Commoner Comment.

Extracts From W. J. Bryan's Paper.

THE PORTO RICO CASE.

By a vote of five to four the supreme court has declared President McKinley emperor of Porto Rico, and according to the press dispatches the emperor has gladly and gratefully accepted the title and authority thus conferred upon him by the highest judicial tribunal of the land.

As the last issue of The Commoner was going to press, Justice Brown began reading the opinion of the court in the De Lima case and as the decision was against the government in that case it was at first thought that the inhabitants of Porto Rico had been brought under the protection of the constitution. But those who were encouraged to believe that the constitution had caught up with the flag were doomed to disappointment. In the Downes case, decided immediately afterwards, a majority of the court, composed of Justices Brown, Gray, White, Shiras and McKenna, held that congress could deal with Porto Rico (and the same logic applies to the Philippines) without regard to the limitations of the constitution. Chief Justice Fuller and Associate Justices Harlan, Peckham and Brewer dissented in strong and vigorous language, but the opinion of the majority—even a majority of one—stands until it is reversed. This is one of the most important decisions, if not the most important, ever rendered by the court; it not only declares that congress is greater than the constitution which created it—the creature greater than the creator—but it denies the necessity for a written constitution. The position taken by the court is defended, or rather excused, by reasoning which, if followed out, will destroy constitutional liberty in the United States. Every reason given by Justice Brown could be used with even more force to support a decision nullifying all limitations placed by the constitution on congress when dealing with the citizens of the several states. If the Porto Ricans can trust the wisdom and justice of a congress which they do not elect and cannot remove, why do the people of the United States need a constitution to protect them from a congress which they do elect and can remove? The decision in effect declares that the people are not the source of power; it defends "taxation without representation" and denies that governments derive "their just powers from the consent of the governed."

It assails the foundations of the republic and does so on the ground of expediency.

The dissenting opinions bristle with precedents and burn with patriotism; they ought to awaken conscientious republicans to a realization of the meaning of imperialism.

This decision, like the Dred Scott decision, raises a political issue which must be settled by the people. The supreme court has joined with the president and congress in an attempt to change the form of our government, but there yet remains an appeal to the people.

The election of 1900 did not decide this question, for the republicans denied that they favored imperialism, but they can deny it no longer. They must now admit their repudiation of the constitution as well as the Declaration of Independence.

So much space is given to the majority and minority opinions that extended comment is impossible at this time, but the discussion of the subject will be continued in future issues.

A STATEMENT OF THE CASE.

The opinions delivered by the United States supreme court in the Porto Rican cases are so important, not only for the present, but for the future, that it behooves every American citizen to thoroughly understand their purport. In these opinions, three separate periods were treated and it will be well to consider them in proper order.

Between the time when General Miles took possession of Porto Rico and the time of the ratification of the peace treaty, the military authorities established certain military tariff duties. The court sustained these duties on the broad ground of military authority and necessity.

After the ratification of the peace treaty and prior to the enactment of the Foraker law, in which law the present Porto Rican tariff duties are set forth, tariff duties were levied on goods coming from Porto Rico to the United States under the terms and rates of the Dingley law. On this point the court held that the Dingley law contemplated the levying of duties on foreign goods from foreign countries; that after the ratification of the peace treaty Porto Rico became "domestic" territory, and therefore the Dingley duties could not prevail.

In the Downes case the court took up that feature of the Foraker law which established tariff duties on goods coming from Porto Rico to the United States. The court held these duties to be lawful on the ground that congress had full authority to make rules, regulations and laws for the government of "domestic" territory other than states.

In order to fully understand these opinions it must be known that in ruling that the Dingley tariff rates could not prevail against Porto Rico, the court did not act on the theory that the constitution followed the flag during any of these periods under consideration. This ruling was made because, in the opinion of the court, a law enacted for the purpose of levying tariff duties against a foreign country could not be applied in levying tariff duties against a country that was not "foreign." In other words, if immediately after the ratification of the peace treaty, congress had enacted a law levying the Dingley rates specially against Porto Rico those rates would have prevailed. In the court's opinion, the legality of any tariff rate between Porto Rico and the United States simply waited upon a formal act of congress establishing those rates as applying to Porto Rico.

The logic of this opinion as it applies to the right of congress to levy tariff customs would make it possible for congress to levy tariff duties on articles coming from any territory of the United States.

