination to fill it, exclusive privileges as an inducement to make the trial. These restrictive and protective rules effect the double evil of shutting out some individuals from their natural and appropriate sphere, where they would be useful to themselves and the community, and of enticing others into what is to them an unnatural, where they can do little for themselves, and little or nothing for the public. It would hardly be possible to devise rules, that should more uniformly prevent nothing but good, and accomplish

nothing but evil, than these which are authorized and upheld by the Legislature.

I will now answer some of the objections, which I suppose will be made, to the passage of such a law as I have proposed.

One is, that there would be too many lawyers. – I might, in answer to this objection, ask, how can there be too many lawyers, when the number of practising ones must, of necessity, be limited by the business and convenience of those, who have occasion to employ them?

But I think there is another answer – and, that is, that, although there might be more than there are now (which is very doubtful,) who would become nominally attorneys, and would occasionally fill writs in cases of necessity, there would yet not be so many, who would devote themselves so steadily to the profession as their regular business. The reason why there would not be so many of this class, is, that there would be more men of talents in the profession, and they would of course receive all, or nearly all, the patronage. It would be of no use for an incapable man to attempt to establish himself as an attorney at all – because the people would give him no business – and not more able ones would enter the profession than could get a good living from the business, which the community would afford, because it is not characteristic of capable men to engage in any business, from which they cannot derive a good support. Whereas we know multitudes of weak men now enter the profession, and make it their regular business, although they derive such a pittance from it as no spirited and able man would be content with.

Another objection, which I have heard made, is that if every man were allowed to commence actions, it would give rise to barratry. But how would it give rise to barratry? None, but men of decent and good moral characters, could commence actions – and is not the good moral character of one man as good a security that he will not commit barratry, as is the good moral character of any other man? Does loitering about a lawyers

off ice three or four years, raise a man's moral character so high above that of ordinary men, as to afford the community any security for his good behaviour, which they have not in the case of other men? Besides, barratry is a crime – an indictable offence – punishable by fine and imprisonment – and is it necessary, in addition to this, to go so far as to deprive certain men “of decent and good moral character,” of privileges, which – on certain conditions, that have in them no tendency whatever to prevent barratry – are granted to others to an indefinite extent, and have been granted to them until the country is overrun with lawyers so poor that, if poverty could induce men to commit barratry, we should have had enough of it long ere this?

But further – all that is necessary to enable a man now to commit barratry, and to have the profits of managing the suits, is for him just to take the power of attorney – yet we have no barratry, unless it be in the ranks of the profession.

And I think it may here be a very pertinent inquiry – whether the present rules do not favor, rather than obstruct, the commission and concealment of barratry by the members of the Bar? The members of the Bar have become an organized, associated body – the society in the mass, exercising a discipline over the members, and professing to the public that they tolerate among their number none unworthy of the public confidence. The members of the association have thus taken to themselves, in some degree, a common character. In the preservation of this common character from suspicion, all are interested. And I think all will admit that the experience of the world has been, that such associations, in guarding their associated character, uniformly pursue the policy of not being the first to expose the faults or crimes of their associates to the world, and generally of hushing suspicion if possible. It is natural that they should, for they have a strong personal interest in doing so. But after public suspicion has once become so strong against an individual member that the character of the whole body is in danger –

or when a case of criminality has become too notorious to be concealed, then the association becomes suddenly virtuous – affect a great deal of astonishment – probe the matter terribly, and if they find it necessary, expel the offender, and would then make the public believe that they have purified the association as with fire. Now is not all this farce? A mere humbugging of the community?

What then is the remedy? It is this. If the profession were thrown open to all, this combination of lawyers would doubtless be broken up – they, like any other men, would hold themselves severely responsible for their own character alone – they would have no inducement to wink at or attempt to hide the mal-practices of others – individuals, who should suppose themselves injured by the practice of an attorney, instead of laying his complaints before the Bar, would lay them before the grand jury, or some other tribunal – and it is no uncharitableness, it is only supposing lawyers to be like other men, to say, that it is probable the community would sometimes fare the better for it.

