prayers which his conscience approves and which the natural and the positive law guarantee to him, may be imposed upon him, because in such institutions the state stands in loco parentes. The judge says "the penal reformatory, or other institutions." What other institutions, judge? The State university? The county houses? You are very cloudy and indefinite for a man who is writing a state paper. So there are possibly some places or institutions in Nebraska where the state can, even within the constitution, establish a state church.

"The decision does not, however," says the judge, "go to the extent of denying the right to use it for the purpose of imparting sectarian instruction." O, learned judge! You ought to know that the moment a Bible is opened in the public school sectarian instruction is being imparted, ipso facto. If it is the King James version that is used, the reader then and there decides that the King James version is "the Bible"—a contention which is denied and opposed by the great majority of Christians the world over. Moreover, the King James version leaves out certain books which the great majority of Christians the world ever consider as being part of the Bible. It leaves them out, as is notorious, because those who invented the King James version affected to regard them as spurious. Your decision renders it lawful for some teacher to decide ex cathedra for her pupils what is the Bible. "What is the Bible?" is the previous question. The same reasoning would hold good from the Protestant point of view if some Catholic teacher were to read the Douay version. Under our laws the mere reading of the Bible in either case would be sectarianism, pure and simple. Certainly the "Iliad" may be read in the public schools without inculcating a belief in Olympic divinities, and the Koran may be read without teaching the Moslem faith. But suppose, judge, that the people of Nebraska believe in the Olympic divinities and that there were two Iliads, each claiming to be the original and only true Iliad, and that the people were divided on the question—most earnestly and sincerely divided? Your parity, judge, is false and puerile.

Neither you nor the counsel in the Pennsylvania case seem to know what Catholics mean by the Bible. The Catholic Bible is not the Douay version all by itself. The Catholic Bible for English speaking Catholics is the Douay version plus the meaning which the Catholic attaches to it; just as the law of this state is the constitution plus the interpretation which the courts place upon it. Why may not the Bible be also read without doctrinating children in the creed or dogma of any sect? What a silly question for a judge of the supreme court of Nebraska to ask! Why? Because, sir, the reading of the Bible in schools is a profession of faith in the sect or demonmination that stands responsible for the version in question. You ought to know this fact. Its contents are largely historical and moral. Its language is unequaled in purity and elegance. These are reasons here given by the judge that would justify the reading in the schools of some of the vilest books ever written. To be sure, there are, according to the Catholic claim, noted points of difference with respect to faith and morals between it (King James) and the Douay version. In a Pennsylvania case the author of the opinion says that he noted over fifty points of difference between the two versions.

This seems to be a revelation to you, oh learned judge, but as a matter of fact there are over 600,000 points of difference between the two versions, not to speak of the fundamental difference between them. "These differences constitute the basis of some of the peculiarities of faith and practice that distingdish Catholocism from Protestanism." They do nothing of the kind. The basis of anything believed in and practiced by Catholics is found outside the Bible and existed anteriorly to the Bible, as a whole. You must not suppose that Catholics are fools, which their ignorant critics make them out to be. The New Testament is merely the mind of the church to a certain extent, put down in writing at the instigation or inspiration of God. Catholics believe that the Bible, and esepecially the New Testament, has no existence or authority independent of the church, which gave it birth; and to believe the contrary would lead to heresy and mental disorder.

"But the fact that the King James translation may be used to inculcate sectarian doctrines affords no presumption that it will be so used." You are wrong again, judge. The fact that the King James version was never used for any other purpose than sectarian, from the time of the soupers in Ireland down to the latest reading of it in the schools of Nebraska, and that under the feelings and circumstances that obtain in this state, cannot be used for any other purpose, unless the reader be drunk or insane, is a presumption sure and certain that it will be so used in any given case. In reading these words, quoted from the judge, the advocates of Bible reading in the public schools must have enjoyed a quiet laugh at the expense of the judge's sincerity. It can be presumed that the Bible will be used in the public schools for sectarian purposes, because those who advocate the reading of it in the schools are, and always have been, ardent and unscrupulous sectarians. The law does not forbid the use of the Bible, in either version, in the public schools." If the law forbids sectarianism in the public schools, it certainly forbids implicitly the reading of the Bible. Neither you nor the other judges, can show how, under present conditions, the use of the Bible in the schools can be anything else than sectarian. It is not necessary, as you ought to know, to name a thing in order to forbid it. The law does not mention "Nana," or the "Mysteries of Paris." But will the teacher read these works to the pupils? In assuming that the Bible can be read at all in the public schools in an unsectarian manner, you simply beg the question. Public opinion and the facts contradict you.

