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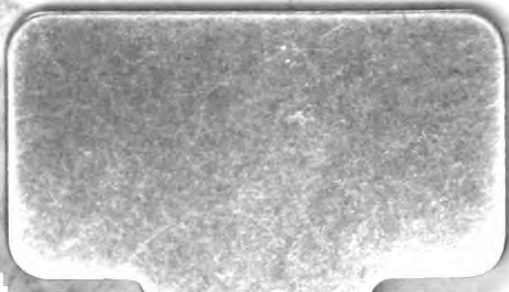


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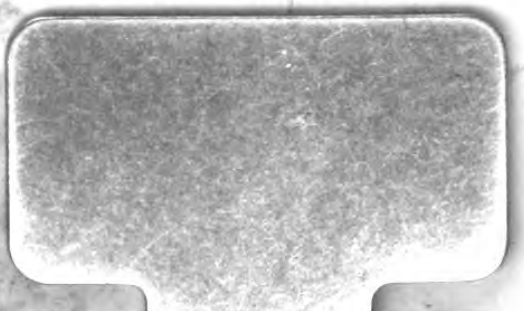
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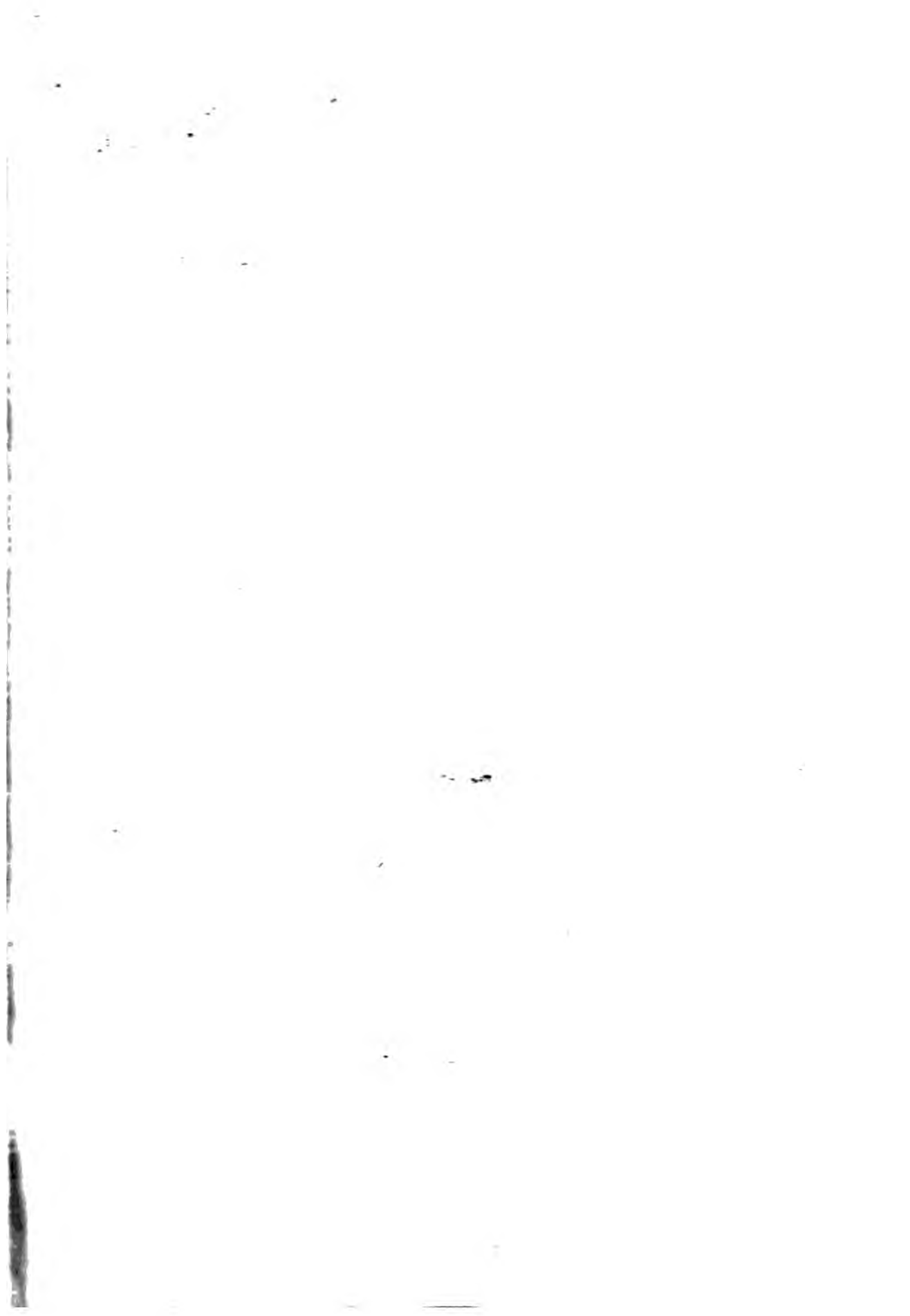
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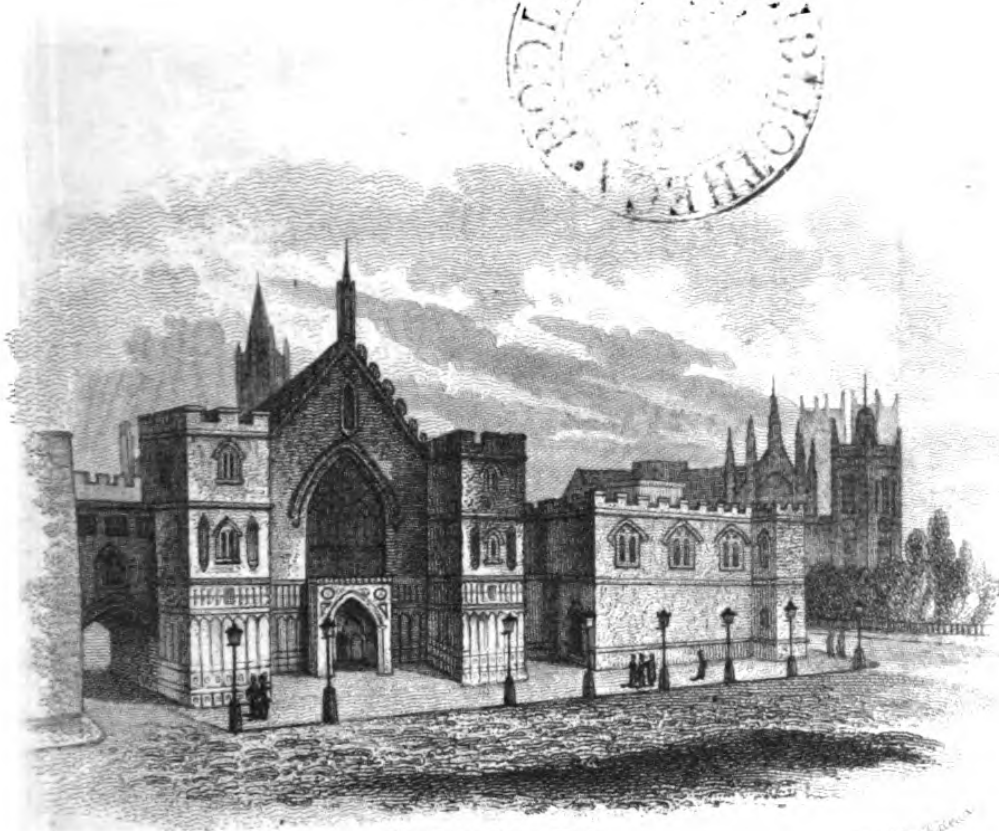
PROFESSIONAL RELICS

AND

ANECDOTES

OF THE BAR, BENCH, AND WOOLSACK.

VOL. I.