Another objection, which I suppose may be made by some, is that if the profession were thrown open to all, young men would be likely to enter it before they should be so qualified that they could be safely entrusted with the transaction of business – and that therefore those who should employ them, would be imposed upon. – And I suppose the present rules were established on the ground, that some ruled, coming from the Court, were necessary in order to prevent men from being imposed upon by those, whom they might otherwise see fit to employ to do their business. Now it was really very kind, no doubt, on the part of the Court, thus to take the people's business out of their hands, and assume so fatherly a control of it themselves, in order to avert from the people the natural consequences of their incapacity to judge of these things for themselves; yet, however benevolent their intentions undoubtedly were, I seriously suspect that their rules actually cause twice as much imposition as they prevent; because, one, admitted under them, is ostensibly admitted on

the ground that he is fit for practice – whereas, in reality, his qualifications have nothing to do with his admission. After a candidate has been nominally a student for a requisite time, he is admitted without inquiry, as a matter of course. Yet the forms of admission are such that his admission amounts to an endorsement and certificate, by the bar, of his capacity and fitness to be entrusted with business. The Bar, in fact, actually recommend him to the confidence of the public, wherever you may go. Many, who are ignorant of the deceptive and fallacious character of this proceeding, repose confidence in the man on account of his indorsement and recommendation, and, in consequence, they too often find themselves to have been imposed upon with a vengeance. In short, this whole affair of rules, recommendations, admissions, &c., although observed professionally to prevent imposition, is yet, in practice, little less than an organized system of imposition.

Let us now look on the other hand. If men were admitted, without regard to their qualifications, their admission would be no recommendation to the confidence of the public, and the client would ascertain for himself what a lawyer was made of, before he would entrust hi, with business at all. Every lawyer would then of necessity stand on his own merits and resources – he would have no recommendation from his brethren of the Bar to prop him up, or to shield him from his just responsibility for his error. Young men, under these circumstances, would commence and proceed in their practice with the plain reason, that it would be necessary, both for their reputation and their interests, that they should do so.

But supposing that incompetent men, should attempt to get professional business, and should succeed, and that those, who employed them, should suffer in consequence – on what principle must the Legislature proceed in sustaining laws to prevent such occurrences? Why, they musty proceed on this principle – that the people are not to be allowed the management of their own affairs – that they are not to be trusted with the

selection of agents to do their own business – but that if they want the services of a lawyer, for instance, the Legislature and the Courts will so far look after their interests as just to prescribe to them whom they must employ, if they wish to have their lawyer enjoy the ordinary facilities for doing their business. A fine doctrine this to preach to the people of Massachusetts.

I have another objection to a law or rule of Court, that shall make it necessary that the qualifications of a candidate, other than his moral character, be in any way whatever inquired into, as a preliminary to admission. It is that if the inquiry be made at all, it must be made by a board of lawyers, who are interested to keep him out, and who also, in some cases, may have special objects to accomplish by frustrating the success of particular individuals – in which contingencies they would be very likely to abuse their power to effect their purpose. Suppose, for example, that an individual, before applying for admission, should have avowed a determination, that, if admitted, he would not enter the combination of the members of the Bar, to keep up the prices, and throw obstacles in the way of competitors, in the profession – can there be a doubt that such an individual, on an examination as to this attainment, would be in much more than ordinary danger of being found to be not qualified for admission? I therefore object to having my rights, or my interests, or my feelings thus unnecessarily placed in the keeping of interested men, who have no claim to the guardianship of them.

If a young man should find that, in order to obtain the confidence and patronage of the community, he needs a certificate from the members of the Bar, of his qualifications, he would perhaps think it worth his while to go to some of them, and ask of them, as a favor, to examine and recommend him, but if he should be able to get along as well without their assistance, he has a perfect right, and in some cases perhaps, would much prefer to do so. He ought therefore to be left at perfect liberty on

this point, without having any other of his privileges affected by the course he may choose.