We shall go no further into an analysis of your unique decision, the ulterior purpose of which, apparently, was to carry water on both shoulders, and so satisfy the conflicting views of irreconcilable extremes, without reference to law or facts. You have heard, judge, of the man who was leading his ass to the market to sell, and also you have heard the old adage, "Between two stools we come to the ground." JOHN RUSH.

T. J. Mahoney's Reply to Rush.

Omaha, Sept. 15.—To the Editor of the World-Herald—Having been of counsel for the relator in the Bible reading case," I am of necessity rather familiar with the legal questions presented and decided in that case, and am in consequence very much surprised at the bitter attack of my friend, John Rush, upon Judge Sullivan, on account of that decision. The true test of the fitness of a judge is his adherence to the law as it is, rather than his advocacy of what one may conceive the law ought to be. When Judge Sullivan's opinion was pronounced, in January of this year, I was consulted by my associates in the case upon the propriety of filing a motion for a rehearing or a modification of the opinion, notwithstanding that the decision gave us all the relief we asked for in that case. My associates and myself went over the decision carefully, and it was our unanimous opinion that the conclusions reached by Judge Sullivan constitute a correct interpretation of the provision of our state constitution forbidding sectarian teaching in the public schools, and, as we believed the judge's conclusions to be right, we did not ask for a rehearing or for modification of the opinion. Our course in this respect was not dictated by any regard for Judge Sullivan's re-election, for even since that time I have not hesitated to apply for re-hearings in other cases where the opinions had been written or approved by Judge Sullivan. We refrained from applying for a modification of the opinion simply because it was our judgment, as lawyers, that the opinion was correct.

Whether the opinion is right or wrong is purely a legal question; it is not a theological question, nor even an ethical question. The correctness of the decision depends absolutely upon the constitution of this state. The judiciary is not the law-making branch of the state government, and the court has no right to legislate. Consequently, it follows that, although one may believe a decision does him an injustice, he is not warranted, for that reason alone, in condemning the judge who rendered it. It is the duty of the judge to announce and administer the law as it is written, and not merely as one may think it ought to have been written. Consequently, if Judge Sullivan's decision in the Bible reading case is a correct disposition of the legal question presented, the judge should be commended for following the law and not condemned for omitting to legislate. Now, the legal question presented in the case was this: Is the reading of the Bible in the public schools, in the manner in which such reading was conducted in the school in question, such sectarian teaching as is forbidden by the constitution of this state?

In that case the character and purpose of the reading was disclosed by the testimony of the teacher, as follows:

Q. And you read that book as religious exercises because you think it is important for that purpose, don't you?

A. I think it is.

Q.—Yes; and you read it because you think it is the word of God?

A. Yes, sir; I do.

Q. And you believe that sincerely?

A. Yes, sir; I do.

Q.—And you select such parts to read as you think proper, don't you

A.—Yes, sir; just as I think it would be best for the pupils and myself.

Q. And whenever you see fit to read you read?

A.—Yes, sir.

Q.—And you read whatever you see fit to read?

A.—Yes, sir.

Q. And did you read from the new testament and from the old testament, too?

A.—Yes, sir.

Q.—And why do you consider it necessary to offer a prayer?

A.—I think we are taught to.

Q.—Yes; and you think it is done as an act of worship—the whole thing?

A.—We think it is, yes, sir.

Q.—Intended to worship God?

A.—Yes, sir.

After quoting the above testimony, Judge Sullivan says in his opinion:

"It is said by Commissioner Ames that the morning exercises, conducted by Miss Beecher, constituted sectarian instruction. This conclusion is vigorously assailed, but in our judgment it is warranted by the evidence, and we adhere to it."

