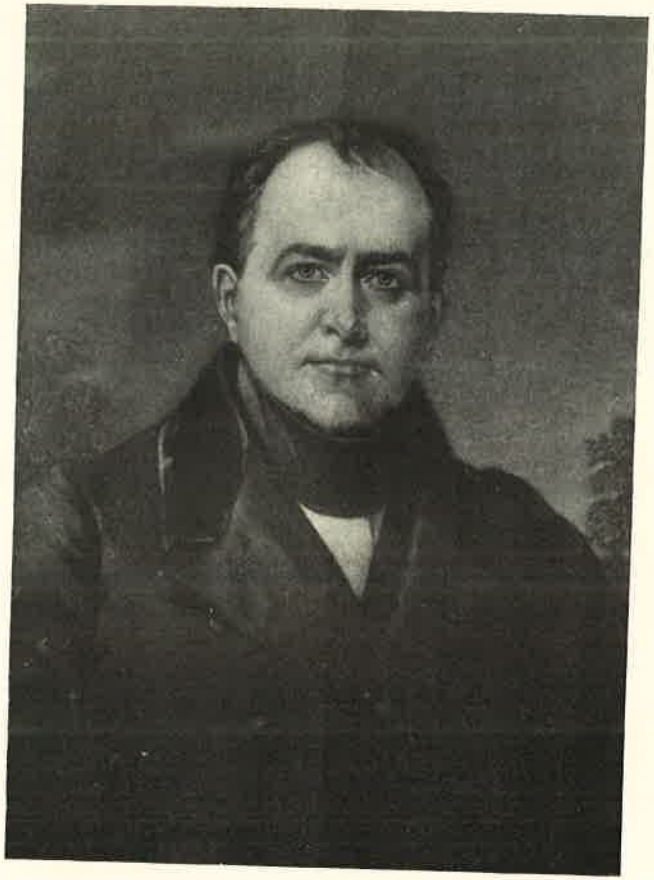

THOMAS WILSON DORR

Published in "Great American Lawyers," from an engraving by W. Warner of a daguerreotype in possession of the Rhode Island Historical Society at Providence, Rhode Island.

THOMAS WILSON DORR AND THE DORR WAR*

A paper read before the Pennsylvania Bar Association, Tuesday, June 29, 1909

By Hon. AMASA M. EATON,
of Providence, R. I.

A man is sometimes born, lives and dies so far in advance of his times, circumstances and surroundings that he is not understood or appreciated until a later day. Then the way opens for an appreciation of the principles for which he in vain contended. He may have had intellect, character, education that gave him insight into principles but dimly appreciated by those about him or which were ignored or denied because in conflict with selfish vested interests. He may have followed his convictions and his sense of duty to their logical conclusions, and as a result he may be called an impracticable visionary, an abstractionist, a seeker for office, a disturber of the public peace, although his motives were pure and lofty, although he may never have misrepresented an opponent, however differing from him. He may never have deserted a friend, nor have surrendered principle to policy. He may have been so constituted that he could accept no compromise of principle, nor be able to understand that others could arrive at conclusions different from those he reached. Espousing a new and unpopular cause, resting upon a profound principle and becoming its leader, he is looked upon as a renegade by the more timid and conservative minds of the social order that was his by birth and education. With victory

* Originally written for and published in "Great American Lawyers" edited by William Draper Lewis. The John C. Winston Co., Philadelphia, Publishers.

almost within his grasp he may fail, his sense of logic preventing concession, and the end is apparently a crushing defeat. But even so he has not lived in vain. He has sown the seed that will grow and bear fruit. Later generations will bless him for the privileges and liberties they enjoy, the results of his labors and sacrifice, and at last he is recognized as a political reformer and a public benefactor.

Such a man was Thomas Wilson Dorr. He was born in Providence, November 3, 1805, and he died there December 27, 1854. He was the son of Sullivan Dorr, a successful manufacturer, and Lydia (Allen) Dorr. His father was a descendant in the sixth generation of Joseph Dorr, a Massachusetts Bay colonist, about 1660. His grandfather, Ebenezer Dorr, was captured with Paul Revere upon the ride made immortal by the genius of Longfellow. He prepared for college at Phillips' Academy, Exeter, went to Harvard, and was graduated thence in 1823 with second honors in his class. He then studied law in New York, under Kent and McCoun, both afterwards eminent as equity judges and jurists. He was admitted to the Bar in New York and soon became recognized as a profound student of law. In later editions of his celebrated "Commentaries" Kent adopted various suggestions and changes made by Dorr. Returning to his home in Providence, he began the practice of law, with the usual slow success, rendered perhaps slower than usual because he was recognized as a student of law rather than as an active practitioner. In 1833 he was elected a member of the lower house of the General Assembly from the town of Providence, and we find him now launched upon that public career that was to be his life work.

He was a Federalist by birth and environment, but he soon became a Democrat from principle. This change was the first step in a course that estranged him from

those who considered themselves as the patrician class, if there may be said to be such a class in this country.

Democratic in essence as Rhode Islanders may be, yet, fostered perhaps by our long-established system of admitting to the suffrage only those who owned land and their oldest sons, those thus favored had come to look upon themselves as members of a special, privileged class, admission to which was granted only to those possessed of the requisite mentioned. When the members of a new class, consisting of those who did not own land, began to suggest that possibly a man might be allowed to vote without owning land, the suggestion was frowned upon as almost a kind of sacrilege, and those favoring it were looked upon as menacing danger to the Rhode Island established order of things. When, taking heart from their logic and convictions, these daring innovators maintained that the question of the enlargement of the suffrage should be decided by those who would become voters under the proposed enlargement, as well as by those who were already voters, the indignation of the latter class led them to impolitic steps that but added new impulse to the determination of many of those who were excluded from the franchise to get within the circle from which they felt themselves to be unjustly excluded—and here, in a nutshell, we find the cause that led to the Dorr war.

Dorr's career in the General Assembly terminated in 1837, in consequence of the course he took in bringing to an end the peculiar "bank process" then in force in Rhode Island, under which if a debtor failed to pay his note at bank by three p. m. on the day when it became due, an attachment, judgment, execution, levy and sale might follow the same day, so that before sunset of that day such a debtor's real estate might become the property of the bank holding his protested note, to the exclusion of the claim of all other creditors. Dorr wrote the report of the committee that reported a bill that became a law, "limiting

the banks hereafter to the same remedies for the collection of debts as are possessed by individuals in the State."

When the Revolution came in 1776 a general upheaval resulted in the formation of new governments in the various colonies. With the exception of Rhode Island and Connecticut all the colonies framed and adopted state constitutions. It was not necessary to do this in the two States mentioned because the English charters they had were so democratic in form, and each had, in consequence, so freed itself from the control of the Crown or Parliament, that each was already virtually independent and self-governed. Therefore, after the Revolution these two colonies, becoming States, continued to rule themselves under the forms of their old charters. But as this was done in Rhode Island without any formal sanction of the voters, that State, like England itself, carried on its government under an unwritten constitution. In 1842 many of the people of Rhode Island, probably a majority, under Dorr's lead, undertook to do what the people of the other colonies (excepting Rhode Island and Connecticut) had done in 1776 or soon after, *i. e.*, to form their own constitution of government. Clearly the people of Rhode Island had the right to do this in 1776. Had they lost the right to do it because they put it off until 1842?

It is important to bear in mind that in 1829 it was decided by the Supreme Court of the United States in the case of Wilkinson *vs.* Leland, 2 Peters 627, that great jurist, Story, J., writing the opinion, that from the time when Rhode Island passed her own declaration of independence on the 4th of May, 1776, to the time when Story wrote the opinion aforesaid, and down later, to the time when the present constitution went into effect, on the first Wednesday in May, 1843, Rhode Island was governed under an unwritten constitution. There are some things that must be taken as established in our history, and this is one of them.