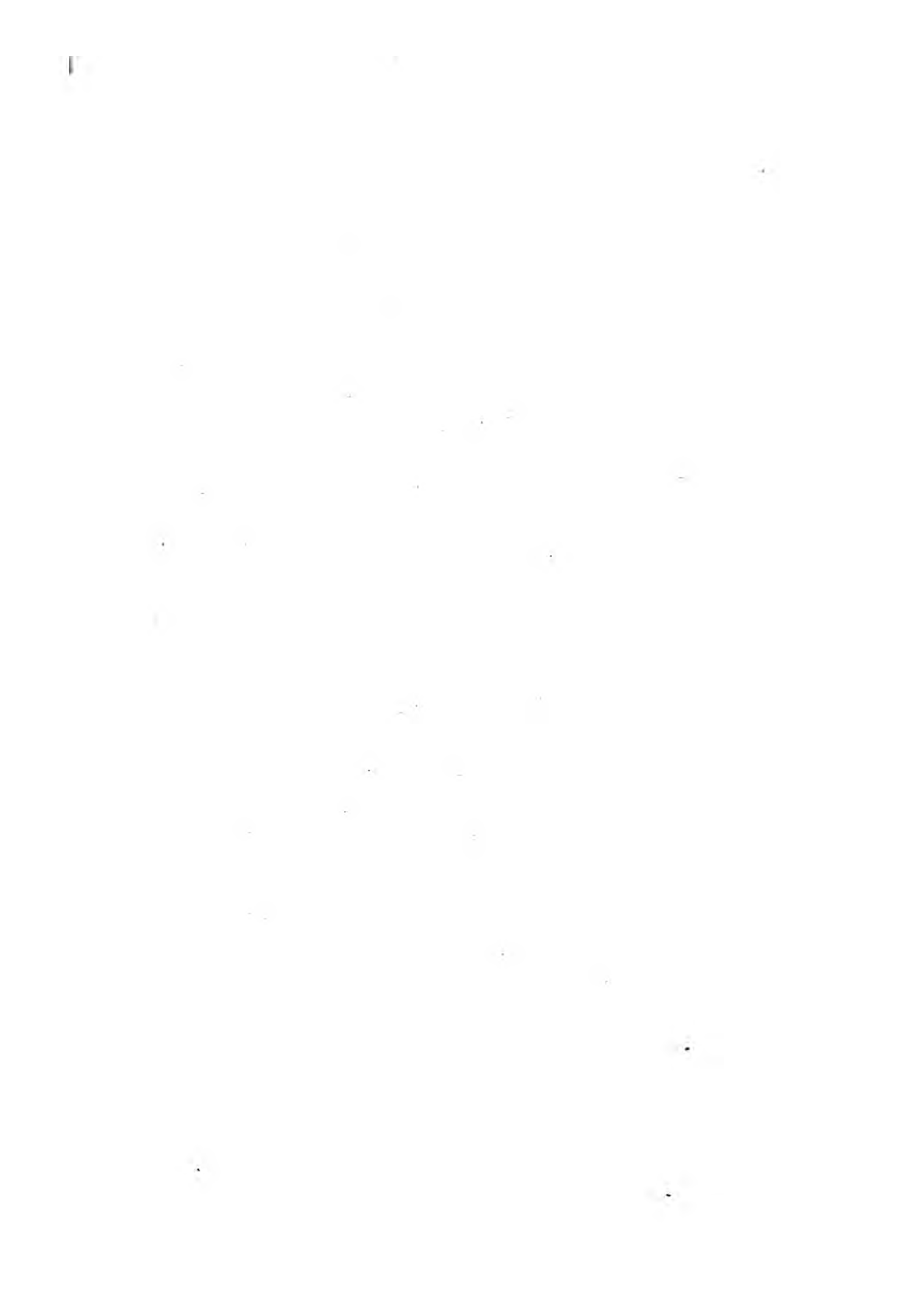


*Westminster Hall*

*Eng<sup>d</sup> by H. Green*

LONDON:  
JOHN KNIGHT & HENRY LACEY,  
PATERNOSTER ROW.  
MDCCLXXXV.

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## PREFACE.

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A WORK of amusement, the subject matter of which is "Law and Lawyers," will, perhaps, be thought to require some explanation. The public are so much disposed to regard the study of the Law as a pursuit destitute of all attraction and interest, that the present attempt to glean from that ample field a few grains of amusement, will, probably, be looked upon with surprise. Those, however, who have rendered themselves acquainted with our Law Books, well know, that there exists in them a copious store of curious and interesting matter, which often enlivens those severer labours,

of which information, and not entertainment, is the object. Intimately connected as the Law is with various other branches of knowledge, blended as it must always be with the history of the country which it governs, and over the institutions and manners of which it must always exercise a powerful influence, it would, indeed, be singular, if the study of such a science were wholly barren of interest. With the view of collecting together these scattered curiosities of the Law Books, the present compilation has been undertaken.

There is also another class of books, to which frequent recourse has been had in the preparation of these volumes,—the various collections of Legal Biography and Anecdote. All these works have been diligently gleaned, and the most curious and important portions of their contents have been carefully selected. Some of the most valuable and entertaining pieces of biography

in our language are to be found amongst the Lives of our Lawyers. The Memoirs of the Lord Keeper Williams, and the Lord Keeper Guilford, are inimitable works. From those volumes, some rich and copious extracts will be found in the pages of the present publication.

With a view of conferring a somewhat higher character upon our work, than a mere compilation would be entitled to claim, some original papers, on subjects connected with the Law, have been scattered through the volumes. In these little dissertations, care has been taken to cite with accuracy the authorities referred to, in order that, whatever may be their intrinsic value, they may at all events be useful in directing the further enquiries of the reader.

Nor have the lighter anecdotes and *bon mots* which are current in the profession been neglected. The witticisms of our

Lawyers, with a few exceptions, are not, perhaps, very brilliant ; but the best which could be collected are now presented to the public.

It is hoped that the following volumes will not only interest the Lawyer, but likewise the general reader. With the mere technicalities of professional learning they have no connexion, and they will, therefore, it is anticipated, be found both intelligible and acceptable even to those who are without the pale of the profession.

*King's Bench Walk, Inner Temple,  
January, 1825.*

# CONTENTS

OF

VOL. I.

---

	PAGE.
The Language of the Law ... ..	1
Sir Thomas More .. ... ..	26
The Good Judge ... ..	ib.
Mr. Bacon .. ..	31
Sir Edward Coke .. ..	32
Sir Nicholas Bacon ... ..	ib.
The Licensing of Law Books ... ..	33
Integrity of the Judges in Elizabeth's reign ... ..	36
The Blue Laws of Connecticut ... ..	38
Burke and Lord Thurlow ... ..	41
Lord Thurlow's Defence of himself in the House of Peers ... ..	42
Sir Edward Coke and the Case of Commendams	44
The Billingsgate of the Law ... ..	45
Legal Poets ... ..	48
The Lawyer's Farewel to his Muse ... ..	50
Candour of an Irish Deponent ... ..	54



	PAGE.
Lord Coke and his Coachman ... ..	55
Burke's Opinion of Lawyers ... ..	ib.
Perils of the Law in Ireland .. ..	57
Horne Tooke and the Bar ... ..	59
Quarrels between Coke and Bacon .. ..	60
The Chapter of the Double Mistress .. ..	63
Legal Vulgar Errors ... ..	64
The "Common Baylers" ... ..	68
Character of Saunders ... ..	70
Burning of the Temple in the Great Fire ...	75
Laws against Witches .. ..	77
Henry V. and the Chief Justice ... ..	90
Lord Keeper North and the Recorder of Colchester	94
The Crest of the Temple ... ..	97
Poetical Reports ... ..	99
An Agreeable Surprise ... ..	104
Mr. Butler's Advice on the Study of Real Property	
Law ... ..	ib.
Character of Lord Keeper Guilford in early Life	107
Certainty to a certain Intent in every Particular	111
Ceremonies formerly observed on the Creation of a	
Judge .. ..	115
Eloquence of the early English Lawyers ... ..	114
Baxter and Jefferies ... ..	115
Singular Bill in Equity ... ..	124
Sumptuary Laws of the Temple respecting Dress	124
Sir Walter Raleigh and Sir Edward Coke .. ..	124
Mode of raising a Benevolence ... ..	134
Marriage of Lord Keeper Guilford ... ..	134
Sir Eardley Wilmot's Escape ... ..	144

**CONTENTS.**

vii

	<b>PAGE.</b>
The Estuis, or Bordelloes .. ...	145
Lord Kenyon's Criticism ... ..	148
Circumstantial Evidence,—Harris's Case .. ...	149
Outrageous Attack upon Lord Chancellor Clarendon	154
On the Use of Torture in Judicial Proceedings ...	160
The Temple Church .. ... ..	172
The late George Hardinge ... ..	177
Mr. Justice Catline ... ..	180
Deliberations of Juries ... ..	ib.
Bacon's Apothegms .. ..	189
Sir Matthew Hale .. ..	190
Mr. Howland .. ..	191
Legal Recollections of London ... ..	ib.
Anecdote from Bacon's Apothegms .. ...	200
Lord Mansfield .. ... ..	201
Sir William Jones's first Speech in Court ...	204
Lord Kaimes ... ..	206
Lord Mansfield's Speech at the Time of Wilkes's Riots .. ..	207
Sir Nicholas Bacon .. ..	211
Laws against the Jews ... ..	ib.
Sir Nicholas Bacon .. ..	215
Execution of Sir Thomas More ... ..	216
Lord Chancellor Cowper ... ..	220
Judicial Corruption .. ..	223
Sir John Davies and Dame Eleanor, his Wife ...	246
Identification of Stolen Goods .. ..	252
Opinion of a French Lawyer on an English Case	253
A Cross-Examination .. ...	255
Lord Chief Justice Willes ... ..	258