In other words, when the Bible is read as a matter of worship or as an inspired book, either for the purpose of imparting religious instruction or inciting religious zeal, it amounts to such sectarian instruction as is forbidden to be conducted in the public schools, and the decision of Judge Sullivan does not forbid it.

But in order that the decision might not be misunderstood, it was manifestly fitting that the court should explain its limitations, and to that end Judge Sullivan said:

"The decision does not, however, go to the extent of entirely excluding the Bible from the public schools. It goes only to the extent of denying the right to use it for the purpose of imparting sectarian instruction. The pith of the opinion is in the syllabus, which declares that exercises by a teacher in a public school, in a school building, in school hours and in the presence of the pupils, consisting of the reading of passages from the Bible, and in the singing of songs and hymns, and offering prayer to the Deity in accordance with the doctrines, beliefs, customs or usages of sectarian churches or religious organizations, are forbidden by the constitution of this state.' Certainly the Iliad may be read in the schools without inculcating a belief in the Olympic divinities, and the Koran may be read without teaching the Moslem faith. Why may not the Bible also be read without indoctrinating children in the creed or dogma of any sect. Its contents are largely historical and moral. Its language is unequaled in purity and elegance. Its style has never been surpassed. Among the classics of our literature it stands pre-eminent."

This is part of the opinion chiefly criticsed by Mr. Rush and he insists that the parallel is false and puerile. But why so? If either the Iliad or the Koran were daily read to pupils of all ages, as the truth, such reading would unquestionably instill beliefs in many immature minds. But if either book is examined or analyzed with a view to its literary worth by a class of advanced pupils, studying literature, so that their minds are directed not to the beliefs contained in the text, but to the literary merits, such use of the Iliad or the Koran would probably produce no results in the way of theological conviction. So, too, with the Bible. There is no doubt that a teacher may make such use of it as to amount to sectarian teaching, and it is doubtless equally true that with a class in literature the psalms of David may be studied for their poetic beauty without indulging in dostrinal teaching. Now the constitution of our state does not say that the Bible shall, under no circumstances, be read in the public schools. What the constitution forbids is sectarian teaching, and what Judge Sullivan decided was, that whenever the Bible is so used that it amounts to, or results in, sectarian teaching, it is forbidden.

But Mr. Rush says: "You ought to know that the moment a Bible is opened in the public school sectarian instruction is being imparted ipso facto. If it is the King James version that is used, the reader then and there decides that the King James version is the Bible—a contention which is denied and opposed by the great majority of Christians the world over."

You might as well say that the moment the Koran is opened the reader then and there decides that it is the Koran, and that such teaching amounts to sectarian instruction. It is one thing to eaxmine and analyze a writing with a secular object in view and quite another thing to read it as a teacher of truth. The former is not sectarian teaching and is therefore not forbidden by the constitution. The latter would be sectarian teaching, and, according to the decision of Judge Sullivan, is forbidden.

Mr. Rush criticises Judge Sullivan's reference to the Pennsylvania case, in which the author of the opinion says that he has noted over fifty points of difference between the Douay and the King James versions, and Mr. Rush manifests some chagrin in calling the judge's attention to the fact that there are upward of 600,000 points of difference. It should be remembered that Judge Sullivan was not called on to decide a theological question, nor was he called on in any way to make a pronouncement upon the number of differences in the two versions. He was simply calling attention to the fact that there are differences and used the reference to the Pennsylvania case to support his recital of that fact.

Another part of the decision of which Mr. Rush complains rather bitterly is found in these words:

"But the fact that the King James version may be used to inculcate sectarian doctrines affords no presumption that it will be so used. The law does not forbid the use of the Bible, in either version, in the public schools. It is not prescribed either by the constitution or by the statutes, and the courts have no right to declare its use to be unlawful because it is possible or probable that those who are privileged to use it will misuse the privilege by attempting to propogate their own peculiar theological or ecclesiastical views and opinions."

