ments, and of the Bench and Bar of Connecticut, and the alumni, students, and friends of the Law School. On the platform were seated the speakers of the day. It is with great pleasure that we print in this number of the JOURNAL a complete stenographic report of these exercises. After the meeting the building was thrown open for inspection and an informal reception was held in the new south reading-room on the third floor.

At a recent meeting of the JOURNAL Board Mr. Frank W. Tully of the Middle Class in the Law School was elected an assistant business manager.

COMMENT.

INTERSTATE COMMERCE—ORIGINAL PACKAGES.

The vexed question of where the Federal power over interstate commerce ends and State control begins is involved in the very important case of *Austin* v. *Tennessee*, 21 Sup. Ct. 132. Under a statute making it a misdemeanor to sell cigarettes, or bring them into the State for sale, Austin was prosecuted for selling an ordinary pack of cigarettes which he had received by express from North Carolina, together with other similar packages, all thrown into a basket and dumped upon his counter in Tennessee. The Supreme Court of the State is reversed in its contention that cigarettes, being inherently bad and bad only, were not a legitimate article of commerce, but sustained (four justices dissenting) in holding that the single packs were not original packages.

The doctrine of original packages, which has played so important a part in interstate commerce law, first cropped out in *Brown* v. *Maryland*, 12 Wheat. 419, where a State statute imposing a tax on parcels and packages imported from abroad was void as being a tax on imports, so long as the original packages remained in the importer's hands. The right to import was thus made by Chief Justice Marshall to include the incidental right to sell. Again, in *Bowman* v. *Northwestern*

Ry., 125 U. S. 465, the right of a State to demand a license of carriers requiring them to ship liquors only to licensed consignees, was denied. And what has since become the leading case, *Feesy* v. *Hardin*, 135 U. S. 100, upheld the right of a person in Illinois to ship beer into Iowa and sell it in original packages, despite State statutes. This decision led to grave abuses, and culminated in Congress giving over to the States the necessary power of regulating liquor traffic. Its constitutionality was sustained in *in re Rahrer*, 140 U. S. 545. The rule was next carried a step further by declaring that whether the package imported is suitable for retail as well as wholesale trade, the importer's right to sell depends solely on the consideration of its being an original package; and a special verdict finding a ten-pound keg of oleomargarine to be an original package, similar to those customarily used in the trade, and not shipped with the intention of evading the State law, was upheld though the package was sold direct to the consumer. *Schollenberger* v. *Pennsylvania*, 175 U. S. 1.

The latest case holds that imported dry goods may be taxed by a State after the box they were imported in is broken and the unbroken packages it contained are sold, the original box and not the parcels it contained being the original package. *May* v. *New Orleans*, 178 U. S. 495.

Assuming that the Federal government has paramount control over interstate commerce; that it is for it, not the States, to say an article should be *extra commerciam*, and its silence negatives this conclusion; and that the reserved police power in the States is subordinate to the Federal power of regulating commerce, the minority holds that each package was an original package and if shipped into the State of right, could not be an evasion of its law; while White, J., concurring with the majority, rests his opinion on the size and surrounding circumstances, *viz:* trifling value, lack of shipping marks, etc.

Reverting to *Brown* v. *Maryland*, *supra*, it will be seen that the purpose of the original-package doctrine is to point out the time when imported property passes from commerce and the protection the Federal government throws around it, and becomes segregated with the mass of State property and subject to State control. Technically, perhaps the size of the package has nothing to do with the right, nor the fact that the sale is direct to the consumer. But as such conclusions logically carried out would paralyze much salutary State police regula-

tion, we think the result reached by the majority, considering the basket the original package, is liberal and sound. It finds the same support as do regulations excluding diseased cattle, inspection laws and preventive measures regarding dangerous articles still in the hands of the importer, which are based simply on the reason and necessity of the thing. But as Brewer, J., dissenting, remarks, it is to be regretted that a great constitutional question should go off simply on the facts and circumstances of the particular case, prescribing no general rule.

HANDWRITING EXPERT EVIDENCE.

The ruling of Justice Fursman, in the re-trial of Dr. Kennedy for murder in New York city, refusing to admit the evidence of handwriting expert Kinsley, has created a profound sensation. If correct, it will upset settled convictions of Bench and Bar in many quarters. The opinion generally prevails that such evidence is admissible, and in the former trial, convinced doubtless of its futility, no objection on this score was made by the able counsel for the defendant.

In the present case, a check for $13,000 was found on the person of the murdered girl, and on the floor of the room a torn memorandum, containing the words "E. Maxwell and wife," corresponding with the entry on the hotel register.

To show motive, the prosecution offered to prove by expert Kinsley, after comparison with admittedly genuine specimens, that the check and memorandum were written by the defendant.

This evidence the trial judge excluded, and stated in effect that while admissible in the case of disputed writings, this check and memorandum were not "disputed writings" within statutory intendment in New York, nor by a proper construction of the decisions of its courts of last resort. Further, that such expert evidence is only admissible when the writings themselves are in issue. Here the subject of the controversy was the killing of the girl, and these writings were merely evidential.

Justice Fursman was quoted in the public press as stating that the same ruling would inevitably have been made in the former trial, had the question been raised.

Despite these positive statements of the trial judge, it is conservative to state that the question is by no means settled beyond peradventure, and considerable speculation will attach to the decision of the Court of Appeals on this point if it comes

before that tribunal. If Justice Fursman is right, there certainly exists in legal minds a general misconception as to the effect of statute and judicial decision on this point, which should be cleared up by an official pronouncement of the proper court.

Speaking generally of the law in this country, the opinion of an expert based on his careful comparison of the disputed writing with a genuine specimen is generally held admissible. In a comparatively recent case (*Dressler* v. *Hard*, 127 N. Y.) it became material whether an ambiguous word in the date was "Jan." or "July." The testimony of an expert who had examined admittedly genuine specimens was excluded by the trial judge, and this was held reversible error. The principle involved was whether a doubtful word in a written instrument might be shown by expert testimony, and it is pertinent, although distinguishable from the present case.

The point ruled on by Justice Fursman has been the subject of much controversy both here and in England, and it would be useless to attempt to reconcile the decisions at common law. Of course this expert opinion is designed simply to aid the jury, and they are to weigh the evidence for what it is worth. Neither law nor custom sets up any required standard of education for juries, and even to a jury of exceptional intelligence such aid might be very helpful.

At the same time the facility by which diametrically opposed expert testimony is obtainable in important trials has brought this kind of evidence into disrepute in the popular mind, and leaves its impress on the average jury. It is natural that the judiciary which often is close to the public pulse should anticipate legislative action, and endeavor to limit and restrict the scope of such testimony.