The General Assembly was even more powerful than the Parliament of England, for it had always exercised, and it continued to exercise, until the constitution of 1842, supreme legislative, executive and judicial powers. Just before 1842 it became felt by an ever-increasing number of the people of this State, that the time had come when there should be some express limitation upon the powers of the General Assembly and an extension of the suffrage. A limitation on the powers of the General Assembly by itself would be of no avail, for whatever the General Assembly enacted it could, at any time, repeal. The General Assembly had, at various times, enlarged and restricted the suffrage and it could enlarge it now, but it would not. The only way to bring about these changes was through a state constitution, framed by a convention and adopted by the people. The people of the State, after much agitation and discussion, extending over many years, with the necessity for action steadily increasing, finally undertook to do, in the period ending in 1842, what the people of other colonies had done in 1776 or soon after. The opposition to this course by the landowning constituted authorities brought about the Dorr war that ended in Dorr's personal defeat, but ultimately in the partial accomplishment of the establishment of the principles for which he contended. It remains yet to establish them more fully.

In 1724 the General Assembly passed an act limiting the suffrage to landowners and their oldest sons. With the decay of shipping and commerce after the Revolution and the War of 1812, the increase of cotton spinning brought into existence a new class in the State. It came about that the members of the class holding the government in their hands were not increasing in numbers in the same ratio that the members of the new class were, so that, through the exclusion from the suffrage of the rapidly growing class, consisting of artisans, tradespeople and professional men, a minority was governing the majority. It is only

by a peculiar and incorrect use of words we can call such a government "a republican form of government," for in reality it was an oligarchic government parading under the name of a republican form of government.

As early as 1797, George R. Burrill, a lawyer, brother of United States Senator James Burrill, delivered a Fourth-of-July oration in Providence, in which he dwelt on the necessity of a constitution for this State. He inquired if a smaller number out of the whole choose the General Assembly, how can this formation of a constitution be brought about? "To petition the legislature for equal representation is to require the majority to surrender their power—a requisition which it is not in human nature to grant." As if foreseeing the future, Burrill proceeded to say, that unless there is power somewhere to bring about a change, Rhode Island would forever exhibit the paradox of a "free, sovereign and independent people desirous of changing their form of government without the power of doing it." The orator saw no remedy but in ignoring the General Assembly and in proceeding to form a new constitution independently of it. Forty-five years later this was what Dorr tried to do.

Attemps were made in 1821 and in 1822 and in 1824 to call a convention to frame a constitution, but they all failed. The excluded class had not yet become powerful enough to insist upon an extension of suffrage, and the land holders still insisted upon their narrow provincial restrictions.

In 1829 many petitions for an extension of suffrage, from the northern or manufacturing portion of the State, were presented to the General Assembly. They were referred, in the House, to a committee of which Benjamin R. Hazard, a prominent lawyer, was chairman. He wrote the report that recommended granting the petitioners leave to withdraw. This report marks the beginning of the acrimonious spirit in which the privileged class treated this subject that culminated at last in the Dorr war.

Dorr afterwards thus very justly characterized this report: "This committee treated the application of the petitioners with scorn and contumely: described them as a low and degraded portion of the community: and reminded them that if they were dissatisfied with the institutions of the State, they were at liberty to leave it."

This report began:

"The committee * * * ask leave to report that they find nothing in those memorials, either of facts or reasoning, which requires the attention of the House. If there is anything noticeable in them, it is the little sense of propriety manifested in the style in which they were drawn up. The committee have not thought it necessary to inquire particularly how many of the signers are native citizens of the State: but they are sufficiently informed to be satisfied that a very great proportion of them are not so: and it is ill calculated to produce a favorable opinion of their qualifications—of those of them, rather, who knew what they were signing, (who, on such occasions are very few,)—that persons who have adventured, and are every day adventuring among us from othr states or countries, to better their conditions: who enjoy in common with ourselves, all the protection and benefits of our equal laws, and upon whose departure there is no restraint, should be restless and dissatisfied unless they can introduce here the political systems of the states they have left."

In 1834 the agitation for a convention to frame a constitution assumed new importance. Upon invitation of the towns of Cumberland and Smithfield, delegates from the towns of Newport, Providence and eight other towns, assembled in convention in Providence, to decide upon the "best course to be pursued for the establishment of a written constitution which should properly define and fix the powers of the different departments of government and the rights of the citizen."

Dorr was a delegate from Providence, and was one of a committee of five to report at a second meeting. He was chairman of this committee and wrote its report. It brought him at once to the front as a leader. He attacked

the charter boldly and gave convincing reasons why Rhode Island should have a new written constitution. The report opened with expressions of loyalty to the State and its founders. It asserted that "a discretionary regulation of the elective right and of the judicial system can never be properly and safely vested in the legislature." It pointed out the difference between a charter granted by a king to his subjects and a constitution framed by the people for their own self-government. It said:

"When the American States severed the political tie which formerly bound them to Great Britain, all obligation to acknowledge obedience to a British charter as a constitution of government was, of course dissolved: and the people of each state were left free and sovereign. The people of each state, upon the happening of that momentous event, became equally tenants in common of the right of sovereignty: and all were equally entitled to a voice in directing what should be established as the fundamental rules of government. The sovereignty of the King of England passed therefore, not to the Governor and Company of Rhode Island, but to the people at large, who fought the battles of the Revolution, and their descendants. * * * That the people of Rhode Island retain their inherent right to establish (in their original capacity) a constitution, cannot for a moment be doubted."

The report then called attention to the fact that such a constitution had been established in every State in the Union, except in Rhode Island (Connecticut having adopted a constitution in 1818). An examination was then made of the changes in the qualifications necessary to the exercise of the suffrage by the General Assembly, showing that sometimes the disenfranchised or the unenfranchised had been enfranchised, with further facts showing that the requirement of ownership of real estate as a prerequisite to suffrage, well enough in the early days of the colony, had now become unnecessary, and resulted in excluding a majority of the people from the suffrage. In conclusion, the General Assembly was asked to call a convention, representative of the people at large, to prepare a liberal and permanent constitution, urging "that the same legislature which has imposed upon the citizens of Rhode Island a landed qualification not spoken of in the charter, has at least as much right to suspend it, for the single purpose of facilitating the exercise by the people, of the great, original right of sovereignty in the formation of a constitution."

These few extracts are but a poor summary of this statesmanlike document. It established the reputation of Dorr as one of the ablest men in the State.

At the June session of the General Assembly this year, 1834, an act was passed, requesting the freemen qualified to vote for general officers to choose delegates to a convention "for the purpose of amending the present or proposing a new constitution for this State." The delegates were to be of the same number and of like qualifications as the members of the General Assembly, and the results of the labor of the convention were to be submitted to the vote of the existing electorate. Whatever enlargement of the franchise might be suggested, it would be within the power of the existing electorate to reject it, and it was well known that the then existing electorate would vote down any extension of the suffrage. Accordingly the convention was thinly attended, and it finally died out without doing anything. Evidently the constantly increasing class excluded from the suffrage, desirous of admission and clamorous for a new constitution, could effect nothing until it could educate the conservative landholders to accede to its demands, or, failing in this, it was evident this excluded majority must take the control into its own hands and frame a new constitution without regard to the existing constituted authorities.

This was the plan proposed in "An Address to the Citizens of Rhode Island who are denied the Right of Suffrage," a pamphlet of eight pages, purporting to come from the First Social Reform Society of New York,

which was distributed throughout the State. It resulted in the organization of the Rhode Island Suffrage Association the same year, 1840, to inaugurate agitation for demand for a wider suffrage under a new, written constitution. The following is its declaration of principles:

"Believing that all men are created free and equal and that the possession of property should create no political advantage for its holder, and believing that all bodies politic should have for their foundations a bill of rights and a written constitution wherein the rights of the people should be defined, and the duties of the peoples' servants strictly pointed out and limited; and believing that the State of Rhode Island is possessed of neither of these instruments, and that the charter under which she has her political existence, is not only aristocratic in its tendencies, but that it lost all its authority when independence of the United States was declared, and furthermore, believing that every State in the federal compact is entitled, by the terms of that compact, to a republican form of government, and that any form of government is anti-republican and aristocratic which precludes a majority of the people from participating in its affairs, and that, by every right, human and divine, the majority in the State should govern, and furthermore and finally, believing that the time has gone by when we are called upon to submit to the most unjust outrages upon our political and social rights. * * * Resolved, That the power of the State should be vested in the hands of the people and that the people have a right from time to time to assemble together, either by themselves or their representatives, for the establishment of a republican form of government. * * * Resolved, That whenever a majority of the citizens of this State, who are recognized as citizens of the United States, shall, by their delegates in convention assembled, draught a constitution and the same shall be accepted by their constituents, it will then be, to all intents and purposes the law of the State."