This is but another way of saying that the courts will not presume that the law has been violated, but the burden is always on him who charges the violation to prove it. This rule of law is now too old to be disturbed, no matter whether individuals may think the presumption reasonable or violent. Mr. Rush's reason for saying that the presumption is violent, is, to use his own language, "because those who advocate the reading of it in the schools are and always have been ardent and unscrupulous sectarians." Here Mr. Rush gives expression to a sentiment for which he alone should be held responsible. This is not the opinion of his fellow Catholics. We know it to be a fact that many persons advocate a reading and study of the Bible who are not ardent sectarians, and who are not sectarians at all, and we know, too, that there are millions of ardent sectarians who are not unscrupulous.

But Mr. Rush would proscribe the Bible altogether, because in the hands of a teacher who wishes to accomplish such a result it may be made the instrument of sectarian teaching. This reason might be urged against the teaching of history, English literature, chemistry or astronomy. It is an argument, if valuable anywhere, that ought to be addressed to a legislature or a constitutional convention; but until the lawmaking branch of the government shall approve such argument, it has no place either before a court or before the people in passing upon the fitness of a judge.

To put the whole matter in a nutshell, Judge Sullivan's opinion is to the effect that whenever it can be made to appear that the Bible is so used in any school in this state that it amounts to or results in sectarian teaching, it is forbidden, but otherwise it is not forbidden. In this he has simply enforced the constitutional restriction without enlarging it. To have gone further would have been to lose sight of his authority as a judge and invade the province of the legislature. It is sincerely to be regretted that a discussion in any way bordering upon sectarian or religious differences should be injected into a political campaign. There is, perhaps, no other subject that has occasioned so much bitterness and so much hatred as religious differences, and it is probably natural that that should be so, because the ardently religious man looks upon his religion as much more important than any worldly consideration. He therefore feels strongly on the subject, and is apt to express himself with vehemence, if not with bitterness. Such discussions have no legitimate place in American politics, and whoever injects them is assuming a grave responsibility and accepting the chances of doing great wrong. T. J. MAHONEY.

Alpha's Criticism.

The Bee.

Omaha, Sept. 16.—To the Editor of the Bee: Doubtlessly the World-Herald and Mr. Mahoney think they have killed and discredited John Rush's criticisms of Judge Sullivan's decision in the "Bible case." Mr. Mahoney's reply is before us, and we must confess we are amazed. Considering Mr. Mahoney's reputation as a lawyer, we thought he knew enough to avoid what even a schoolboy would know is sophistry. It would appear from Mr. Mahoney's letter in the World-Herald this morning that Judge Sullivan construed the state constitution as really excluding any religious use whatever of the Bible in the public schools. Judge Sullivan, of course, did not say this clearly and distinctly. He played on the term "sectarian," and made it proper to infer that according to the judge there is a possible religious use of the Bible in the public schools which is not "sectarian." If the judge did not mean this he has his own indefiniteness and loquacity to blame for the misunderstanding. Mr. Mahoney is much clearer and more satisfactory on this point. According to him, the judge, in saying that the constitution did not entirely exclude the Bible from the public schools, meant that it could be used there for any other purpose than religious—e. g. as a model of literature. Even this position could be properly assailed by Christians, but it is possible that no one would have considered it worth his while to do so. We think that, considering our conditions, it is impossible to use the Bible in any of our schools with the indifference that is shown when one of the classics is used.

It is passing strange that while Mr. Mahoney considers Mr. Rush beside the point, he goes to the trouble of trying to refute him. Mr. Rush wrote: "You ought to know that the moment your Bible is opened in the public school sectarian instruction is being imparted ipso facto. If it is the King James version that is used, the reader then and there decides that the King James' version is the Bible." Mr. Mahoney immediately tries to discredit this difficulty, but soon changes his mind and takes refuge in the assumption that the judge's decision excludes the religious use of the Bible in the schools and contemplates its literary use or some other secular use only. Mr. Mahoney says: "You might as well say that the moment the Koran is opened the reader then and there decides that it is the Koran and that such teaching amounts to sectarian instruction." If a person should open the Koran as a religious act, as Mr. Rush rightly assumes the Bible is opened in the schools, that person most assuredly would be deciding the question of the authenticity, inspiration and canonicity of the Koran, an act which every clear-headed man in the state knows is an act of sectarianism under our constitution. But Mr. Mahoney clumsily doges. "It is one thing to examine and analyze a writing with a secular object in view, and quite another thing to read it as a teaching of truth. The former is not sectarian teaching and is, therefore, not forbidden by the constitution. The latter would be sectarian

JUDGE SULLIVAN'S SPEECH OF ACCEPTANCE.