With respect to our new possessions, the decision is an unfair one because it denies to them equal trade privileges with other portions of the United States whose sovereignty has been established over them, and the purpose of the constitution in providing for equal trade privileges was that no section subject to United States sovereignty should ever become the victim of discrimination. This principle is in line with the very foundation principles of this government which contemplated that all the people of the United States should have equal privileges, should be exempt from discriminations, and should enjoy the immunities which the constitution makers conceived to be essential to the perpetuity of free institutions.

THE ATTITUDE OF ALIENS.

In the opinion delivered by Justice Brown in the Downes case, the supreme court went much farther than the consideration of the right to levy tariff duties. Justice Brown contended that power to acquire territory by treaty "implies not only the power to govern such territory, but to prescribe on what terms the United States will receive its inhabitants and what their status shall be in what Chief Justice Marshall termed 'the American empire.'"

Justice Brown then distinctly declared that the annexation of territory did not make the inhabitants of that territory citizens of the United States. He admitted, however, that whatever may be finally decided as to the status of these islands and their inhabitants "it does not follow that in the meantime the people are in the matter of public rights unprotected by the provisions of our constitution and subjected to the mere arbitrary control of congress. Even if regarded as aliens, they are entitled, under the principles of the constitution, to be protected in life, liberty and property."

Here we find the supreme court's declaration of the status of the people of these islands. Although the constitution does not follow the flag, "under the principles of the constitution" the people of our new possessions are entitled "to be protected in life, liberty and property." In other words, although cut away from all former allegiance, although taken away from former sovereigns and denied the right of building a sovereignty for themselves, and although required to render allegiance to this country, yet they are in the attitude of "aliens," they are to be taxed without representation, and to be governed without having a voice in the government. This is imperialism pure and simple.

DELEGATED POWERS.

Throughout the majority opinion delivered by Justice Brown runs the theory that the American congress may do anything not forbidden in the constitution. This is one of the most repugnant features of this opinion. Justice Brown seems to have searched the constitution for prohibitions rather than for that grant of power which the American people have always conceived to be the true office of that instrument. In one place Justice Brown said: "If in limiting the power which congress was to exercise within the United States, it was also intended to limit it with regard to such territories as the people of the United States should thereafter acquire, such limitations should have been expressed." In another place he refers to a constitutional clause as "suggestive of no limitations upon the power of congress in dealing with territories." In another place he says that "no construction of the constitution should be adopted which would prevent congress from considering each case upon its merits unless the language of the instrument imperatively demands it." And in his conclusion Justice Brown, referring to the right or authority of congress to do what ever it sees fit to do, said—"We decline to hold that there is anything in the constitution to forbid such action."

The American system of government is not a complicated one. Indeed, its strength and success have depended, in a marked degree, upon its very simplicity. For years we have been taught to look in the constitution for power delegated to the United States and for powers prohibited by the constitution to the states. For years we have been taught that the federal constitution was a grant of power, while the state constitution was a limitation of power; yet the opinion delivered by Mr. Justice Brown encourages the notion that our federal authorities may do whatever they think necessary to be done when the same is not specifically forbidden in the federal constitution.

The dangers arising from such an irrational, un-American notion will depend entirely upon the character and disposition of men in authority. A written constitution has been the safeguard of American institutions, and once it shall be fully established that that constitution is a limitation rather than a grant of power, this government and its people are completely at the mercy of the men who happen to be in authority.

The mischievous character of Justice Brown's decision on this point is indicated in one paragraph wherein he said—"The states could only delegate to congress such powers as they themselves possess, and as they have no power to acquire new territory they have none to delegate in that connection." This was Justice Brown's apology for the absence from the constitution of a delegation of power to congress to deal with newly acquired territory. He would then hold that congress, the creature of the constitution, had greater powers than the body that created the constitution itself. In order to avoid the well established theory that the constitution is a grant of power, we have, according to Justice Brown's opinion, only to ascertain that the grantors of power were without authority in a certain respect in order to give to the creatures of the constitution whatever authority and power those creatures see fit to exercise.

A RADICAL CHANGE.