Following the example thus set in Providence, similar associations were formed in nearly every town in the State.

An entire change of programme resulted. Instead of educating the people to demand changes in the government through the General Assembly, and a convention to be called by the General Assembly, "a peaceful revolution"

was to be brought about by ignoring the constituted authorities. This was the beginning of the movement that culminated the next year in the Dorr war. Neither of the two parties, Whig or Democratic, inaugurated this movement. It was the result of the awakening to a realizing sense of their number, power and opportunity of the excluded classes under the leadership of Dorr and others, aided by the incapacity, the blind fatuity and the almost inconceivable bad management of the landholders and their leaders.

Petitions were now again presented to the General Assembly for enlargement of the suffrage and for a constitutional convention. Again in February, 1841, the General Assembly called a convention to frame a constitution in whole or in part, but not having yet learned the lesson that only through an enlarged electorate that would be in consonance with the demands of the suffragists, could a new constitution be adopted, it again left the question of the adoption or rejection of the new constitution to the old electorate of the landowners and their oldest sons.

The suffragists, as those were called who wanted an extension of the suffrage, and who became known as Dorrites, put no faith in this action by the General Assembly, in this renewed attempt to pacify them without granting them anything. Public meetings were held, especially in Providence, with discussion of questions, such as: "Is it expedient for the non-freeman to refuse to do military and fire duty?" "Is it expedient for the non-freeholders to form associations for the purpose of military discipline?" Here we find the first hint of the use of force to accomplish their aim.

In May, 1841, the General Assembly made an attempt to conciliate the suffragists by a proposal to apportion the delegates according to the population of the towns. But as it was not accompanied by any enlargement of the suffrage, or what was perhaps of more importance by any pro-

posal that those who should vote on a new constitution should be those who would be voters under its terms, it was received with scorn by the Rhode Island Suffrage Association.

Meanwhile, in April, 1841, a grand parade and a mass meeting with a collation and speeches, was arranged for. It proved to be a greater success than anticipated, and is of importance, as with it the Dorr movement was really inaugurated. Thousands flocked into Providence, and everyone turned out to see the procession pass by. The paraders wore the suffrage badge with the words: "I am an American citizen." They bore banners with appropriate mottoes, such as: "Worth makes the man, but sand and gravel make the voter," and what was more ominous "Peaceably if we can, forcibly if we must." Vigorous addresses were made after the collation. Doubtless many were present merely as spectators, but they went away influenced by what they heard and influencing others by repeating it.

The success of this parade, meeting and speaking, led to a mass convention on election day at Newport. At this convention a State Committee was elected *viva voce,* with instructions to work for an extension of the suffrage and a constitutional convention. Resolutions were adopted declaring that the charter had become insufficient and obsolete, and should no longer be permitted to exist as a barrier against the right and liberties of the people; that upon the occurrence of the Revolution the rights of sovereignty passed to the whole body of the people of the State and not to any special or favored portion thereof, that therefore the whole body became entitled to alter, amend or annul the form of government, subject only to restrictions imposed by the constitution of the United States, and in their original and sovereign capacity, to devise and substitute such a constitution as they may deem to be best adapted to the general welfare; that no lapse of time could

bar the sovereignty inherent in the people; that a system of government under which the legislative body exercises powers undefined and uncontrolled by fundamental laws, according to its own "especial grace, certain knowledge and mere motion," and which limits, restricts, makes and unmakes the people at its own pleasure, is anti-republican, odious in character and operation, at war with the spirit of the age, and repugnant to the feelings of every right-minded Rhode Island man, and ought to be abated. Disclaiming concerted action with any political party, these men pledged themselves individually to each other and collectively to the public, to use their unremitting exertions to procure a written constitution through a convention of delegates to be apportioned among the towns according to their population and to be elected by American citizens over the age of twenty-one years. To this end they elected a State Committee to correspond with the towns, to obtain lists of all voters qualified as described, to call a convention and to prepare and send forth an address to the people of the State.

At the adjourned meeting of this mass convention held in Providence, July 5, 1841, these resolutions and plans were unanimously reaffirmed and endorsed, and further statements of principles were made of the same import as those that had meanwhile been issued in June by the State Suffrage Committee, concluding with a short address to their fellow-citizens containing the ominous sentences:

> "Give us our rights or we will take them." * * * Your rights are in your hands. Assert and vindicate these like men determined to be free. See to it that a meeting for the choice of delegates is held in every town, and that its proportional number is regularly elected. Summon your friends and neighbors to the work, and rely upon it that a constitution framed by such a convention will be promptly acquiesced in by the minority, will be vigorously sustained; and will become, without delay, the undisputed paramount law of our State."

Meanwhile what had been done by the old electorate, the landholders and their oldest sons and the regular constituted authorities elected by them, to sustain the government?

Nothing whatever in the way of organizing a reliable military force to guard against the use of force by the suffragists, should a conflict arise. There are two reasons for this supineness. The landholders, as a class, together with the constituted authorities, looked down upon the suffragists with a mixture of contempt and tolerance, a feeling that it was just as well in this land of freedom to let them talk it out, and that it would never amount to anything more than talk. To their surprise the suffragists' arguments gained adherents, with the result that when an appeal to arms began to be talked about, it was found the militia were divided in sentiment and could not be depended upon to sustain the old government. No attempt, however, was made to create a force, either of militia or constabulary or police, upon which the constituted authorities could depend in case of trouble, and it was the absence of such a force that later led Governor King to appeal to the President of the United States for troops to sustain his tottering power.

The result of the election by the suffragists of the delegates to their convention to frame a constitution was unsatisfactory in one respect, inasmuch as it left it still in doubt whether their aims were satisfactory to the majority of the citizens of the State, but they were satisfactory to the suffragists because they showed that it only needed further discussion to bring over a majority to their views. It was especially noteworthy that more than two-thirds of their eighteen delegates from Providence, and probably more than half of all the delegates elected were freemen, that is, landholders, for only landholders and their oldest sons were freemen.

But what of Dorr during all this time? For we do

not find him taking part in these movements since his famous address of 1834, until now we find him elected one of the delegates from Providence to the suffragists' convention to frame a constitution, that met in Providence in October, 1841. We learn from the "Reminiscences of a Journalist," that interesting book written by Charles T. Congdon, at this time the editor of the suffragists' organ "The New Age," something about the reasons for Dorr's temporary withdrawal from the controversy. Congdon was sent to urge him to take an active part in the movement again, and he tells us he found Dorr calmly smoking a cigar, with nothing about him indicating a revolutionist, anarchist or fanatic. Dorr said he had not been properly supported, and curiously enough, it was to be this want of support that eventually brought him defeat. But he was induced to change his mind, and being elected a delegate to the suffragists' convention, he soon became its most prominent member. He delivered a carefully prepared address, when the convention had framed its constitution and ordered it to be submitted to the vote of the people, that is to say, those who would become voters under its terms. This very able state paper by Dorr may be found *in extenso* in Burke's Report, page 851, and should be read with care by every student of Dorr's career. In view of the opprobrium afterwards heaped upon Dorr and his followers for appealing to arms, it is well to remember that in his speech Dorr tells us that the so-called "Law and Order Party" were already making threats that they would call in the New York militia and United States troops to repress the suffragists. In reply Dorr said, "We throw out no boast of military preparation, and we make no such cowardly concessions as that we stand in need of any foreign aid."

Time forbids our attempting any summary of this address, which should be studied by every student of American political development and of liberty under law.

The constitution thus drawn by the suffragists' convention was submitted to the vote of the people December 27, 28 and 29, 1841, each voter placing his name on the back of his ballot. The complete list of every person thus voting may be found in Burke's Report. The vote thus cast was found by the reconvened convention to prove the adoption of their constitution and it was accordingly resolved

"We do therefore resolve and declare that said constitution rightfully ought to be, and is, the paramount law and constitution of the State of Rhode Island and Providence Plantations. And we do further resolve and declare for ourselves and in behalf of the people whom we represent, that we will establish said constitution and sustain and defend the same by all necessary means."

Does it not seem incredible that after such a declaration, following a course persisted in for months, looking to the destruction of the existing form of government, not a single step had been taken by the constituted authorities to save their government from destruction. Is it to be wondered at that, as the result of such indifference and supineness, the suffragists thought they were going to have everything their own way, without opposition? This feeling was increased by the uncertain course of the delegates to the convention to frame a constitution called by the General Assembly to meet November 1, 1841. It met and adjourned in two weeks to February, leaving its work only partially finished, the delegates being uncertain what the people wanted and what the suffragists or peoples' convention would do.