Another objection, which may be made to the law I propose, is, that the Courts might be incommoded and delayed by the arguments of ignorant men. I have already, indirectly given one answer to this objection in showing (if I have shown it) that the active part of the profession would probably be more, rather than less, intellectual than it now is. Another answer is, that the people will of course, then as now, (because it will be for their interest to do so) employ the ablest lawyers that can be obtained – and if those, who spend four years in college, three years in an office, and \$2500 in money, in fitting themselves for the Bar, are more intellectual than those can be, who may spend less time and money, or spend them in a different way, for that purpose, the presumption is that the people will find it out without the aid of the Legislature, and that, in consequence of it, the former class of practitioners will still have all, or nearly all the business, and young men, who are fitting themselves for the Bar, will still find it for their interest to pursue the same course of education as that now required – and the result will be that the Courts will have the pleasure of listening only to the same kind of arguments as those addressed to them. But a better, and more conclusive answer to the objection, is that the Courts were made for and by the people, and not the people for or by the Courts. Suitors, when in Court, are the people, and it is their right to present their causes to their own courts, by whatever counsel they may think it for their own interest to present them, (provided it be done with civility,) and the Court must hear them without murmuring, or resign their seats.

I ought here to say, that I do not suppose that these arguments, to which I have alluded, will be put forward in purely good faith. They are too shallow to be honestly relied on by men capable of just and liberal views of the subject. They will be used, if at all, by those, who dare not avow their real objections to the change. The true source of opposition, if any

should be made, will be, that there are those, who, either for themselves, or for some dear Son JOHNNY or JOSEY, want the aid of a protective system to give them a living, or make them respectable.

Having thus attempted to answer the objections, that occurred to me as the most likely to be brought against the law, which I have suggested, I wish now to state some further objections of my own to other portions of existing laws. I object to the oath, that is required of attorneys, in all its particulars. (See St. 1785 Ch. 23)

In the first place, I object to the oath to bear true allegiance to the Commonwealth, and to support the Constitution. The right of rebelling against what I may think a bad government, is as much my right as it is of the other citizens of the Commonwealth, and there is no reason why lawyers should be singled out and deprived of this right. My being a friend or an avowed enemy of the constitution has nothing to do with the argument of a cause for a client, or with any other of my professional labors, and therefore it is nothing but tyranny to require of me an oath to support the constitution, as a condition of my being allowed the ordinary privileges for getting my living in the way I choose. It will be soon enough, after I shall have been convicted of treason, to refuse me the common privileges, or take from me the common rights of a citizen to decry and expose the character of the constitution, and if possible to bring it into contempt and abhorrence in the minds of the people, without forfeiting any of the ordinary privileges of citizens – and the recognition of this right constitutes one of the greatest safe guards of the public liberty. And if any one class of men, the moment they attempt to prove that our constitution is not a good one, and ought to be abolished, are to be denied any of the ordinary rights and privileges of citizens, then has that class been singled out for the especial tyranny of the government. There would be just as much propriety in requiring a farmer to take an oath to support the constitution, as a condition of his being allowed the privilege of being allowed to enter his deed of record in a



public recording office, as there is in requiring it of me, as a condition of my being allowed the privileges of an attorney. There would also be the same propriety in requiring this oath of the members of a manufacturing corporation, as a condition precedent to their receiving an act of incorporation, as there is in requiring it of me.

I object, in the next place, to the oath, which the attorney is required to take, that “if he know of an intention to commit any falsehood in Court, he will give knowledge thereof to the Justices of the Court, or some of them, that it may be prevented.” I do not choose to be made an informer in this manner, against men with whose matters I have nothing to do. That is not what a lawyer goes to court for – he goes there to defend the rights and interests of his clients, and for nothing else, – and he has a right so to do, and to have all the ordinary facilities for doing it afforded to him, without this odious service being exacted of him. There would be just as much reason as requiring the members of a manufacturing corporation, as the price of their charter, an oath that they will act as informers against all their neighbors, whom they may suppose to be dishonest in their dealings, and that “if they know of an intention,” on the part of one man, to cheat another in the price of a horse or a cow, “they will give notice thereof that it may be prevented.” I object to being made in any way an officer or servant of the Court, as a condition of my being allowed the ordinary privileges in doing the business of my clients. Any other service, such as taking charge of a Jury, ringing the bell or sweeping the court-room, (which, by the way, would be services a thousand times more honorable) might be required of me on the same ground as is this of an informer.