Justice Harlan discusses this point at considerable length, and his words are quoted here that the reader may note the contrast between his views and those expressed by the majority of the court through Justice Brown. Justice Harlan says:

"I take leave to say that if the principles now announced should ever receive the sanction of a majority of this court, the result will be a radical and mischievous change in our system of government. We will, in that event, pass from the era of constitutional liberty, guarded and protected by a written constitution, into an era of legislative absolutism, in respect of many rights that are dear to all peoples who love freedom.

"In my opinion, congress has no existence and can exercise no authority outside of the constitution. Still less is it true that congress can deal with new territories just as other nations have done or may do with their new territories. This nation is under the control of a written constitution, which is the supreme law of the land, and the only source of the powers which our government, or any branch or officer of it, may exercise at any time or at any place. Monarchical and despotic governments, unrestrained in their powers by written constitutions, may do with newly acquired territories what this government may not do consistently with our fundamental law.

"The idea that this country may acquire territory anywhere upon the earth, by conquest or treaty, and hold them as mere colonies or provinces, is wholly inconsistent with the spirit and genius as well as with the words of the constitution. The glory of our American system of government is that it was created by a written constitution which protects the people against the exercise of arbitrary, unlimited power, and the limits of which may not be passed by the government it created, or by any branch of it, or even by the people who ordained it, except by amendment.

"It will be an evil day for American liberty if the theory of a government outside of the supreme law of the land finds lodgment in our constitutional jurisprudence."

THE AMERICAN EMPIRE.

The court's decision was based upon expediency. In the opinion to which Justice Harlan referred as an effort to establish "two governments in this country—one resting on the constitution for Americans—the other carried on in the national capital by the same people, without the constitution for a subject people," Justice Brown said: "A false step at this time might be fatal to the development of what Chief Justice Marshall called 'the American empire.'"

It would seem that this phrase was employed by way of apology or defense for the American empire which Justice Brown and his colleagues were seeking to erect upon the ruins of the American constitution. When the great Marshall used the term "the American empire," he referred to an empire of love, an empire of perfect republicanism, an empire of hearts, an empire in which the people reigned supreme and the congress, the executive and the courts were the servants, rather than the masters, of the people. He referred to "the American empire" as expressing the perfect reign of American principles on every foot of American territory, and the enjoyment of American rights, privileges, and immunities on every foot of soil within the American domain.

It was in 1820 that Chief Justice Marshall used this term. The court at that time had under consideration the constitutional provision that "all duties, imports and excises shall be uniform throughout the United States." On this point Chief Justice Marshall said—"Does this term (the United States) designate the whole or any portion of the American empire? Certainly this question can admit of but one answer. It is the name given to our great republic which is composed of states and territories. The District of Columbia or the territory west of the Missouri river is not less within the United States than Maryland or Pennsylvania and it is not less necessary on the principles of our constitution that uniformity in the imposition of imposts, duties and excises should be observed in the one than in the other."

What a difference, then, between "the American empire" of the great Marshall and the American empire of Mr. Justice Brown!

Marshall's "American empire" was "our great republic which is composed of states and territories." The American empire of Mr. Justice Brown contemplates "two governments in this country; one resting on the constitution for Americans—the other carried on in the national capitol by the same people, without the constitution and for a subject people."

SOOTHING SYRUP.

One of the extraordinary features of the supreme court's decision, delivered by Justice Brown, is the attempt to assure the people that the safeguard of a written constitution can be destroyed without danger. This argument is of such a remarkable character that it deserves to be pasted in every American scrap book. On this point Justice Brown said:

"Large powers must necessarily be intrusted to congress in dealing with these problems, and we are bound to assume that they will be judicially exercised. That these powers may be abused is possible. But the same may be said of its powers under the constitution as well as outside of it. Human wisdom has never devised a form of government so perfect that it may not be perverted to bad purposes. It is never conclusive to argue against the possession of certain powers from possible abuses of them. It is safe to say that if congress should venture upon legislation manifestly dictated by selfish interests it would receive quick rebuke at the hands of the people."

Having been dispossessed of the advantages of a written constitution we have the right to hope that the men whom we elect to office will not abuse the extraordinary power conferred upon them by the United States supreme court.

It is an amazing bit of logic for a dignified justice of the highest court in this land to contend that a fear that congress might abuse the unlimited power given it by the supreme court should be quieted by the reflection that "the same may be said of its powers under the constitution as well as outside of it."