But evidently an impression had been now made that convinced many landholders of the injustice of the existing political system, with the result that the General Assembly, at the January session, 1842, passed an act providing that "all persons now qualified to vote and those who may be qualified to vote under the existing laws, together with all persons who shall be qualified to vote

under the provisions of the constitution to be framed by the convention authorized by the General Assembly, shall be qualified to vote upon the question of the adoption of said constitution."

This was virtually a surrender to the claims of the suffragists, and should have been at once accepted by them. But perhaps the concession was too long delayed, and the animosities engendered by what had been done were not to be so easily appeased.

The convention authorized by the General Assembly completed its draft of a constitution February 19, 1842, and appointed March 21st, 22d and 23d as the days for the voters to approve or reject their work, nearly three months after the suffragists' constitution had been declared to be the paramount law and the constitution of the State. The only preparation made to meet the conflict between the two was again by mere words, unsupported by any preparation to support those words by force, the General Assembly contenting itself by passing a series of resolutions cautioning the good people of the State against being misled by the attempt to impose upon them a constitution not framed in accordance with law, concluding with the declaration "that this General Assembly will maintain its own proper authority and protect and defend the legal and constitutional rights of the people."

With all Rhode Island seething like a boiling pot, waiting for the next move by the suffragists under their constitution which they had declared was the paramount law of the land, mere words by the General Assembly in such a crisis but intensified the general feeling that the landholders were in the minority. This weak course and timid policy contributed to the defeat of the landholders' proposed constitution when it was voted upon March 21, 22 and 23, 1842, but only by a very narrow vote of 8013 yeas to 8689 noes. It was defeated by only 676 votes. If 339 who voted against it, had voted for it, it would have been

adopted, and there would have been no Dorr war. It was defeated because the two extremes voted against it. The extreme conservative landholders voted against it because they wanted the control to remain in their hands and were, therefore, opposed to any extension of the suffrage. Many suffragists or Dorrites, as they were now called, voted against it under the mistaken, though sincere, conviction that having secured the adoption of their own constitution by their votes, they were not now at liberty to vote for another constitution.

It is impossible, however, in the cold impartial light of afterthought to acquit Dorr and the leaders of his party of the charge of want of sound judgment at this time. Had they vigorously counselled their followers to vote for this freemen's constitution they could have secured its adoption. They would have come into control under its extension of the suffrage, and then they could have made such further changes in the political system of the State as might be deemed by them to be necessary. It was at this point the Dorrites were at the zenith of their power, but they knew not how to use their opportunity.

In this tangle and conflict of authority the justices of the Supreme Court, Job Durfee, Levi Haile and William R. Staples, felt called upon to state it as their opinion that the convention which formed the People's Constitution assembled without law; that the votes in favor of it were given without law; and however strong an expression of public opinion they might present, their constitution was not the paramount law of the land, and was of no binding force whatever, and that any attempt to carry it into effect would be treason against the State, if not against the United States.

To rebut this opinion, Dorr, with aid in securing citation of authorities, wrote an opinion, and published it with the signatures of Samuel Y. Atwell, Joseph K. Angell, Thomas F. Carpenter, David Daniels, Thomas W. Dorr,

Levi C. Eaton, John P. Knowles Dutee J. Pearce and Aaron White, Jr., all lawyers, and which hence became known as "The Nine Lawyers' Opinion." It presented in able form the principal arguments already briefly above given in favor of the legality of the suffragists' course, concluding:

> "We respectfully submit to you, fellow citizens, that the Peoples' Constitution is 'a republican form of government' as required by the constitution of the United States, and that the people of this State, in forming and voting for the same, proceeded without any defect of law and without violation of any law."

Three days later Chief Justice Durfee delivered a carefully prepared charge to the Grand Jury of Bristol County that should be carefully studied. He reiterated, in even stronger terms, the conclusion reached in the opinion that had been given by the members of the Supreme Court, giving warning that any attempt to carry the People's Constitution into effect by force would be levying war and, therefore, treason.

Awakening at last, but at too late a period, to the danger threatening the State and to the necessity of more stringent legislation to suppress the Dorr movement, in March, 1842, the General Assembly passed an act declaring illegal and void all meetings for the election of State officers, not held in accordance with the laws of the State, forbidding anyone to act as an officer at such illegal meetings or to accept any office by virtue of such an election, with provision for punishment by heavy fines and imprisonment of minor officers, and also for punishment as treason, in the case of the higher officers. The act provided that trials for the offences specified might be held in any county, whether the offence was committed in that or some other county. It was this act under which Dorr was subsequently tried and convicted of treason. One of the newspapers having stated that the Dey of Algiers was lack-

ing in power to enforce such a law, it became known derisively as the Algerine law, and those supporting it, the Law and Order Party, were called "Algerines" by the Dorrites. This law induced many of the Dorrite nominees for office to decline, and a committee, of which Dorr was chairman, was elected to fill vacancies, etc. The other members of this committee, Dorr not acting, now announced their State ticket, with Dorr at the head as Governor, and at the election held by his party, on April 18, 1842, Dorr and other State officers were unanimously elected. It is impossible to account for the supineness of the constituted authorities in allowing these elections to take place, after the publication of the opinion of the members of the Supreme Court and the passage of the Algerine law, except upon the supposition that as the General Assembly had passed no act to enable the Governor to call out the militia, and as the Governor had no real authority, none being given to him by the charter of 1663, he did not feel authorized to do so. It seems certain that this failure to take any step to suppress the Dorrite movement, but encouraged the Dorrites to go on in their course. In addition, both sides well knew that the militia could not be relied upon.

Two days later the regular election under the charter came off, and Samuel Ward King was elected Governor.

Nearly two hundred members of the Dorrite party, elected to office, were now liable to arrest and conviction for treason, yet not only was no attempt at arrest made, no attempt was made to prevent their induction into office.

Two rival Governors and two rival General Assemblies confronted each other. Which side was to be victorious? The Charter Government authorities now made another great mistake. They appealed to President Tyler for United States troops to do what they had not even attempted to do—to suppress the Dorrites. This step but embittered the Dorrites, and it failed to secure the help desired. Again and again was the appeal made, but the

President had good advisers, and continuing to recognize the existing government as a government *de facto,* he declined sending troops to support the existing government unless called upon by actual insurrection. He kept his head and was undoubtedly right.

The possibility of armed conflict was becoming apparent and, as usual in troublous times, the most absurd rumors obtained credence. It was said that the Dorrites would sack and loot the city, their object being "beauty and booty;" they would fire red-hot balls and thus set fire to the town. Families were divided and animosities were engendered that still have left their traces.

On May 3, 1842, Dorr was inaugurated Governor at the first and only meeting of his legislature. A procession of perhaps two thousand persons, including some militia companies and an independent company, some of whom were armed, preceded by the usual brass band, escorted the Governor-elect and the members of the General Assembly-elect to a new, unoccupied foundry building, whence this became known as the "Foundry Legislature." The sheriff at the State House, that was also the Court House with the records of the Supreme Court, and where this court also met, was prepared to give up possession, having indeed no means furnished him to maintain possession. It was Dorr's purpose to march there and take possession, but he was overruled, and the psychological opportune moment was lost. The most incredible folly was committed of electing as justices of the Supreme Court the same judges already in office who had given their opinions that what Dorr was now doing was treason!

These two mistakes were enough to lose the day and the opportunity. Possession of the State House and Court House, with the State and court records at once in the custody of a new clerk, with new judges carrying on the regular judicial business of the State, with Dorr and his General Assembly duly sworn and inaugurated and supported by

such an adequate armed force as was present on that day, would have started into life a new government *de facto* under a good claim of right, that might easily have been enough to put an end to the Charter Government. While Dorr, inside the foundry, was being sworn in, and was delivering his inaugural message, the military escort outside was holding a meeting in which they resolved that as a component part of the militia of the State they would obey all lawful orders coming from Thomas Wilson Dorr, as commander-in-chief under the constitution. Dorr could not deliver his inaugural message and order this force to take command of the State House at the same time, but where was the trusty lieutenant to act at the opportune moment and to order a march to the State House to take possession? With none to oppose, and without shedding one drop of blood, Dorr's government would have become at once both a government *de facto et de jure*. What other colonies did in 1776 would now have been done here in 1842.