	PAGE.
Lord Cowper and Richard Cromwell .. ..	259
Mr. Justice Burnet .. ..	261
Character of a Pettifogger .. ..	265
Coke's Address on being elected Speaker of the House of Commons .. ..	266
Lord Mansfield's Conduct during the Riots ..	268
Mr. Bacon .. ..	272
The Lawyer .. ..	273
Character of a Reverend Judge ..	ib.
Lord Keeper North and the Rhinoceros ..	274
Trial and Execution of Lawrence, Earl Ferrers	276
Scriblerus's Reports ... ..	283

## LAW AND LAWYERS.

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### THE LANGUAGE OF THE LAW.

NOTHING more singular can well be imagined than the language of our law in early times, when the English, the French, and the Latin were all employed. The proceedings in court (after the statute of Edward III.) were carried on in English, reported in French, and entered upon record in Latin. There is no doubt, that the French was introduced into our judicial proceedings by the Normans, on the conquest; and, indeed, William I. is said to have ordained, not only that the pleadings in all courts of justice should be in that language, but likewise that it should be taught at schools. In Chaucer's time, these schools appear to have been in full operation. Of the Prioress Eglantine, the poet says,

— Frenche she spake full fayre and fetisly,  
After the schole of Stratford atte Bowe,  
For French of Paris was to hire unknowe.

*Prologue, ver. 124.*

Some curious information relative to the introduction and decline of the French language in England, may be found in the Preliminary Dissertation prefixed to Chaucer's Works.

The reason given by Fortescue (*De Laudibus*, c. 48.) for the introduction of the French language is as follows: "Likewise the Frenchmen, after their coming into England, reckoned not the accounts of their revenues but in their own language, lest they should be deceived therein, neither had they delight to hunt, and to exercise other sports and pastimes, and at dice-play and the hand-ball, but in their own proper tongue. Wherefore the Englishmen, by much using of their company, grew in such a perfectness of the same language, that at this day, in such plays and accounts, they use the French tongue. And they were wont to plead in French, until by force of a certain statute, that manner was much restrained. But it could never be wholly abolished, as well by reason of certain terms, which pleaders do more properly express in French than in English, as also, for that declarations upon original writs cannot be pronounced so agreeably to the nature of those writs as in French; and under the same speech the forms of such declarations are learned: moreover all pleas, arguments, and judgments, passed in the king's courts, and entered into books, for the instruction of them that shall come after, are evermore re-

ported in the French tongue. Many statutes also of that realm are written in French." The statute to which Fortescue alludes, is the 36 Edward III. which enacts, that all pleas, &c. shall be pleaded, shewn, defended, answered, debated, and judged in the English tongue, and entered and enrolled in Latin. "But though," as Dugdale observes, "the pleadings in French ceased with this statute, yet the terms of law in that language being accounted more significant than any other, were still retained."

It is said by Selden, that the statute of Edward III. took its rise from an inconvenience, rather supposed than felt; for though some kind of knowledge of law terms may be increased thereby, yet, unless the science is professionally studied, "it will breed nothing but notions and overwhelming conceits, which often engage men in law-suits to their great loss;" he adds, however, that, "thus in part, the reproach of Normandy rolled away, like that of the Israelites at Mount Gilgal." Mr. Barrington has remarked, that, with proper deference to such an authority, few law-suits have ever been occasioned by what he apprehends, and that it is not only a wise measure, for the reasons mentioned in the preamble,\*

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\* The preamble runs as follows: "Because the Laws, Customs, and Statutes of this realm are not commonly

but that the legislature has carried the alteration still further, by directing, that the pleadings shall be enrolled in English. (*Barrington on the Ancient Statutes*, p. 291.)

The Reports of adjudged cases began, according to Sir Edward Coke, (*See Preface to 3 Report*, p. xxi.) to be written in *French*, in the reign of Edward III. ; but it is observable, that in the Year Books, there are many reports of the time of Edward II. in French, while the fragments of cases of the reign of Edward I. are in Latin. It continued to be customary to report in French until the time of the Commonwealth, although an attempt was made by James I. to introduce the use of English. Wilson informs us, that James, in his speech from the throne to parliament, in the year 1609, recommended that the books of the common law should be written in the mother tongue, that the people might know what to obey, and that the lawyers in law, like the popish priests in the Gospel, might not keep the people in ignorance. (*Wilson's Life of James I.* p. 47.)

On the establishment of the Commonwealth, the deficiencies and corruptions of the law began to

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known, and because they are pleaded, declared upon, and decided in the French Language, which is much unknown in this kingdom, so that parties to suits do not know what is said either for them or against them, by their Sergeants and Pleaders, &c."

be very nicely inquired into, and, amongst other questions of the same kind, we find it asked, "Why is the law kept in an unknown tongue?" (*See The Corruptions and Deficiency of the Laws of England soberly discovered. London, 1649.*) At last it was determined to abolish the use of the Law French altogether, and the following Ordinance was passed.

*An Act for turning the Books of the Law, and all Processes and Proceedings in Courts of Justice, into English.*

"The Parliament have thought fit to declare and enact, and be it declared and enacted, by this present Parliament, and by the authority of the same, that all the Report Books of the Resolutions of the Judges, and other books of the Law of England, shall be translated into the English Tongue: and that, from and after the 1st day of January, 1650, all Report Books of the Resolutions of Judges, and all other books of the Law of England, which shall be printed, shall be in the English Tongue only.

"And be it further enacted, by the authority aforesaid, that from and after the first Return of Easter Term, which shall be in the year 1651, all Writs, Process, and Returns thereof, and all Pleadings, Rules, Orders, Indictments, Injunctions, Certificates, and all Patents, Commissions, Records,



Judgments, Statutes, Recognizances, Rolls, Entries, and Proceedings of Courts Leet, Courts Baron, and Customary Courts, and all Proceedings whatsoever, in any Courts of Justice, within this Commonwealth, and which concern the Law and administration of Justice, shall be in the English Tongue only, and not in Latin or French, or any other language than English, any law, custom, or usage heretofore to the contrary notwithstanding, and that the same, and every of them, shall be written in an ordinary, usual, and legible hand and character, and not in any hand commonly called court-hand." (*Scobell's Collection*, p. 143.)

This ordinance does not appear to have given much satisfaction to the lawyers, who were, probably, chagrined at the idea of their clients being enabled to form an opinion upon the merits of their own cases. Stiles, the author of the Reports, thus alludes to the ordinance: "I have made these Reports speak English, not that I believe they will be thereby generally more useful, for I have been always, and yet am, of opinion, that that part of the common law which is in English hath only occasioned the making of unquiet spirits contentiously knowing, and more apt to offend others than to defend themselves; but I have done it in obedience to authority, and to stop the mouths of such of this English age, who, though they be as confusedly different in their minds and

judgments, as the builders of Babel were in their languages, yet do think it vain, if not impious, to speak or understand more than their own mother tongue." (*Preface to Stiles's Reports.*) Bulstrode also was compelled, much against his will, to translate his Reports into English. (*See the Address to the Reader prefixed to the 2d Part.*)

Upon the Restoration, the Law French was likewise restored as the language of the reporters, and continued in use until the beginning of the last century. In the Preface to Fortescue's Reports, (who was one of the Judges of the Common Pleas in the reign of George II.) there is a laboured attack upon the use of the Law French: "And here I cannot but observe," says he, "that while the Saxon is totally neglected, some, not content to learn the Law French for what is already wrote in, seem fond of the use of it, and of writing new things in it; but for what reason I am at a loss, and at a greater yet, why any lawyer should write reports in that tongue; \* \* \*. If we consider the present state of Law French, as used by some modern reporters, wherein all the antiquated true French is lost, and instead thereof, English words substituted, with French terminations tacked to them, this still makes it worse, and thereby it is become even the corruption of an imperfect and barbarous speech, understood by no foreigner, not even by the French themselves, serving only as a mark of

our subjection to the Normans, and for the use of which the French despise us." Mr. Justice Fortescue attacked this antiquated absurdity with much greater effect in his celebrated and very humorous report of the trial of *Stradling v. Stiles*, usually printed in Pope's Works, at the end of the *Memoirs of Martinus Scriblerus*, and which will be found in another part of these volumes. At the conclusion of this case is an inimitable morsel of Law French, which it is impossible not to transcribe: *Le reste del argument jeo ne pouvois oyer car jeo fui disturbe en mon place.*

The Latin continued to be the language of the Records until the reign of George II., when a statute was passed directing them to be entered in English.