Justice Brown says that "human wisdom has never devised a form of government so perfect that it may not be perverted to bad purposes." True, indeed, and because the statesmen of this country realized that fact, having had it burned into them by the hot iron of experience, they provided limitations upon the authority and power of their public servants. They never dreamed of giving unlimited authority to their public officials; and when they devised this government and improved it by placing certain powers with the states, when they denied certain powers to the states and gave federal authorities certain powers specifically set forth in a written constitution, resting the whole frame-work upon a foundation of justice, liberty and equality to all men and to all sections of this country, they devised the best form of government yet conceived, and their handiwork was never so much endangered as it was by the opinion delivered by Mr. Justice Brown.

A SUBLIME REASSURANCE.

In his effort to further quiet those who apprehended danger by reason of the unlimited power bestowed by the supreme court on the federal authorities, Justice Brown said:

"Grave apprehensions of danger are felt by many eminent men—a fear lest an unrestrained possession of power on the part of congress may lead to unjust and oppressive legislation, in which the natural rights of territories or their inhabitants may be engulfed, find no justification in the action of congress in the past century, nor in the conduct of the British parliament toward its outlying possessions since the American revolution."

This is sublime reassurance: Those who fear that an "unrestrained possession of power on the part of congress may lead to unjust and oppressive legislation" in which the natural rights of men may be engulfed have only to look at the action of congress during the past century.

But if this is not sufficient Mr. Justice Brown bids them look at the "conduct of the British parliament toward its outlying possessions since the American revolution."

To what a glorious field for inspection this justice of the supreme court has invited the American people!

Under this opinion we are about to embark on Great Britain's colonial policy and to reassure ourselves, to quiet our conscience, we have but to look at the history of Great Britain toward its outlying possessions "since the American revolution."

An inspiring spectacle, indeed!

We may look at South Africa where Great Britain's "unrestrained possession of power" has destroyed two promising republics and has drenched the soil with the blood of patriots; we may look at India whose people have been dying by starvation for years—at India where on several occasions the bounty and generosity of the American people have been necessary in order to save human beings, living under the sovereignty of Great Britain, from death by starvation.

We may look at Ireland, whose population today is 4,000,000 less than it was in 1841; at Ireland whose people have been defrauded of their natural rights; at Ireland whose people have been denied the highest aspirations and the purest ambitions; at Ireland whose people have been burdened with unjust laws, with outrageous taxes, with infamous decrees; at Ireland whose people have fled from British sovereignty or died with broken hearts and famished bodies. Wherever you go, whether you find the Irishman at home or abroad, you will find a hater of British sovereignty and a living witness to the fact that British rule over the peoples who are denied equal participation in British government has been unjust to the people governed and discreditable to the governing power.

"A Hot Literary Dinner."

A Georgia paper has an account of "A hot literary dinner, after which there was a wrestling match to decide who was the best literary man in town. Mart Tompkins throwed Luke Landers five times, and was afterward declared head writer and literary president."

ONLY A CARTER.

TYPICAL CASE OF POVERTY IN METROPOLIS.

Skinned by the Doctors, Skinned by Landlords and Skinned by Twentieth Century Civilization—A Common Thing in Division Street.

The following appeared in the news columns of a recent issue of one of New York's leading dailies:

It will be a curious sight to the tenement dwellers about lower Division street when the Malkins are evicted on Saturday.

Neighbors will gather to see the miserable household goods of the unhappy family put upon the street. Six little Malkins will stand about the dingy bedding and the cracked stove, as soldiers rally about their tattered colors, wondering why they are not allowed to live in houses like other people.

And a pallid man and woman, with the furrows of sorrow on their faces, will look across the bundles comprising all they own in the world, across the six tousled heads of their children and into each other's eyes, seeking there the trust and pity which their fellows have denied them.

There is another little Malkin, the seventh, but he is comparatively well off. He is in Beth Israel hospital with sixty-six square inches of skin burned from his back. But he has bread and butter and cake and pie, and he has at least the pity of the doctors and kind words from the nurses.

He is at a careless age, this little Malkin, and he was the innocent cause of the undoing of his father, Louis H. Malkin, who lives with the rest of his family in three miserable rooms at 123 Division street. Louis Malkin was a hardworking carter up to the last of February. He was sober, respectable, industrious and energetic. His wife and family of seven stair stepping children were well cared for.