Dorr's inaugural message, like all his political papers, shows the ability of the man, and should be read by every student of Rhode Island history. One point is of importance. Admitting that the moderators at the meeting held upon the adoption of the People's Convention were not under oath, he said that neither were those of the freemen's meetings, except in the city of Providence. This safeguard against fraud had not then been generally adopted. The objection frequently advanced, that the voting under the suffragists' meetings was not thus protected and, therefore, was not as reliably done as the voting at the meetings of the charter authorities (except in the city of Providence), cannot be sustained.

The Charter General Assembly met the next day, May 4, 1842, in Newport, and continued the weak vacillating policy already pursued, requesting the Governor to invoke the President's aid, but taking no steps itself to

guard against insurrection. How could the support of the national government be expected to protect a State government that took no steps to protect itself? But it led Dorr to the mistake of going at once to Washington to counteract this appeal, and to secure the same aid for his own cause. Meeting with no success he returned to New York, despondent and hopeless. Here an attempt of the Democratic organization to ally the Dorr movement in Rhode Island with the Democratic party, led to public meetings at which Dorr spoke and allowed himself to be misled by promises of aid and support from New York companies and militia. Meanwhile his absence had led to a rumor that he had run away. Taking courage, the charter authorities issued warrants for the arrest of Dorr and his leaders, many of which were served. The Providence *Journal* of May 17, 1842, said:

"The revolution is in a state of suspended animation. Governor Dorr has hid or run away. Pearce is missing, Sheriff Anthony has absquatulated. The Secretary of State's office is over the line and their headquarters nobody knows of. Their General Assembly has evaporated."

Telegraphs were not then in use, else the *Journal* would have known that on the preceding day Dorr had returned from New York to Stonington by steamboat, and had issued a proclamation to his fellow citizens in Rhode Island, announcing his intention of calling for the aid offered him in New York

"so soon as a soldier of the United States shall be set in motion, by whatever direction, to act against the people of this State, in aid of the charter government. * * * 6. No further arrests under the law of pains and penalties (the so-called 'Algerine law') which was repealed by the General Assembly of the people at their May session, will be permitted. I hereby direct the military, under their respective officers, promptly to prevent the same, and to release all who may be arrested under said law. As requested by the General Assembly, I enjoin upon the militia forthwith to elect their company officers: and I call upon volunteers

to organize themselves without delay. The military are directed to hold themselves in readiness for immediate service."

Only overweening confidence and faith in the absolute justice and final success of his cause can account for such language, coming from one with nothing but moral force behind him.

A crowd met Dorr upon his return by railroad to Providence. A procession, of which armed militia volunteers formed part, escorted him to his temporary headquarters. Dorr made an address standing in his carriage. It was declared by the Providence *Express,* which was favorable to his cause, to be "well timed and eloquent." It was declared by the Providence *Journal,* which was unfavorable to his cause, to be "furious and inflammatory." Unfortunately no shorthand reporter took it down. The testimony of witnesses varied afterwards at his trial for treason, as to whether he brandished a sword while making this address, "a sword dyed in blood," which he was ready to use again in the people's cause.

The next day Dorr made the fatal mistake of appealling to arms, by an attack upon the arsenal, to obtain possession of the guns and military supplies stored there. But unknown to him, a detachment of militia was inside, and among its officers was Samuel Ames, who had married Dorr's sister. The night was warm, very dark and foggy. Every one lost every one, and it is impossible to make out exactly what did take place. There was an attempt to fire a cannon against the arsenal, and some witnesses testified at Dorr's trial for treason that Dorr himself made the attempt, but this was denied by other witnesses. The cannon would not go off because a pailful of water had been poured in it. The attack failed, Dorr's force dispersed, and by morning Dorr drove out of the city and left the State, barely escaping arrest.

The charter General Assembly met May 20th at Newport, and after discussion decided to call another constitu-

tional convention. Taking warning from past failures and learning at last that the demand for an enlarged electorate must be met; it was provided that the delegates to this convention were to be elected by the votes of those already qualified to vote for general officers, and also of all native male citizens of the United States, twenty-one years or more of age (except Indians, convicts, paupers, etc.). It was further provided that in voting upon the adoption or rejection of the new constitution, in addition to the existing electorate, all those should be admitted to vote who would afterwards become voters under its terms.

Here was a virtual surrender to the suffragists' demand, and had Dorr and his followers been wise, they would now have sought amnesty for the past and would have confined their further conflict to the use of ballots at the polls. But this was not to be, and the constitution framed by this convention, although far from perfect, was adopted without the aid of the Dorrites and is still the constitution of Rhode Island.

Upon leaving the State Dorr went to New York and thence to Norwich. Being informed that his followers were gathering at Chepachet in Glocester, Dorr joined them June 25th. To his surprise and disappointment he found only a slight breastwork thrown up on Acote's Hill and about 140 men in arms, with no commissariat. Now at last Governor King declared martial law and called out the militia of the State, and to the number of more than four thousand they assembled at Providence and marched and countermarched. Then a portion was sent to Foster and an advance guard was cautiously despatched to Greenville, about half-way to Chepachet. The insignificant, undrilled handful of volunteers at Acote's Hill gradually melted away, and, calling a council, Dorr and his officers decided to disband. The decision was made known to the men between six and seven o'clock on the afternoon of June 27th, and was at once carried into effect, Dorr sending

letters to Providence at once, for publication, announcing the fact of disbandment, and immediately leaving the State to escape arrest. His letters to Providence were captured, taken to the Governor, and were opened and read at about the same hour Dorr's force was dispersing at Chepachet. Instead of publishing at once the information they contained, it was concealed, and the militia were ordered to march at once to Chepachet. What is to be thought of constituted authorities who made their raw militia make a night march under the supposition they were to attack an armed force behind entrenchments, knowing at the time that the enemy had already dispersed, and withholding this information until the next day? To keep up the fraud or the farce, the Providence *Journal* issued an extra edition on the afternoon of June 28th, with this intelligence:

"Dorr Fled and his Fort Taken.

News has this moment arrived that the force under the command of Col. Brown has taken the insurgent fortification. Dorr has fled but large numbers of his men have been captured."

And the government issued the following:

Orders No. 54—Headquarters, &c. June 28, 1842.

The village of Chepachet and fort of the insurgents were stormed at quarter before eight o'clock this morning and taken, with about one hundred prisoners, by Col. William W. Brown: none were killed and no one wounded."

And thus ended the Dorr war! But one man lost his life, a Massachusetts man on Massachusetts soil, who was accidentally killed by a musket ball fired across the bridge at Pawtucket.

The success of the Charter Government in ending the Dorr movement has caused forgetfulness of the inefficiency and political incapacity of the constituted authorities.

On June 29th, Governor King issued a proclamation offering in addition to one thousand dollars already offered, the further sum of four thousand dollars "for the apprehension and delivery of the said Thomas Wilson Dorr to

the sheriff of the county of Newport or Providence within three months from the date thereof."

Dorr had gone to New Hampshire, where he remained more than a year under the protection afforded by the refusal of the Governor to honor a requisition for his extradition.

In August, 1843, Dorr issued a masterly address to the people of Rhode Island, reviewing the whole controversy, with the reasons of his course, and announcing his intention of returning to Rhode Island. Accordingly, acting under a sense of duty, knowing that he would be arrested and tried for treason under the indictment of August 25, 1842, Dorr quietly returned to Providence, October 31, 1843, was immediately arrested and kept in the jail in Providence until February, 1844, when he was taken to Newport for trial there. This in itself was a violation of the usual rule of law requiring trial for a criminal offence in the county where the offence was committed, in order that the accused may be tried by a jury of the vicinage. Dorr's offences had all been committed in Providence County and there he had many supporters. It would, therefore, be difficult to secure a jury in that county from which all persons of his way of thinking would be excluded, whereas in Newport County, Dorr had but few adherents. The so-called Algerine law permitted such a trial in other than the county in which the offence was committed, and for the reasons stated, the trial came off in Newport. It presents the unique feature of a trial by the court of a State under a new constitution, for treason committed against a form of government that had now gone out of existence. We are accustomed to study the records of the English State trials as full of tragic interest and as faithful pictures of the development of law and of civilization. In the two good reports by Turner, and by Pitman, of Dorr's trial for treason, we have a record as full of such value as any record of an English State trial,

a record that in the future will be more studied than it is now. The court that tried Dorr consisted of the same three judges who had given their opinion against the legality of the Dorrite movement, and Judge Brayton, who had since then been added to the court. One hundred and eighteen jurors were summoned and examined before twelve were obtained for the jury, and but three of the one hundred and eighteen belonged to the Democratic party, now considered the Dorr party. There was not a Dorrite on the jury, a result that can hardly be considered as accidental. The Attorney-General proposed to put these questions (among others) to the several jurors on the panel, as their names were called:

"3d Did you vote for the said Thomas Wilson Dorr for governor at the election on the 18th of April 1842?"