The motives of the lawyers in employing a dead or a foreign language for so long a period have been frequently questioned. It was objected, according to Sir John Davies, "to the professors of our law, that, forsooth, they write their Reports and books of the law in a strange unknown tongue, which no one can understand but themselves, to the end that the people, being kept in ignorance of the law, may the more admire their skill and knowledge, and value it at a higher price. As Cicero in his final book *de Oratore*, doth testify, that the like conceit was held of the first professors of the civil law, *Quia veteres illi*

*qui huic scientiæ præfuerunt, obtinendæ atque augendæ potentiæ suæ causâ, pervulgari artem suam noluerunt.* And Cæsar, speaking of the Druids, who were judges and interpreters of the laws among the ancient Britons, doth report of them, that though they spent twenty years in the study of those laws, *non existimabant fas esse ea literis mandare.*" (*Pref. to Sir John Davies's Rep.*)

With regard to the language of the statutes, it is observed by Barrington, (*p.* 426,) that the statutes of Edward the Fourth's reign are the last in the French Language: and again, (*p.* 431,) that the reign of Richard III. is a remarkable epoch in the legislative annals of the country, from the statutes having continued from this time to be in the English Language. This statement is certainly erroneous, for, in Pynson's Edition of the Statutes, those of Richard III. are all in French: and it is said by Sir John Davies, that "as for our statutes or acts of Parliament, the bills were for the most part exhibited in French, and passed and enrolled in the same language, even till the time of King Henry VII. And so they are printed in Rastell's first Abridgment of Statutes, published in the year 1559. But after the beginning of King Henry VII. his reign, we find all our acts of Parliament recorded in English." (*Preface to Reports.*) The reason given by Lord Coke for publishing the statutes in a foreign language, is

admirable : “ It was not thought fit or convenient to publish those, or any of the statutes, enacted in those days, in the vulgar tongue, lest the unlearned, by bare reading, without right understanding, might suck out errors, and, trusting to their own conceit, might endanger themselves, and sometimes fall into destruction.” (*Preface to 3 Report, p. xxi.*)

The French Language continued in use at court for a long period. Barrington mentions, that the letters from Burleigh and other Ministers to the English Ambassadors at foreign courts were in French, and that many instruments relating to English business are found in that language, during that and the following reign. Edward VI. as he also informs us, corresponded in French. Elizabeth, the daughter of James I., likewise corresponded with her father in that language. (*See Ellis's Original Letters, v. iii. p. 112.*)

#### PROJECTS TO REFORM THE LAW.

The necessity of adopting some plan for consolidating and simplifying the unwieldy and disjointed system of English Law, engaged the attention of several eminent men, at a period when the inconveniences of that system were trifling, compared with those which subsequent times have experienced. It is difficult to say at what precise time the evils of our complicated code first began to make themselves felt. During the reigns of

the Plantagenets and the Tudors, the system of the old law was only in progress, and it can scarcely be said that it was necessary to reform that which had not attained a perfect existence. The best developed, and most complete portion of our law at that time, was the feudal system, which harmonised with the spirit and intelligence of the age. Accordingly we find, that by far the majority of cases in the earlier Year Books, relate to questions arising out of the feudal contract, or to injuries committed to real property. But, from the commencement of the reign of Henry VIII. a most important change is observable in the Reports. England was becoming a commercial country, and personal property began to be more highly regarded. The reign of James I. may be called the *terminus* of the old law, and this, therefore, is, perhaps, the period at which the necessity of some great and radical change in our legal system began to be sensibly felt, although a proposal to that effect was made in the preceding reign. The spirit of the feudal times had become extinct, and an attempt, though an unsuccessful one, was made to abolish those military tenures, which were afterwards extinguished in the reign of Charles II. We can scarcely be allowed to call the improvements introduced into our judicature by Edward I. a reform of the law. They were rather a supplying what was deficient than

an amendment of what was superfluous. "The Laws," says Sir Matthew Hale, in speaking of this king's reign, "never did receive so sudden *an advancement*; nay, I think I may safely say, all the ages since his time have not done so much in reference to the orderly settling and establishing of the distributive justice of this kingdom, as he did within the short compass of the thirty-five years of his reign, especially about the first thirteen thereof." (*History of the Common Law*, p. 159.) "He bent himself," says Sir Francis Bacon, speaking of the same prince, "to endow his state with sundry notable and fundamental laws, upon which the government thereof hath ever since principally rested."

Towards the conclusion of Elizabeth's reign, a formal proposal was made to remodel the law. "I am," says Bacon, in the Preface to his *Rules and Maxims of the Common Law*, "an unworthy witness to your Majesty, of a higher intention and project, both by that which was published by your Chancellor in full parliament from your royal mouth, in the year 35 of your happy reign, and much more by that which I have been since vouchsafed to understand from your Majesty, imparting a purpose for these many years infused into your Majesty's breast, to enter into a general amendment of the state of your laws, and to reduce them to more brevity and certainty, that the great

hollowness and unsafety in assurances of lands and goods may be strengthened, the penalties that lie upon many subjects removed, the execution of many profitable laws revived, the judge better directed in his sentence, the counsellor better warranted in his counsel, the student eased in his reading, the contentious suitor, that seeketh but vexation, disarmed, and the honest suitor, that seeketh but to obtain his right, relieved; which purpose and intention, as it did strike me with great admiration when I heard it, so it might be acknowledged to be one of the most chosen works, and of the highest merit and beneficence towards the subject, that ever entered into the mind of any king; greater than we can imagine, because the imperfections and dangers of the laws, are covered under the clemency and excellent temper of your Majesty's government."

The zeal with which Bacon turned the powers of his stupendous mind to the consideration of this subject, might, under happier auspices, have had the most beneficial results. His first proposal "for amending the laws of England," was made while he was Attorney General to James I. "After I had thought of many things," he observes, "I could find, in my judgment, none more proper for your Majesty as a master, nor for me as a workman, than the reducing and recompiling of the Laws of England." Sir Francis then pro-



ceeds to point out the principal inconveniences which resulted from the then state of the law, in consequence of the changes which had been gradually taking place. The great work of reformation was to be accomplished by a digest, or re-compiling, first, of the Common Law, and second, of the Statute Law.

“ For the first of these, three things are to be done :

“ 1. The compiling of a book *de antiquitatibus Juris*.

“ 2. The reducing or perfecting of the course or *corps* of the Common Laws.

“ 3. The composing of certain introductive and auxiliary books, touching the study of the Laws.”

With regard to the Statute Law, he proposes,

“ 1. To omit from the Digest all statutes expired or repealed.

“ 2. To repeal all statutes which are sleeping, and not of use.

“ 3. To mitigate the penalties of certain statutes, and

4. To reduce “ the concurrent statutes, heaped upon one another, to one clear and uniform law.”

“ Towards this,” he observes, “ there hath been already, upon my motion and your Majesty’s direction, a great deal of good pains taken ; my Lord Hobart, myself, Sergeant Finch, Mr. Heneage Finch, Mr. J. Noy, Mr. Hackwell, and

others, whose labours being of a great bulk it is not fit now to trouble your Majesty with any further particularity therein ; only by this you may perceive the task is already advanced." He then proposes the appointment of a commission, named by both Houses of Parliament, "to accomplish this excellent work." It does not appear to what cause the failure of this important project, in which so considerable a progress appears to have been made, is to be attributed. The attention of Bacon was probably diverted to other objects ; but at a later period, after his conviction and disgrace, he again applied his mind to the same subject ; and made to James "an offer of a digest of the laws of England." The conclusion of this little tract contains a fine allusion to the writer's situation. "As for myself, the law was my profession, to which I am a debtor ; some little helps I have of other arts, which may give form to matter, and I have now (by God's merciful chastisement and by his special providence) time and leisure to put my talent or half talent, or what it is, to such exchanges as may perhaps exceed the interest of an active life. Therefore, as in the beginning of my troubles, I made offer to your Majesty to take pains in the story of England, and in compiling a method and digest of your laws, so have I performed the first, which rested but upon myself in some part, and I do in all

humbleness renew the offer of this latter, which will require help and assistance to your Majesty, if it shall stand with your good pleasure to employ my service therein." It does not appear that the King took any effectual steps to promote the object which Bacon had so greatly at heart.