On the evening of Feb. 11 the third child, a boy of 8, went down into the dark tenement cellar to get a bucket of coal. He took a candle, and in some manner his coat was ignited. He ran shrieking upstairs, where he fell unconscious on the floor. His back was terribly burned from his shoulders to his hips.

He was taken to Beth Israel hospital, where for a time it was thought he would die. His father was called upon to supply cuticle for the boy's back. Twenty-two inches of skin from Mr. Malkin's right leg disabled him for work.

He lost his position, lost his credit, lost all but hope. He pawned everything he could pawn. The heroic father, still lame from the awful skin stripping he had endured, was called upon by the Beth Israel doctors for a similar graft from his left leg.

He leaned wearily against a table in his home—a pale apparition of hard luck—and talked about it. Six children, gaunt starvelings of the street, gazed at him with querulous eyes.

The mother, with the lines of despair in her face, heaved and toiled despairingly over a washtub. A neighbor through charity had sent in some washing which must be finished by nightfall.

And so she went, scrub, scrub, scrub, while her husband made ready for the hospital, while her children wailed or slept.

"I cannot work anyway, I am so lame from the other operation. But if I don't go to the hospital and submit to another grafting this afternoon the boy will die. I cannot bear that. I suppose that God will take care of us." Then, lowering his voice: "We will be put out Saturday, I guess, but they can't do any more than starve us to death. The poor mother can't take care of them all alone."

Scrub, scrub, scrub! The woman's ears had been open. She was crying now, and she bent her back to her burden with the envy of despair.

"After I have recovered from the operation of today," Mr. Malkin continued, "they are going to take another grafting twenty-two inches from my back. God knows what will become of us."

Scrub, scrub, scrub, went the arms monotonously. Then suddenly, with white averted face, the woman walked suddenly past and cast herself face downward on the bed in the next room.

"Poor woman," said the stricken man wearily. 'Excuse me, now. She is broken hearted, and I must go and comfort her."

And so it has fallen out that the tenement dwellers of Division street will be treated to a curious but not unusual sight on Saturday.

LAND AND WORK.

For colossal impudence it would seem hard to surpass the claim of John D. Rockefeller, that he has given to men work of the value of $600,000,000—and given it, too, in a spirit of benevolence. What Rockefeller has really done has been to seize the source of employment—the earth, and then to permit men to labor on it and produce wealth of which he kept the largest share. The "work" would have been there in the oil regions had Rockefeller never been born. Indeed, there would have been more work for he has been a monopolizer, a forestaller, a reducer of consumption, and by his interferences with trade has obstructed the natural growth of the oil industry.

Yet Rockefeller's claim is only a personal arrogation of the impersonal claim so often made that the rich give employment to the poor; a statement which has just this much of truth in it, as the Springfield Republican points out: "That when natural bounty has been monopolized for private profit the mass of men work only by grace of the monopolist, and the chance to work and live comes only as a gratuity."

The employment has been furnished by nature; the land and the man are the two factors needed to produce wealth. Yet when the land is monopolized its owners can demand as the price of the chance for employment all the laborer can make above a bare living. And so by a confusion of thought they are accredited with furnishing the employment itself. Were rivers subject entirely to private ownership we would be told that the waterlords provided the water which is essential to life.

While monopoly is as wrong when enjoyed by a thousand as when enjoyed by one man, the mass of mankind seen unable to realize its injustice until the profits concentrate in a few hands. Large estates arouse the greatest popular antagonism to landlordism, and the rapid growth of a few monopolies like the Standard Oil is arousing antagonism to the private ownership of such natural resources as oil, coal, and iron. That these are the common property of the race is coming to be recognized more clearly every day, and the rightfulness of permitting them to be owned by individuals is being questioned even by those usually classed as conservative thinkers. But this fundamental and all-embracing truth needs to be proclaimed—that all land is a natural resource which cannot justly be owned. The earth is the only source of employment, and when it is subject to private ownership "the chance to work and live comes only as a gratuity" to the landless. To harmonize the equal rights of all men to the earth (which means to any portion of it) with the individual possession necessary to secure to each the results of his toil is the purpose of the single tax, which would destroy monopoly of land and natural resources and yet leave the individual free to employ his labor as he chose and to enjoy the fruits thereof.

CURRENT COMMENT.