"4th Have you formed the opinion or do you believe that said Thomas Wilson Dorr was the governor of this State, or authorized to exercise the duties of governor at any time between the 16th day of May 1842 and the 28th day of June 1842?"

As well might Dorr and his counsel have put the same questions, substituting the appropriate changes in date and the name of the Charter Governor, Samuel Ward King. The questions were, of course, objected to, and after argument on both sides, and due deliberation, the court was evenly divided, and the questions were not put. The surprising thing is that the court did not unanimously exclude the questions, as clearly unreasonable and improper. To admit them, and as a necessary consequence, to admit similar questions on the part of the defence, and to exclude from the jury all who had voted for Dorr or for King, would have resulted in putting an end to any trial.

Dorr made no attempt to deny the main facts, on the contrary, he diligently sought to have them made fully known to the jury. When a witness, friendly to Dorr, claimed that a conversation he had with Dorr was private and confidential, Dorr said, "I release you from all the

honorary obligation which you regard yourself as being under, that you may relate all you know." When another friend, a Dorrite, was under examination as a witness against him, Dorr said: "He hoped Mr. Salisbury would not withhold anything he knew, on his account." So far did Dorr carry this, that the chief justice was led to remark sarcastically that the object of the cross-examination thus far seemed to have been to establish the charges in the indictment, by proving the particulars instead of denying them; to which Dorr replied he hoped that the privilege would not be refused him of getting at the facts as they were, even if they should be against him, in the opinion of the Court.

The defence presented by Dorr after disposing of defences in bar of the suit, was that of justification. There were four counts in the indictment, two for acts of treason committed at Providence, May 17 and 18, 1842, the other two for acts of treason committed at Glocester, June 26 and 27, 1842. The specific acts of levying war, constituting treason, on these four specific days, not being laid with a *continuando,* it is difficult to understand why testimony concerning similar acts on other days, was allowed to go to the jury without objection by Dorr's counsel, even though Dorr himself wanted all the testimony as to his acts to be put in. It has been claimed by those who defend the government's conduct of the case, that evidence concerning similar acts on other days was properly allowed, because intending to show Dorr's intentions or motives. But the argument goes too far, for if the intention or motive is allowed to be shown by the prosecution, it opens the door for the defendant to rebut it with evidence of other intention than that claimed by the prosecution, to show that his intention or motive was good and not bad, and that he was seeking to promote the welfare of the State by supporting what he and his followers claimed was the true government, and hence, that his intentions were not traitorous.

Thus we learn from Turner's report of the trial, page 10, that the counsel assisting the prosecution, Mr. Bosworth:

"then went on to give a history of the proceedings of the defendant and to describe his motives and character in an exaggerated strain of denunciation and invective, more adapted to the political caucus than to the hall of justice, and which a political opponent should hesitate to employ. Mr. B. had forgotten the remark of his colleague the Attorney General, that 'if Mr. Dorr were governor, then he had a right to do all that he did;' and that the true question involved the principle of popular sovereignty, which might be honestly supported by Mr. Dorr, as it had been by the men of former days, who have bequeathed to us the inheritance of our liberties."

In opening the defence, Turner, for the accused, stated five principal points:

"1. That treason cannot be committed against a State, but only against the United States.

2. That the Act of March, 1842 (the Algerine law), 'is unconstitutional and void, as destructive of the common law right of trial by jury, which was a fundamental part of the English constitution at the Declaration of Independence, and has ever since been fundamental law in Rhode Island.'

3. That that act, if constitutional, gives this court no jurisdiction to try this indictment in the County of Newport, all the overt acts being therein charged as committed in the County of Providence.

4. That the defendant acted justifiably as Governor of the State, under a valid constitution rightfully adopted, which he was sworn to support.

5. That the evidence does not support the charge of treasonable and criminal intent in the defendant."

The Court easily and very properly decided that treason can be committed against a State, as well as against the United States, after full argument with elaborate citation of authorities by the defendant and his counsel.

As to the second point (that the Algerine law was unconstitutional and void, because destructive of the common law right to jury trial) Dorr's counsel would seem to have been oblivious of the fact that such a claim, that would place a limitation upon the power of the General Assembly under the charter, was inconsistent with the stand Dorr had always taken, that there was no limitation upon the power of the General Assembly and that a written constitution was necessary as the only way by which limitations could be placed upon its powers.

This omnipotent power of the General Assembly in the old days of the Charter Government, was once well described by a member in the course of a legislative debate, as follows:

"Mr. Speaker, the member from——— is very much mistaken when he supposes that this General Assembly can do anything that is unconstitutional. Sir, I conceive that this body has the same power over the freeholders of this State that the Almighty has over the universe."

It will not do to blow hot and to blow cold with the same argument. One of the reasons why a written constitution was needed in Rhode Island, was that there was no limitation on the power of the General Assembly. But the Algerine law was passed by just this General Assembly that had this unlimited power. Therefore it was not logically open for Dorr to contend that it had no power to pass this law. It follows that the law in question being valid (unless when the law was passed, Dorr's government was the true government of the State) the Court had jurisdiction to try the indictment in a county other than the one in which the offence was committed.

The point might have been raised that the government now existing under the provisions of a new, written constitution, restricting the power of the General Assembly and creating a Supreme Court and a judicial system under it,

different from what had before existed, had no power to try the defendant for treason alleged to have been committed against another government that had now gone out of existence, under a law which, even though it might have been valid under that government, because, being without a written constitution, whatever law it enacted was valid, the present General Assembly confessedly had no power to enact. But the point was not raised.

The fourth point of the defence, that Dorr acted justifiably as Governor of the State under a valid constitution rightfully adopted, which he had sworn to support, was better taken, especially in view of the indiscreet language used by the prosecution without check by the Court, and the evidence for the prosecution that was allowed to go to the jury as to the bad motives or intentions of the defendant. Dorr offered evidence to prove that a large majority of the whole male adult population of the State, citizens of the United States, had voted for the People's Constitution, in December, 1841, and that under the constitution thus adopted he had been elected Governor. He offered to produce the ballots themselves and the men who cast them, but the evidence was refused by the Court. In his charge to the jury Chief Justice Durfee said:

"Courts and juries, gentlemen, do not count votes to determine whether a constitution has been adopted, or a governor elected or not. Courts take notice without proof offered from the bar, what the Constitution is, or was, and who is, or was the Governor of their own State. It belongs to the Legislature to exercise this high duty."

This is undoubtedly sound law well put, but nevertheless the evidence might have been admitted "for the purpose of explaining the motives of the prisoner" and to rebut the testimony as to his bad motives, that had been allowed to go to the jury. Dorr claimed that he had the right to show that he had not risen in the midst of the people as a

usurper, but was endeavoring to secure to them rights of which they were unjustly deprived, and hence, that his motives were not traitorous.

"It is certainly proper to claim a right to repel the charge of wicked and malicious motives in exercising a pretended authority, which has been so much dwelt upon by the prosecution, in the opening of the case."

"Mr. Turner—Will the Court have the goodness to state why testimony as to the 'fiendish looks' and expressions of the Defendant was allowed to be gone into? The opening counsel has indulged himself in harsh imputations against the Defendant: and a great many things have been introduced here which can have no other effect than to prejudice the jury against him. We ought to be permitted to remove all these prejudices, as we can if we be permitted to go into the whole case."

Again, later, an effort was made to put in this testimony. Dorr said:

"I have sought to conceal nothing in this case. * * * Levying war is not enough. In the language of Chief Justice Marshall, the levying war must be with the intent to commit treason: and treason is not to be inferred from an assemblage in arms without an examination of all the circumstances and reasons that led to it."