The object of this intended reform is nowhere better described than by Sir Edward Coke, in the Preface to his 4 Rep. "To make one plain and perspicuous law divided into articles, so as every subject may know what acts be in force and what repealed, either by particular or general words, in part or in the whole, or what branches and parts abridged, what enlarged, what expounded, so that each man may clearly know what and how much of them is in force, and how to obey them, it were a necessary work, and worthy of singular commendation ; which his Majesty, out of his great wisdom and care to the commonwealth, hath commanded to be done ; for as they now stand, it will require great pains in reading over all, great attention in observing, and greater judgment in discerning, upon consideration of the whole, what the law is in any one particular point."

It may be conjectured that the House of Commons, in the reign of James I. was anxious to effect a reform in the law, for we find that when a proposal was made that the King should give up the Court of Wards, and receive, instead of its

perquisites, 200,000*l.* per annum, it was resolved, That his Majesty be petitioned to appoint some to make a diligent survey of all the penal laws of this realm, to the end that such of them as are obsolete and unprofitable may be repealed, and that for the better ease and certainty of the subject, all such as are profitable concerning one matter may be reduced into one Statute.—(*Journal of the House of Lords, July 23, 1610.*)

During the commonwealth, there existed a strong public feeling with regard to the amendment of the laws. It was, in fact, a favourable opportunity, (though little improved) for making an attempt at reformation. The attention of the public was turned to the subject by the Pamphleteers of the day, who wrote with violence against the abuses of the law. In a short tract by John Warr, (London, printed for Giles Calvert, 1649,) entitled, "*The Corruption and Deficiency of the Laws of England soberly discovered,*" the popular view taken of the subject may be traced. The principal objections to our legal system are pointed out, and commented upon with considerable acrimony. "Why," it is asked, "are there so many turnings, windings, and delays in the laws of England? Why is our law a meander of intricacies, where a man must have contrary winds before he can arrive at his desired port? Why are so many men destroyed for want of a

formality and punctilio in law ? and who would not blush to behold seemingly grave and learned sages to prefer a letter, syllable, or word, before the weight and merit of a cause ? Why does the issue of most law-suits depend upon the precedents rather than the rule, especially the rule of reason ? Why are persons' lives forfeited by the law upon light and trivial grounds ? Why do some laws exceed the offence ? and on the contrary, other offences are of greater demerit than the penalty of the law ? Why is the law kept in an unknown tongue, and the nicety of it rather countenanced than corrected ? Why are not Courts rejourned into every county, that the people may have right at their own doors, and such tedious journeyings may be prevented ?" It is very evident from these questions, and also from the next chapter of the tract, entitled, "Of the corrupt Interests of Lawyers in the Commonwealth of England," that the writer did not belong to that learned body. It appears that the military at this period threatened to reform our Courts of Justice. "The soldiers," says Howell, "have a great spleen to the lawyers, insomuch that they threaten to hang up their gowns among the Scots' colours in Westminster Hall, *but their chiefest aim is at the regulation of the Chancery*, for they would have the same tribunal to have the power of *Justice and Equity*, as the same apothecary's

shop can afford us purges and cordials."—(*Familiar Letters*, v. iv. l. 38.) Reformers of this kind were much dreaded by Sir Matthew Hale, who has observed, that "twelve red-coats in Westminster Hall were able to do more mischief to the nation than as many thousand in the field." That many strenuous attempts were made during the Commonwealth to effect a complete change in the system of our jurisprudence, may be gathered from Sir Matthew Hale's *Considerations touching the Amendment of Laws*.—"In the late troubles there was very great earnestness, by those who had gotten the power in their hands, for the reformation of things amiss in the law. And I do verily believe that any thing might have been passed in that kind, that prudent and knowing men would have offered. Nay, possibly there was scarce any thing that could have been offered, introductory of any alteration, but would have been greedily swallowed." The chief motive of those who were thus anxious to produce a change in the laws, is thought by Hale to have been a desire thereby to obstruct the King's return, "for upon a sudden all men's properties, estates, and assurances, would have much rested upon such new laws, and have engaged the community, upon account of their common interest, to have supported that power which introduced those laws wherein they were so much concerned." Upon this account he tells us

that the wise and honest men of that day declined forwarding a measure unsuited to the unstable times in which it was proposed: "And therefore, those who were solicited to undertake that business, rather chose to propound such things only to be done as might be done by the power of Courts of Justice, but declined whatsoever required a new law to authenticate it."

Several alterations were made during the Commonwealth, with regard to the administration of the laws. Thus, in the year 1649, an ordinance was passed "for redress of delays and mischiefs arising by writs of error in several cases;" and it was enacted that no execution should be stayed or superseded in any Court of record by any writ of error, after verdict and judgment obtained; and that no judgment should be arrested for want of matter of form.—(*Scobell's Collections of Acts*, p. 72.) In 1650, an ordinance was passed for introducing the English language into all legal proceedings and reports.—(*See Ante*, p. 5.) By an ordinance of the same year, adultery was declared a felony without benefit of clergy, and fornication was made punishable with three months' imprisonment.—(*Scobell*, p. 97.) An insolvent act was also passed in the year 1649, for the relief of all prisoners who should swear that they were not worth 5*l.* beyond their wearing apparel, &c. but their goods and chattels were to remain

liable. (*Scobell*, p. 28.) This appears to be the earliest insolvent act. Another act to the same purpose was passed in the same year. (*Id.* p. 213.)

On the Restoration, this important subject occupied the attention of Sir Matthew Hale, who has made some very excellent observations upon it, in a tract, entitled, "Considerations touching the Amendment of the Laws;" (printed in Mr. Hargrave's Law Tracts.) The temperate wisdom displayed in these remarks, and the candour with which they are written, are well worthy the observation of our modern legislators. After pointing out the great difficulties in which the subject is involved, and the caution and discretion required in attempting a reformation in the law, Hale proceeds to shew the necessity of such a reformation. "We must remember, that laws were not made for their own sakes, but for the sake of those who are to be guided by them, and though it is true that they are, and ought to be, sacred, yet if they be, or are become unuseful for their end, they must either be amended, if it may be, or new laws be substituted, or the old repealed, so it be done regularly, deliberately, and so far forth as the exigency, or convenience, justly demands it; and in this respect the saying is true, *salus populi lex esto* \* \* \*. The stream of things has, as it were, left that channel, and he that thinks a state can be exactly steered by the same



laws in every kind, as it was two or three hundred years since, may as well imagine, that the clothes that fitted him when he was a child, shall serve him when he is grown a man. The matter changeth the custom; the contracts, the commerce; the dispositions, educations, and tempers of men and societies, change in a long tract of time; and so must their laws in some measure be changed, or they will not be useful for their state and condition. And besides all this, as I before said, time is the wisest thing under heaven. These very laws, which at first seemed the wisest constitution under heaven, have some flaws and defects discovered in them by time. As manufactures, mercantile arts, architecture, and building, and philosophy itself, receive new advantages and discoveries by time and experience, so much more do laws, which concern the manners and customs of men."

How different are the views of Sir Matthew Hale from those of some of our modern lawyers, who see nothing but danger in departing from the path marked out for us by "the wisdom of our ancestors." The reluctance of the lawyers to take part in any scheme calculated to alter and improve the system of our jurisprudence, has too often thrown the task into hands not altogether fitted for the conduct of it; an evil which is remarked by Sir Matthew Hale. "The amendment

of things amiss, timely, by knowing, able, and judicious men, that understand their business, may do very much good, and prevent very much evil that may otherwise ensue: and when the business is begun by such hands, it may possibly be too late to allay it. And although it may be true, that as the legislative power is established there be many reserves to prevent or stop such an inundation, yet we know not how high the public necessities of supplies may arise, considering our many great undertakings in the kingdom; and it is no new thing to observe very hard and unreasonable terms granted as the price and purchase of supplies, when they cannot be had upon easier terms. *And it will have this plausible pretence, that the judges and lawyers will do nothing to the laws, and therefore it shall be done by other hands.* Such a humour would be more easily prevented by a wise and reasonable undertaking in this kind, which would not be so easily diverted or allayed, if once it should be flying." Hale considered the period at which he was writing well adapted for attempting the reformation which he had in view. "But now things are settled upon their right basis, and the Parliament returned to its original constitution, the season, for aught I know, may be well enough for such an enterprise."