Mr. Chairman and Gentlemen of the Convention: I have no words to adequately express the sense of gratitude and obligation I feel for the generous treatment I have received at your hands. Tonight, more than ever before, am I impressed with the conviction that it is, after all, even from the low standpoint of expediency, worth while for a public servant to be steadfastly faithful in the execution of his trust. The action of this convention, and the action of the populist convention at Grand Island, are expressions of commendation and approval that afford me the keenest satisfaction. I am fully conscious of my own imperfections and shortcomings, and I realize that if charity were not an element in your judgment my judicial record would hardly pass muster. I brought to the bench neither wide experience nor broad scholarship, and I lay no special stress upon my industry, but the one thing of real value that I did bring to the discharge of my duties—the thing above all others that has contributed most to whatever measure of success I have achieved—was independence, absolute judicial independence.

I went onto the bench a free man, and if I continue there I shall remain free. Having at no time desired a renomination or re-election, it, has, of course, involved no strain upon virtue to hew steadily to the line, giving no thought or deed to the flight and fall of the chips.

Our method of choosing the judiciary is, it seems to me, an unfortunate one. Geography and partisanship have absolutely nothing to do with the administraion of the law, and yet, strange as it may seem, absurd as it is, these are determining considerations in the nomination and election of judges. Whatever may be the character of a judge whether he be weak or strong, he ought to be under no temptation to count the political consequences of his decisions. He ought not to feel that his destiny is in the hands of the stout Warwicks who make and unmake postulants for public favor, who manipulate party conventions and produce political results. Courts will never become ideal arbiters, they will never enjoy full popular confidence, until judicial fiber becomes firmer than it is at present, or until a change in our vicious system of selecting the judiciary is in some way brought about. It is impossible to overestimate the importance of the work committed to the supreme court. It is engaged not only in the business of deciding controversies between citizens, but it is moulding the jurisprudence of a state that will in the near future rank among the foremost commonwealths of the republic.

To sit in the highest judgment seat is indeed a great honor, but with the honor goes great responsibility. The reputation of the state is to a large extent in the hands of its courts. Every civilized community is judged by the character of its institutions, and this community will be judged, in some degree, by the character of the judiciary which it is willing to accept.

I have never been well convinced of my own fitness for judicial service, and as I said before, I have had no wish to continue on the bench. Nevertheless, I have concluded to abide by your decision and to accept its consequences. If elected as my own successor, it shall be my constant and earnest endeavor to raise the character and reputation of the supreme court to a higher level, and to make it altogether worthy of a distinguished bar and an enlightened people.

The candidate of the republican party is my personal friend. He is a worthy and generous rival, and I bespeak for him at your hands fair and courteous treatment. Let the campaign be conducted on a high plane, in a temperate spirit, and in accordance with the humane doctrine that a man does not forfeit his civil rights and become an outlaw by running for office.

The contest this year is important, but not vital. We must not get excited; we can afford to keep cool. Whatever happens, the state will survive, and the democratic party is, of course, indestructible. There is in this state a large body of square-headed men. These men are not much swayed by mere sentiment. They understand that in a judicial campaign an appeal to party loyalty is nothing else than a flap-doodle and clap-trap. In their own good time, between now and election, they will think the matter over, and if they are satisfied with the supreme court as at present constituted, it is not improbable that they will conclude, regardless of politics, to let well enough alone. If we deserve to win, the chances are we will win.

I, for one, have faith in the people. Whatever they do I shall not murmur. Even though they slay my opponent, still will I trust them. A little healthy optimism will do us all good.