But again the offer was overruled and again the defendant took his exceptions. The result was a foregone conclusion. Upon the evidence, the admissions made by the defendant, the exclusion of the testimony of the defendant above described, and with the jury made up as it was, exclusively of anti-Dorrites, notwithstanding the able and eloquent address made by Dorr, there could be but one result. The jury agreed at once upon a verdict of guilty. A bill of exceptions, based upon eighteen objections or exceptions taken during the trial, was presented to the Court by Dorr's counsel, and also a motion for a new trial. The exceptions were all overruled and the motion for a new trial was denied, after full hearing and argument, with citation of

authorities. A motion was then made and argued in arrest of judgment, and this also was overruled. The Attorney-General moved at once for sentence. The next morning, June 25, 1844, Dorr was asked if he had anything to say why sentence should not be pronounced against him. He replied:

"Without seeking to bring myself in controversy with the Court, I am desirous to declare to you the plain truth. I am bound in duty to myself to declare to you my deep and solemn conviction that I have not received, at your hands, the fair trial by an impartial jury, to which by law and justice, I was entitled."

After giving briefly his reasons for reaching this conclusion, he said:

All these proceedings will be reconsidered by that ultimate tribunal of Public Opinion, whose righteous decision will reverse all the wrongs which may be now committed, and place that estimate upon my actions to which they may be fairly entitled. The process of this Court does not reach the man within. The Court cannot shake the convictions of the mind nor the fixed purpose which is sustained by integrity of the heart. Claiming no exemption from the infirmities which beset us all, and which may attend us in the prosecution of the most important enterprises, and at the same time conscious of the rectitude of my intentions, and of having acted from good motives, in an attempt to promote the equality and to establish the just freedom and interests of my fellow citizens, I can regard with equanimity this infliction of the Court: nor would I even at this extremity of the law, in view of the opinions which you entertain, and of the sentiments by which you are animated, exchange the place of a prisoner at the bar for a seat by your side upon the bench. The sentence which you will pronounce, to the extent of the power and influence which this Court can exert, is a condemnation of the doctrines of '76 and a reversal of the great principles which sustain and give vitality to our democratic Republic and which are regarded by the great body of our fellow-citizens as a portion of the birthright of a free people. From this sentence of the Court, I appeal to the People of our State and of our country. They shall decide between us. I commit myself without distrust to their final award. I have nothing more to say."

The sentence of the Court was then announced by Chief Justice Durfee, as follows:

"That the said Thomas W. Dorr be imprisoned in the State's Prison in Providence in the county of Providence, for the term of his natural life, and there kept at hard labor in separate confinement."

On Thursday afternoon, June 27, 1844, Dorr was removed from the county jail in Newport and was committed to the State's prison in Providence, there to undergo the sentence of the Court.

Upon a dispassionate review of the case it is impossible to avoid the conclusion that this sentence was unduly severe. The dignity of the law and the peace of the State would have been asserted and maintained had the Court, taking into consideration facts well known to its members, both personally and judicially, sentenced Dorr to solitary confinement for twenty-four hours. Personally, of course, every member of the court knew Dorr, who and what he was, and what his motives were. They knew he was, and had long been, a lawyer of high character and reputation, of exemplary life, of good family, and for years a trusted representative in the General Assembly from the City of Providence, a bank commissioner, and filling other positions of trust and responsibility. But aside from their personal knowledge, they had also the knowledge that they as well as the jury derived from the evidence in the case submitted on both sides.

Walter S. Burges, Dorr's lifelong friend, an honored citizen, who accompanied Dorr to his prison cell, and who took him from it upon his release, a year later, afterwards Dorr's literary executor, and for many years a member of the Supreme Court, testified at the trial that on the evening of May 17th, the night of the attack on the Arsenal, he called upon Dorr in the evening, before the attack. During this interview Dorr asked him, in case of accident to himself, to attend to his affairs, directing him where to find the

books and papers in Dorr's hands, as one of the State commissioners of the Scituate Bank; also the files of papers pertaining to his office of President of the School Committee of the city of Providence, which he had filled for some time; also the papers, securities and funds belonging to the Rhode Island Historical Society, of which he was Treasurer, and telling him particularly where he would find other valuable papers specified, relating to administration and guardianship accounts in his hands, particularizing the location of each and giving Burges the keys leading to each one.

Then, too, a member of the court that tried Dorr was at the time President of this Historical Society of which Dorr was Treasurer, and in many other ways the members of the court had taken part with Dorr in positions and duties in public as well as in private life. Other instances of knowledge of the same kind that reached the judges as well as the jury during the trial may be found in the accounts of the trial. In excluding some of the testimony offered, the court intimated more than once that it would have its influence with the court, after verdict and before sentence. As the court imposed the greatest penalty it could, it is evident they did not give to it the weight it was entitled to. The judges well knew that the real essence of treason was lacking, that Dorr's motives were of the highest character, the good of all the people, and that there was no intention on his part to subvert the State and enslave the people by making himself supreme ruler outside of the limitations of law. On the contrary, the judges well knew that Dorr was endeavoring to establish a real republican form of government under the limitations of a written constitution, at a time when we had none; such a constitution as the United States and all the other States in the Union had. He strove to bring about in reality what we had only in pretence—a republican form of government. We had the *form* but not the *essence*. Dorr's talents and energies

were directed to giving the State both the form and the essence. The judges should have taken all this into due consideration in determining their sentence. This was not done, and the result was a barbarous sentence, a blot upon the administration of justice in this State. This deliberate judgment is not intended as a personal reflection upon the members of the court, two of whom were kinsmen of the writer. They all did their duty as they saw it before them, but it is deplorable they did not see it in a broader light, as did our great national leaders twenty years later, in the crisis of the Civil War.

To sentence such a man as Dorr under such circumstances, to imprisonment for life at hard labor, in separate confinement, was barbarous and cruel, especially when, as the judges well knew, a minority of his fellow-citizens large enough to make it doubtful whether they did not constitute a majority, believed as Dorr did, and had so far prevailed that at last the landholders had been brought to abandon their original contention that they and their oldest sons were the only citizens of the State who had the right to determine what the form of government should be, and who should be admitted to the suffrage. We cannot escape the conclusion that the judges erred in not taking all these matters into due consideration in determining the sentence. Upon the evidence and the law, the court did wrong in inflicting such a severe sentence.

Unaccustomed as we are now to such severity, it is difficult for us to appreciate it, even if carried out in mitigated form. A gentleman now living has told the writer of a visit made by him when a child with his father, an old friend of Dorr's, upon Dorr while in prison. They stopped at the door of a cell, in which Dorr, alone, was at work painting some particular part of fans, the mitigated form of "hard labor" he was compelled to perform, through the leniency of the prison authorities. Dorr looked up from his work and, recognizing in the boy's father his old friend

and political supporter, he bowed. His visitor bowed in return, but neither spoke.

In what respects was Dorr right, and in what wrong? In general it may be said that he was right in endeavoring to bring about political reforms in Rhode Island, and he was right as to the reforms that were needed, but he was wrong when he attempted to use force to carry those reforms into effect. Still further, he was wrong in attempting to use force at the particular times he made the attempt. He missed the psychological moment when he failed to take possession of the State House and the State and court records on the day he was inaugurated as Governor under the constitution. He erred in judgment when he went to Washington to invoke assistance there. He erred again when he stopped and spoke at political meetings in New York and allowed himself to be cajoled into believing he would receive support from that quarter. He erred in attempting an attack on the Arsenal, and again in attempting to organize an armed force at Chepachet. He erred worst of all when his overmastering sense of logic prevented his advising his followers to take part in the formation of a new constitution, the delegates to which and the voters upon which were not restricted to landholders and their oldest sons. He erred in returning to the State to stand trial for treason, for he knew that the judges who would try him were, with the addition of one more judge, the same judges who had given their opinion against the validity of his course and of the principles he advocated. No government ever convicts itself of having no right of being, and the acquittal of Dorr would have meant the conviction of illegality of the government that tried him. Dorr erred therefore greatly in good judgment when he submitted himself to the jurisdiction of the court. Let us frankly admit his faults, but let us equally frankly admit his claims to distinction; let us unite "in according to him a conscientious and commendable purpose and in honoring his memory

as a reformer, whose efforts extended the rights of suffrage to all the native citizens of the State," in the language of Judge Stiness in his Memorial Address on W. S. Burgess, read before the R. I. Vet. Citizens' Hist. Assn., Nov. 14, 1892, where he concludes that "although Dorr was personally defeated and crushed, he was substantially successful in accomplishing the result for which he strove."