In attempting to carry his projects into effect, Sir Matthew Hale had, doubtless, a struggle with

the bigotted lawyers of his day, who discovered in every change a destructive innovation. Thus the abolition of the military tenures, a measure which had been long called for by the alterations in the state of society, was strongly disapproved of by Sir Francis North. "He thought," says his brother, "the taking away of the tenures *a desperate wound to the liberties of the people of England*, and must, by easy consequence, procure the establishment of an army."

In the reign of Queen Anne, the subject of amending the law attracted the attention of Burnet, amongst others, who, in the History of his own Times, has thus alluded to it: "There are two things of a public nature, which deserve the care of a Parliament; the one must begin in the House of Lords, and the other in the House of Commons. The Law of England *is the greatest grievance of the nation*, very expensive and dilatory. There is no end of suits, especially when they are brought into Chancery. It is a matter of deep study to be exact in the law; great advantages are taken upon inconsiderable errors; and there are loud complaints of that which seems to be the chief security of property, I mean juries, which are said to be much practised upon. If a happy peace gives us quiet to look to our own affairs, there cannot be a worthier design undertaken, than to reduce the law into method, to di-

gest it into a body, and to regulate the Chancery, so as to cut off the tediousness of suits, *and, in a word, to compile one entire system of our laws.* The work cannot be undertaken, much less finished, but by so great authority, as at least an address from the House of Lords to the Queen.

“ Nothing, after the war is happily ended, can raise the glory of her reign more than to see so noble a design set on foot in her time. This would make her name sacred to posterity, which would sensibly feel all the taxes they have raised fully repaid them, if the law were made shorter, clearer, more certain, and of less expense.” (*Burnet, vol. iv. p. 445.*)

We are told by Barrington, (*Observations on the Ancient Statutes, p. 563,*) that towards the middle of the last century, Sir William Young moved for a Committee of the House of Commons, for the purpose of revising the Criminal Law, and was himself appointed chairman; but that nothing material was either done or resolved upon.

At length a select committee has been appointed, “ to consider the expediency of consolidating and amending the Criminal Law of England,” and no rational doubt can be entertained of their reporting in favour of such a measure. In what manner the reform is to be effected is a most important and difficult question. Lord Ba-

con recommends the appointment of commissioners, to be nominated by both Houses of Parliament. Sir Matthew Hale is of opinion, that the bills should be prepared by the Judges and other "Sages," who should be examined respecting them before the Committees of both Houses : and a third mode is proposed by Mr. Daines Barrington. (*Ancient Statutes, p. 563.*) The success of the attempt will greatly depend upon the character of the parties who are entrusted with the execution of it; and it is to be hoped, that Parliament will display the greatest prudence in the selection of them.

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"Sir Thomas More, on the day that he was beheaded, had a barber sent to him, because his hair was long, which was thought would make him more commiserated by the people. The barber came to him, and asked him, 'whether he would please to be trimmed?' 'In good faith, honest fellow,' saith Sir Thomas, 'the king and I have a suit for my head; and till the title be cleared, I will do no cost upon it.'" (*Bacon's Apothegms.*)

#### THE GOOD JUDGE.

"The good advocate, whom we formerly described, is since, by his prince's favour, and his

own deserts, advanced to be a judge, which his place he freely obtained, with Sir Augustine Nicolls, whom King James used to call, 'the Judge that would give no money; otherwise, they that buy justice by wholesale, to make themselves savers must sell it by retail.'

"He is patient and attentive in hearing the pleadings on both sides, and hearkens to the witnesses, though tedious. He may give a waking testimony, who hath but a dreaming utterance; and many country people must be impertinent, before they are pertinent, and cannot give evidence about a hen, but first they must begin with it in the egge. All which our judge is contented to hearken to.

"He meets not a testimony half way, but stayes till it come at him. He that proceeds on half evidence, will not do quarter justice. Our judge will not go till he is led. If any shall brow-beat a pregnant witsesse, on purpose to make *his* proof miscarry, he checketh them, and helps the witsesse that labours in his delivery. On the other side, he nips those lawyers, who, under a pretence of kindnesse to lend a witsesse some wordes, give him new matter, yet clean contrary to what he intended.

"Having heard with patience, he gives sentence with upwritenesse. For when he put on his robes, he put off his relation to any; and, like

Melchisedech, becomes without pedigree. His private affections are swallowed up in the common cause, as rivers lose their names in the ocean. He, therefore, allows no noted favourites, which cannot but cause multiplication of fees, and suspicion of by-ways.

“ He silences that lawyer who seeks to set the neck of a bad cause, once broken, with a definitive sentence, and causeth that contentious suits be spued out, as the surfets of Courts.

“ He so hates bribes, that he is jealous to receive any kindnesses above the ordinary proportion of friendship, lest, like the sermons of wandering preachers, they should end in begging. And surely integrity is the proper portion of a judge. Men have a touch-stone whereby to try gold, but gold is the touch-stone whereby to trie men. It was a shrewd gird which Catulus gave the Roman Judges for acquitting Clodius, a great malefactor, when he met them going home well attended with officers : ‘ You do well (quoth he) to be well guarded for your safety, lest the money be taken away from you, you took for bribes.’ Our judge also detesteth the trick of mendicant Friars, who will touch no money themselves, but have a boy with a bag to receive it for them. When he sits upon life, in judgment he remembreth mercy. Then, (they say) a butcher may not be of the jurie; much lesse let him be a judge. Oh,

let him take heed how he strikes, that hath a dead hand. It was the charge Queen Marie gave to judge Morgan, Chief Justice of the Common Pleas, that notwithstanding the old errour amongst judges did not admit any witness to speake, or any other matter to be heard in favour of the adversary, her Majesty being party; yet her Highnesse' pleasure was, that whatsoever could be brought in the favour of the subject should be admitted and heard. If the cause be difficult, his diligence is the greater to sift it out. For though there be mention, (Psalm xxxvii. 6.) of righteousness as cleare as the noon day, yet God forbid that innocency, which is no clearer than twilight, should be condemned. And seeing one's oath commands another's life, he searcheth whether malice did not command that oath: yet when all is done, the judge may be deceived by false evidence. But blame not the hand of the diall, if it points at a false howre, when the fault's in the wheels of the clock which direct it, and are out of frame.

“The sentence of condemnation he pronounceth with all gravity. 'Tis best when steeped in the judge's tears. He avoideth all jesting on men in misery: easily may he put them out of countenance, whom he hath power to put out of life. Such as are unworthy to live, and yet unfitted to die, he provides shall be instructed. By God's mercy, and good teaching, the reprieve of their



bodies may get the pardon of their souls, and one day's longer life for them here may procure a blessed eternity for them hereafter, as may appear by this memorable example. It happened about the year 1556, in the town of Weissenstein, in Germany, that a Jew, for theft he had committed, was in this cruel manner to be executed: He was hanged by the feet, with his head downwards betwixt two dogs, which constantly snatched and bit at him. The strangeness of the torment moved Jacobus Andreas (a grave, moderate, and learned Divine, as any in that age) to go to behold it. Coming thither, he found the poore wretch, as he hung, repeating verses out of the Hebrew psalms, wherein he cried out to God for mercy. Andreas, hereupon, took occasion to counsell, to trust in Jesus Christ, the true Saviour of mankind. The Jew, embracing the Christian faith, requested but this one thing, that he might be taken down and be baptised, though presently after, he were hanged again, (but by the neck, as Christian malefactors suffered) which was accordingly granted him.

“He is exact to do justice in civill suits betwixt sovereigne and subject. This will most ingratiate him with his Prince at last. Kings neither are, can, nor should be, lawyers themselves, by reason of higher state employments, but herein they see with the eyes of their judges, and at last

will break those spectacles which, (in point of law,) shall be found to have deceived them.

“ He counts the rules of state and the laws of the realm mutually support each other. Those who made the laws to be not onely disparate, but even opposite terms to maximes of government, were true friends neither to laws nor government. Indeed, *Salus Reip.* is *charta maxima* : extremity makes the next the best remedy. Yet though hot waters be good to be given to one in a swoond, they will burn his heart out who drinks them constantly when in health. Extraordinary courses are not ordinarily to be used, but when enforced by absolute necessity.

“ And thus we leave our good judge to receive a just reward of his integrity, from the Judge of Judges, at the last assize of the world.” (*Fuller's Holy State*, p. 270.)