New York Evening Post: The community of interest that was to produce such harmony in the industrial and financial world has led to a battle of giants. The field is strewn with dead and wounded, and the question rises involuntarily:

Can such things be,
And overcome us like a summer cloud,
Without our special wonder?

The country, prosperous though it be, is full of discontent with the arrogance of men who control millions, and who combine today and fight tomorrow, regardless of the rights and interests of the masses. There is a substratum of socialism in every community which demands municipal ownership of "public utilities." It wants street railroads and gas and electric lighting works and telephones to be owned by the cities and administered in the interest of the consumer. It will very likely want country trolley lines to be owned by the state and operated in competition with the steam railroads. It may demand the taking of coal and iron mines and oil wells under the law of eminent domain. It may impose killing taxes on what it conceives to be dangerous monopolies. It may meet the "community of interest" idea of railroad management with more stringent legislation by congress and the legislatures than any we have yet had. It is only a rumbling force now, but is capable of doing vast mischief, both to itself and to those whom it conceives to be inimical to it. Nothing is better calculated to awaken this slumbering giant than such spectacles as we have had in Wall street the past few days.

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San Francisco Star: A despised contemporary says that "Tom L. Johnson, the newly elected mayor of Cleveland is said to have one eye on a seat in the United States senate and the other on the governorship, so it would seem he will have to go it blind so far as the city is concerned." Mayor Tom L. Johnson has already saved the city of Cleveland millions of dollars by stopping a water front grab of the Pennsylvania railroad, by his promptness in taking office, and he is now vigorously overhauling assessments, by which course he will reach the tax-shirkers and relieve those who are now bearing double burdens. He has also taken the first step toward three-cent street car fares and municipal ownership. That does not look much like "going it blind."

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Springfield Republican: A reputed trust salary of $800,000 ought to make the recipient a zealous defender of trusts, and Charles M. Schwab of the United States Steel corporation is no disappointment in that respect. He admitted to the federal industrial commission that the trusts made lower prices on the export trade and used the tariff to hold up the home price but while claiming that great economies in production were effected by the trusts, still he held the steel trust needed tariff protection on account of differences in labor cost. He was opposed to labor consolidation and in favor of the highest degree of capital consolidation. And he was also opposed to enforced publicity in the accounts of such monopolies as he is now running. In a word Mr. Schwab believes fully in public monopoly conducted by private individuals for unregulated private profit. Under the circumstances this is not remarkable.

Now, all this is the opinion of an expert after consultation with the manufacturers and jobbers in these lines of business and to make the lack of prosperity more plain, it must be remembered that a trade journal never gives a discouraging outlook if possible, it is against the interests of such a publication.

Taking Care of Forests.

Congress has appropriated $300,000 for the preservation of our forest lands. The salaries of those to be employed are fixed at $3 per day, with $3 additional for livery and traveling expenses.

Fund for Education of Boys.

The German Emperor has assigned the sum of 100,000 marks, collected by East Prussians at the bicentenary of the kingdom of Prussia, as a fund for the education of boys who are no longer under the care of their parents.

Game of "Ping Pong."

"Ping pong," a society amusement started in England, has found its way to this side and is increasingly popular. It is a table version of lawn tennis, with celluloid balls, parchment racquets and a six-inch net.

Driving Out British-Made Goods.

American-made boots and shoes are driving British made goods out of Australia and the British colonies in the East and West Indies and Africa, where they have always had a monopoly.

Bringing Fruit to Market.

A fleet of small schooners is being fitted out preparatory to leaving for the Bahamas to load pineapples for Philadelphia and Baltimore. Every year these vessels leave for the small islands which comprise the Bahama group and return with the fruit.

Miss Holman a Laboratory Worker.

Miss Josephine Bowen Holman, an Indianapolis girl who is to marry Marconi, is herself an enthusiastic laboratory worker and has devoted a great deal of her attention in that line to electricity.

Suddenly Rich and Generous.

George W. Carroll of Beaumont, Texas, who has become rich through the discovery of oil in Texas, has given $60,000 to Baylor University, Waco, Texas, to erect a science building and has promised more if that sum is insufficient.

Higher Mathematics.

The story writer who figures out that there has been 121 generations of the human family beginning with Adam has done something that ought to discourage the most enthusiastic genealogist.—Boston Globe.