His political opponent, the editor of the Providence *Journal,* in its issue of May 24, 1842, said Dorr was a man "endowed with intellectual powers, which, had they been properly directed, would have always secured him a commanding influence. Those powers too, were disciplined by an education more accomplished, perhaps, than any other man of his age in Providence, had been privileged to obtain. As a man of science and letters, he might have attained honorable distinction, had he chosen to dedicate his time either to science or to letters. As a Statesman, he might have rendered his native State substantial service. He might have been a true-hearted private gentleman, honored by the respect and confidence of the community in which he resided."

Such was the opinion of his political opponent, afterwards for many years a United States Senator from this State. But he failed to perceive that as a political reformer, although personally defeated and crushed, Dorr *has* "rendered his State substantial service" through the adoption of a written constitution embodying in part his principles, which even yet have not received their full application, but are destined to lead the State still further on, to their more perfect appreciation and application.

The result of the severity of the sentence inflicted upon Dorr was what might have been expected. A reaction set in and much sympathy was expressed for the "Martyr Governor." Unknown to him, his aged parents applied to the General Assembly for his release from prison under an Act of amnesty. An Act was passed releasing him from imprisonment, with the proviso that he should take an oath of

allegiance to the State. True as always to his own sense of duty, Dorr declined to take the oath required, declaring that to do so would be a recognition on his part that he had heretofore failed in allegiance, and this he could not admit. Therefore he preferred to remain in prison.

This but increased the agitation for his unconditional release, and the subject became the leading political issue in the State. The following spring, 1845, the "Liberation" candidate for Governor, Charles Jackson, was elected and the "Liberationists" had a majority in the General Assembly. Dorr was released unconditionally under an Act of the General Assembly in June, 1845, having remained in prison one year. He came out a disappointed, broken-hearted man, but with resolution undaunted, although a physical wreck, his rheumatic affection having been increased by the dampness of his stone cell in prison, and with some obscure affection of the stomach that kept him an invalid at home during the nine remaining years of his life. The sympathy excited by his condition, with a sense of recognition of the value of Dorr's work as a political reformer, led to the passage, shortly before Dorr's death, of the extraordinary Act of the General Assembly of June 25, 1854, as follows:

AN ACT

TO REVERSE AND ANNUL THE JUDGMENT OF THE SUPREME COURT OF RHODE ISLAND FOR TREASON RENDERED AGAINST THOMAS W. DORR, JUNE 25, A. D. 1844.

WHEREAS: the General Assembly of this State hath from time to time exercised the powers conferred upon it by the Charter of King Charles the Second "to alter, reverse, annul or pardon, under their common seal or otherwise, such fines, mulcts, imprisonments, sentences, judgments and condemnations as shall be thought fit;"

AND WHEREAS the same powers were continued to the General Assembly under the existing Constitution of this State by the terms thereof, which provide "that the General Assembly shall continue to exercise the powers they have heretofore exercised,

unless prohibited by this Constitution," and by the provision that "the Supreme Court established by this Constitution shall have the same jurisdiction as the Supreme Judicial Court" theretofore existing;

AND WHEREAS, an alleged political offence, for which a judgment hath been rendered in favor of the State, may, in certain cases, furnish a proper occasion for the exercise of such high powers:

AND WHEREAS, upon the trial of Thomas Wilson Dorr for the alleged crime of treason, there was an improper and illegal return of jurors in this, that one hundred and seven jurors from one political party were designedly selected by the sheriff, in part with the aid and assistance of persons acting in behalf of the State, and only one juror from the other political party; and the accused was tried in a county other than that in which the alleged offence was committed and in which he resided, and he was allowed but two days with any, and but a few hours with some of the panel of jurors in which to inquire as to their disqualifications, or obtain proof thereof, and was not allowed, after the peremptory challenge of several such jurors and after obtaining proof of such disqualifications, to withdraw said peremptory challenges and to challenge said jurors for cause or to have a new trial in consequence thereof;

AND WHEREAS, the Court denied the jury the right to pass upon questions of law, though said Court had previously, in accordance with the common law, held that the jury might in criminal cases "take upon themselves the responsibility of deciding questions of law"; and the accused was not allowed to show in justification or in explanation of his motives or intent, that he acted under a Constitution which had been adopted by a large majority of the people of the State, and an election under the same as Governor of the State, and in accordance with what he deemed to be his right and duty in consequence thereof:

AND WHEREAS the said Thomas Wilson Dorr was thereby wrongfully convicted:

AND WHEREAS, it is desirable for the best interests of this State that the wrongs thereby inflicted upon said Dorr and upon the people of the State should be redressed, and that the animosities created by the civil commotions which preceded and accompanied said trial should cease and determine:

AND WHEREAS it has been the custom of our English forefathers (but for which there hath been happily no occasion hereto-

fore in the history of this country) whenever judgments for treason have been thus illegally and wrongfully obtained, to reverse by Act of Parliament, such judgments, and to direct, to the end that justice be done to those who have been thus convicted, that the records thereof be cancelled or destroyed:

It is enacted by the General Assembly as follows:

SECTION 1. The judgment of the Supreme Court, whereby Thomas Wilson Dorr, of Providence, on the twenty-fifth day of June, A. D. 1844 was sentenced to imprisonment for life, at hard labor, in separate confinement, is hereby repealed, reversed, annulled and declared in all respects to be as if it had never been rendered.

SECTION 2. To the end that right be done to the said Thomas Wilson Dorr, the clerk of the Supreme Court for the County of Newport, is hereby directed to write across the face of the record of said judgment, the words, "Reversed and annulled by order of the General Assembly at their January session, A. D. 1854."

SECTION 3. The Secretary of State is hereby directed to transmit a copy of this act to each of the Governors of the several States and to the Congress of the United States.

SECTION 4. This act shall take effect from and after its passage.

(R. I. Acts and Resolves, January Session, 1854, p. 249)

Acts like these, passed by the Parliament of England or by the General Assembly of Rhode Island during the interval after the Declaration of Independence of the State and until the adoption of a written constitution, may be supported on the ground that Parliament and General Assembly were, respectively, the sovereign power. When Parliament repealed the Triennial Act under which its members had been elected, enacted a Septennial Act, and then continued its own existence until the end of the seven years, although Lord Campbell expressed doubts of the constitutionality of the Act, there was no power anywhere to declare it invalid, and so it was constitutional in the sense that it took effect and no power could overrule it. But this Act, reversing the judgment in Dorr's case, was plainly unconstitutional, because it was passed by a General Assembly

that under the written constitution then in force had no such power. And the members of the Supreme Court gave their opinions to that effect, June 14, 1854, *In re* Dorr, 3 R. I., 1854. Durfee had died since the trial of Dorr, and R. W. Greene had taken his place as Chief Justice, the other members of the court remaining the same—Haile, Staples and Brayton.

But looked at from another point of view, even granting that the General Assembly of Rhode Island, like the Parliament of England, had no limitations upon its powers, there are other good and sufficient reasons that show this Act, reversing the judgment in Dorr's case, to have been a mere nullity. One is the rule of parliamentary law laid down by Cushing, that one body has no control over the records of another body. As well might one church council attempt to change the record of some other church council. Another reason is that not even an omnipotent General Assembly can make that not to be that is. Parliament, for instance, might resolve that the sun did not rise yesterday, but with all its omnipotence the fact is beyond annulment that the sun did rise yesterday. So in this instance the General Assembly of Rhode Island, even were there no restriction upon its omnipotence, cannot annul the fact that the Supreme Court did sentence Dorr to imprisonment for life at hard labor in separate confinement.

But to the dying man this attempted annulment of the decree against him brought small comfort. Upon his conviction he had appealed to the people of our State and of our country. The appeal was not in vain. As the animosities of the conflict fade from sight we appreciate, in spite of the mistakes in judgment he sometimes made, that high upon the roll of Rhode Island's great men will stand forever the name of the political reformer and public benefactor, Thomas Wilson Dorr.