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“ Mr. Bacon, after he had been vehement in parliament against depopulation and inclosures, and that soon after the queen told him, that she had referred the hearing of Mr. Mill's cause to certain counsellors and judges; and asked him how he liked it? answered, ‘ Oh, Madam, my mind is known; I am against all inclosures, and especially against inclosed justice.’ ” (*Bacon's Apothegms.*)

“ SIR Edward Coke being vehement against the two Provincial Councils of Wales, and the North, said to the King, ‘ There was nothing there but a kind of confusion and hotch-potch of justice : one while they were in a Star-chamber ; another while a King’s Bench ; another, a Common Pleas ; another, a Commission of Oyer and Terminer.’ His Majesty answered, ‘ Why, Sir Edward Coke, they be like houses in progress, where I have not, nor can have, such distinct rooms of state, as I have here, at Whitehall, or at Hampton Court.’ ” (*Bacon’s Apothegms. See “The Case of the Lords Presidents of Wales and York.” 12 Report, 50.*)

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“ When Sir Nicholas Bacon, the Lord Keeper, lived, every room in Gorhambury was served with a pipe of water, from the ponds distant about a mile off. In the life-time of Mr. Anthony Bacon, the water ceased ; after whose death, his Lordship, coming to the inheritance, could not recover the water without infinite charge. When he was Lord Chancellor, he built Verulam-house, close by the pond-yard, for a place of privacy when he was called upon to dispatch any urgent business. And being asked, why he built that house there ? his Lordship answered, ‘ That since he could not carry the water to his house, he would carry his house to the water.’ ” (*Bacon’s Apothegms.*)

## THE LICENSING OF LAW BOOKS.

THE practice of referring all law books to the chancellor and judges for a license was a consequence of the Licensing Acts; but continued to exist long after those acts had expired, in the reign of William III. In James II.'s time, an order was issued to the Stationers' Company, "That all books of and concerning the common laws of the realm are to be licensed by the lord chancellor, the lord keeper of the great seal of England, the lords chief-justices, chief-baron, or one or more of them, or by their or one or more of their appointments." Even at the time when the illegal patent for the printing of all law books was in existence, the patentees could not print law books without the judges' license. (*Curt. Rep.* 89.) The disadvantages of this law-patent are pointed out by Mr. Viner, in *Abridgment*, (*vol.* 17, *p.* 209.) "These books," says he, "are never perused by the learned before they are put to the press, and if *the Maxims of Tom Thumb* or *Dr. Doolittle* came to their press under the title of law, I dare undertake the patentees would make no scruple of printing them as such." The rule with regard to licensing law books formerly was, "that no book could be cited in court which had not been licensed by the judges." "Mr. Cartwright cited a case in *2 Mod.* 97, to the contrary

To which Holt, chief-justice, *in irâ*, said, that no books ought to be cited at the bar but those which were licensed by the judges." (1 *Ld. Raym.* 537.) One of the earliest reporters who ventured to break through this custom was Tracy Atkyns, who published Reports *tempore* Lord Hardwicke, which, although not licensed by the judges, were cited by Lord Mansfield. (See 1 *Black. Rep.* 653, and the *Preface to Atkyns' Rep.*) Mr. Justice Foster also published his Reports without obtaining the sanction of the judges; an example which was soon afterwards followed by Sir James Burrow, who has stated his reasons for so doing in his Preface. "Licenses by the chancellor and the judges," he observes, "proceed upon the character of the reporter only, without saying a word of the work itself, or that the licensers ever saw it. Such licenses (to allow and approve of the printing and publishing) took their rise from the necessity of a license to print, as the law formerly stood, and have continued in the same form of words (without any meaning) since the reason of them has ceased." It appears that the judges themselves were anxious to abolish this unmeaning ceremony. "I have been assured," says Sir James Burrow, in the same preface, "that some now possessed of judicial offices have declared, that they never would sign one, because it hangs out false colours, and misleads those who think

it gives the least approbation or authority to the work." "The same form of license and testimonial," says Mr. Douglas, "continued in use till not many years ago, when, as the one had become unnecessary, and the other was only a general commendation of the writer, and no voucher for the merit of the work, the judges, I believe, came to a resolution not to grant them any longer, and accordingly the more recent reports have appeared without them." (*Pref. to Dougl. Rep. iii. and see his Introduction to Election Cases, p. 37.*)

It appears to have been formerly usual for the writer of a law book to present a copy to each of the judges, a custom which the editor of Sir William Blackstone's Reports is blamed for having omitted. (*See the Character of Sir W. Blackstone, p. 100.*) Sir James Burrow makes a formal excuse for his omission of the practice of presenting copies to his friends. "I hope likewise for another favour from all who have honoured me with their acquaintance, which is, that they will be so good as to excuse my not sending them books; such a number have a right to expect presents, if I make any, that I have been advised to make none; it is not just that I should lose by the pains I have taken for the service of the profession; I am not solicitous to gain."

## INTEGRITY OF THE JUDGES IN ELIZABETH'S REIGN.

“ It is very observable,” says Lord Clarendon, in speaking of the opinions of the judges relative to ship-money, “ that in times when the prerogative went highest, never any court of law, very seldom any judge, or lawyer of reputation, was called upon to assist in any act of power.” The consequence of this forbearance was, that the judges, in the earlier periods of our history, seldom interfered in political matters, and it was not until the reign of James I. that the system of rendering the bench subservient to the politics of the court was introduced. There is an instance, indeed, of an attempt made by Elizabeth to overawe the judges, who had the firmness to offer a successful resistance to the commands of their imperious mistress. Having created a new office in the Common Pleas, she bestowed it upon Richard Cavendish, one of her servants, and commanded the judges to admit him. This they delayed to do, alleging, that the prothonotaries claimed a right to perform the duties of the office. Upon this, her Majesty dispatched a severe letter to them, commanding them to shew the reasons of their contempt and disobedience, to the Lord Keeper and the Earl of Leicester. Which the judges did, alleging the grounds above mentioned. Not contented with this, the queen sent a peremp-

tory message to admit Cavendish, adding, that if the others were put out, they were rich and able men, and that her courts of justice were open, where they might demand their rights,—that this was not to take away their right, but to put them to their action. The judges humbly answered, That the queen had taken her oath for the execution of justice according to law,—that they did not doubt but that when her majesty was informed that it was against law, she would do what befitted her ; for their parts, they had taken an oath to God, to her, and the commonwealth, and if they should do it without process of law before them, and upon her command put the others out of possession, though the right remained to them, it were a breach of their oaths, and, therefore, if the fear of God were not sufficient, they told her, that the punishment that was inflicted upon their predecessors for breach of their oaths, (citing the case of Thorpe in Richard II.'s time,) might be sufficient warning to them. The queen, upon hearing the reasons, was satisfied, and her judges heard no more of the business. (*See 1 And. Rep. 152, and 3 How. State Trials, 128.*) In the succeeding reign, all the judges, with the exception of Sir Edward Coke, displayed a most pusillanimous spirit upon an occasion similar to the present, an account of which may be found in another part of these volumes.



## THE BLUE LAWS OF CONNECTICUT.

Many very curious documents are preserved amongst the archives of the towns in the United States, which were the seats of the early settlers from this country. The peculiar opinions which these people, who were often very strict puritans, carried with them to their new abodes, are visible in the strange laws which they enacted, and in the reports of their judicial proceedings, still in existence. The code of 1650, being a compilation of the earliest laws and orders of the General Court of Connecticut, with some extracts from the laws and judicial proceedings of Newhaven Colony, commonly called Blue Law, was lately published, in a small volume, at Hartford, U. S. from which the following cases are extracted. The puritanical strictness of some of these decisions is highly amusing.

*“ A Court holden July 1, 1640.*

“ Thomas Parsons and John ———, servants to Elias Parkmore, were whipped for their sinful dalliance and folly with Lydia Browne.

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“ John Lobell, the miller, was whipped for sinful dalliance with a little wench of Goodman Hall's.

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“ Goodman Hunt and wife, for keeping the

councils of the said William Hardinge, baking him a pastry and plum-cakes, and keeping company with him on the Lord's day, and she suffering Hardinge to kiss her, they being only admitted to sojourn in this plantation on their good behaviour, were ordered to be sent out of this town, within one month from the date hereof; yea, in a shorter time if any miscarriage be found in them.

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“ Edmund Dorman, plaintiff, entered an action of slander or defamation against Jeremiah Johnson, defendant. The plaintiff informed against him, that he had heard that J. Johnson had reported at John Olvarde's house, that he heard Dorman at prayer in a swamp, for a wife, and there were other circumstances of scoffing, &c.