I object, in the last place, to the oath of the attorney, that he “will do no falsehood, nor consent to the doing of any in the Court, that he will not wittingly or wittingly promote or sue any false, groundless or unlawful suit, nor give aid or consent to the same; that he will delay no man for lucre or malice; but will conduct, in the office of an attorney within the

Courts, according to the best of his knowledge and discretion, and with all good fidelity, as well to the Courts as to his clients.” I object to the whole of this oath for several reasons. First, it singles out lawyers as men worthy of special suspicion – as men of doubtful honesty. If a lawyer is guilty of malpractice, he is amenable to the laws; or if he is unfaithful to his clients, he is answerable in damages, in spite of his oath – and, if he is not guilty of malpractice or unfaithfulness, he ought not to have the invidious suspicion, implied by this oath, fastened upon him. Without this oath, the community have the same security for the honesty of lawyers, that they have for the honesty of other men, and what more have they a right to demand? Clients also have the same security for the fidelity of their attorneys, that other men have for the fidelity of their agents, and what more have the laws a right to require that they shall have? If any individual client want the oath of his lawyer, or a security for his fidelity, let him make to him the insulting proposal, and persuade or purchase a compliance with it, if he can. But if he is satisfied to trust him without the oath, it is base business for the Legislature to interfere and say that the man ought not to be trusted except he be sworn.

Why should not physicians, before they are permitted to practice, be required to take an oath that they will always practice in good faith, and knowingly injure none of their patients? Why are not the members of manufacturing corporations, before they are allowed a charter, required to take an oath that they will defraud no man in the quality of the goods, that they may manufacture under that charter? Why is not the farmer, before he is allowed the privilege of securing to himself his property in his farm, by entering his deed in the public recording office, required to swear that he will never defraud any man in the price or quality of the produce of that farm? There would be as much reason in it as there is in requiring of a lawyer an oath that “he will not wittingly or willingly promote or sue any false, groundless or unlawful suit.”

The truth is that legislatures and Courts have made lawyers a privileged class, and have thus given them facilities, of which they have availed themselves, for entering into combinations hostile, at least to the interests, if not to the rights, of the community – such as to keep up prices, and shut out competitors. The natural result of such combinations also is, that the mass of the members will do more or less to screen individuals from suspicion. The consequence is, that the people have imbibed an extreme jealousy towards them, and exact from them oaths, containing such divers significant specifications, that, were he not kept in countenance by others, a man would consider them too humiliating to be taken. Now if the profession were throw open to all, lawyers would no longer be a privileged class – they probably could no longer enter into combinations that would be of any avail to them, and the jealousy of the people towards them would be at an end.

I object lastly to the statutes, (1814 Ch. 178, Sec. 2 1795, Ch. 80, Sec 4, and 1822, Ch. 51) requiring an attorney, on his admission to the Common Pleas, to pay \$20, and on his admission to the Supreme Court, \$30 to the Law Library Association. If I wish to have the benefit of the Law Library, it is of course right that I should contribute to the pay of the Librarian, and also something for the increase of the library; and perhaps \$50 is a reasonable sum, although I think few, unless obliged by law, would ever pay it. But – whether the sum itself be reasonable or unreasonable – if, either because I live remote from the place where the library is kept, or because I have library enough of my own, or have not the \$50 to spare, or for any other reason whatever, I do not choose to join the association, or avail myself to use their library, the association have no more claim upon me for \$50 than have the Missionary or Bible society.

Our Bill of Rights declares (Art. 18) that “the people have a right to require, of their lawgivers and magistrates, an exact and constant observance of the principles of justice.” I have endeavored to satisfy you

that our existing laws in relation to the admission of Attorneys, are unequal and unjust; and if I have so satisfied you, I have a right to require – in defiance of all such pleas to expediency, utility and public good, if any such unanswered ones can be invented in defense of such laws – that they be abolished.

With respect, &c.

LYSANDER SPOONER

Worcester, Aug 26, 1835.