“ The defendant was asked, whether he granted the thing, or denied. The defendant desired proof, and that the witnesses might speak apart; John Olvarde was first called, who testified, that Johnson being at his house, he heard him say that he heard Edmund Dorman at prayer in a swamp, (by John Downes's,) for a wife, and said, ‘ Lord, thou knowest my necessity, and canst supply it; Lord, bend and bow her will and make her sensible of my condition or necessity.’

“ Stephen Bradley being called, also testified the same thing. The defendant being asked what he had got to say for himself, said he thought

Bradley did it out of revenge ; but he was told he must prove him a false person upon record, or perjured, or that he doth it out of revenge at this time. The defendant further said, that he did expect some other persons that were present at John Olvarde's, would have been here, therefore did refuse to make his defence further at this time, and desired that the witnesses might not be sworn.

“ Then Jeremiah was told, that it is a fearful thing to come to that height of sin as to sit in the seat of the scorner. Therefore the Court told him they should defer this business, and warned him to attend the next particular court to answer thereto.”

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In an American paper, a copy is given of some of the early Blue Laws of Connecticut, many of which, especially upon points of religion, are of a most singular character. Thus :—

“ No one shall run of a sabbath day, or walk in his garden or elsewhere, except reverently to and from church.

“ No one shall travel, cook victuals, make beds, sweep houses, cut hair, or shave, on the sabbath day.

“ No woman shall kiss her child on sabbath or fasting days.

“ No one shall read common prayer, keep Christmas or saint's day, make minced pies, dance,

play cards, or play on any instrument of music, except the drum, the trumpet, and the jew's-harp.

“ No one shall court a maid without first obtaining the consent of her parents ; five pounds penalty. for the first offence, ten for the second, and for the third, imprisonment during the pleasure of the court.

“ Every male shall have his hair cut round according to a cap.”

#### BURKE AND LORD THURLOW.

During the discussions on the regency question, in 1788, Lord Thurlow is said to have trimmed between the contending parties with considerable skill. In alluding to the King's afflicting illness, his Lordship employed some very pathetic expressions in the House of Peers, which occasioned the following sarcastic observations from Burke.—

“ The theatrical tears then shed were not the tears of patriots for dying laws, but of lords for their expiring places ; the iron tears which flowed down Pluto's cheek rather resembled the dismal bubbling of the *Styx*, than the gentle murmuring streams of Aganippe ; in fact, they were tears for his majesty's bread, and those who shed them would stick by the King's loaf, as long as a single cut of it remained, while even a crust of it held together.” (*Prior's Life of Burke*, p. 334.)

LORD THURLOW'S DEFENCE OF HIMSELF IN THE  
HOUSE OF PEERS.

“ At times, *Lord Thurlow* was superlatively great. It was the good fortune of the Reminiscent, to hear his celebrated reply to the Duke of Grafton, during the inquiry into Lord Sandwich's administration of Greenwich hospital. His Grace's action and delivery, when he addressed the house, were singularly dignified and graceful; but his matter was not equal to his manner. He reproached Lord Thurlow with his plebeian extraction, and his recent admission into the peerage; particular circumstances caused Lord Thurlow's reply to make a deep impression on the Reminiscent. His Lordship had spoken too often, and began to be heard with a civil but visible impatience; under these circumstances he was attacked in the manner we have mentioned. He rose from the woolsack, and advanced slowly to the place from which the chancellor generally addresses the house; then, fixing on the duke the look of Jove, when he grasps the thunder:— “ I am amazed,” he said, in a level tone of voice, “ at the attack which the noble duke has made on me. Yes, my Lords,” considerably raising his voice, “ I am amazed at his grace's speech. The noble duke cannot look before him, behind him, or on either side of him, without seeing some

noble peer who owes his seat in this house to his successful exertions in the profession to which I belong. Does he not feel that it is as honourable to owe it to these, as to being the accident of an accident?—To all these noble Lords the language of the noble Duke is as applicable and insulting as it is to myself; but I do not fear to meet it single and alone. No one venerates the peerage more than I do; but, my lords, I must say that the peerage solicited me,—not I the peerage. Nay more,—I can say, and will say, that as a peer of Parliament,—as speaker of this right honourable house,—as keeper of the great seal,—as guardian of his majesty's conscience,—as lord high chancellor of England,—nay, even in that character alone in which the noble duke would think it an affront to be considered, but which character none can deny *me*—as a *man*, I am at this moment as respectable—I beg leave to add, I am at this time as much respected, as the proudest peer I now look down upon." The effect of this speech, both within the walls of Parliament and out of them, was prodigious. It gave Lord Thurlow an ascendancy in the house which no chancellor had ever possessed; it invested him in public opinion, with a character of independence and honour, and this, though he was ever on the unpopular side of politics, made him always popular with the people."—(*Butler's Reminiscences*, p. 199.)

**SIR EDWARD COKE AND THE CASE OF COMMENDAMS.**

The firm conduct of Sir Edward Coke, in the dispute between King James and the Judges, respecting Commendams, is highly creditable to the Chief Justice. The King imagining that his interests might probably be affected in the course of a suit which was then in progress in the King's Bench, directed the attorney-general to write a letter to Sir Edward, commanding the judges not to proceed in the cause without advising previously with his majesty. By the advice of Coke, a letter was addressed to the King, signed by all the twelve judges, stating it to be against law and their judicial oaths to forbear doing justice between the parties, and that they had therefore proceeded to a decision according to their duty. The King, after answering the arguments of his judges by letter, summoned them to appear before him at the Council Table; where, after much dispute and many reprimands, the following question was put to them. "Whether in a case where the King believed his prerogative or interest concerned, and required the judges to attend him for their advice, they ought not to stay proceedings till His Majesty had consulted them?" The other judges yielded, acknowledging it to be their duty to do so; but Coke answered, "that when that case should be he would do that which should

be fit for a judge to do." This noble reply is most creditable to the memory of Sir Edward Coke. (*See his Life in the Biog. Britt., and see Coll. Jurid. i. 17.*)

THE BILLINGSGATE OF THE LAW.

The Law Reports contain an almost infinite variety of exprobatory epithets, some of which, in the older books, are of an amusing character. In *Siderfin*, (p. 327,) there is a curious decision respecting slanderous words applied to an attorney: "*He hath no more law than Mr. C.'s bull.*" Being spoken of an attorney, the court inclined that they were actionable, and that the plaintiff should have the judgment; though it was objected, that the plaintiff had not declared that Mr. C. had a bull." In the Report of the same case, (*in 2 Keble, 202.*) Keeling, C. J., is said to have over-ruled this objection, "for if C. had no bull, the *scandal is the greater.*" So it has been adjudged, that to say of a lawyer that he has no more law than a goose, is actionable, (*Sid. 127;*) to which a quære is added, whether it be actionable to say, "He hath no more law than the man in the moon."

There are many curious decisions respecting words imputing witchcraft, which clearly show how very prevalent that superstition was in the seventeenth century. The malign influence of the



sorcerer seems to have gained the greatest credence among the rustic part of the population, as most of the cases impute witchcraft to the charming of cattle.—Thus, in *Sid.* 424: “You enchanted my bull, and made him run mad about the common.” And again, in 1 *Rol. Ab.* 45: “Thou art a witch; I will make thee say, God save my mare; I was forced to have my mare charmed for thee.” It is said in this case, that in the country where the words are spoken, it is usual for men when they pass by cattle to say, “God save them,” otherwise they are taken for witches. In *Cro. Eliz.* 312, the words were, “He is a witch, and bewitched my husband to death, for he made his picture in wax, and roasted it every day by the fire, until he roasted my husband to death.” It was objected, that the reason given shewed the charge to be “a vain conceit;” but the court held the words to be “very heinous,” and adjudged them actionable. If a man says to a woman, that she sacrificed one of her children to the devil, to the intent to bewitch his mother, an action on the case lay, for invocation of spirits was punishable by the Statute of Witches. This Statute of Witches was long a disgrace to our law; but, by the 9 *Geo. II.* c. 5, §. 3; no prosecution shall lie against any person for witchcraft, sorcery, enchantment, or conjuration, or for charging another with such offence.

Many abusive epithets occur in these cases, the very meaning of which is now lost. Thus it is laid down, that "If a man says of a counsellor of law in the North, Thou art a *daffa-down-dilly*, an action lies, with an averment, that the words signify, that he is an ambidexter." (1 *Rol. Ab.* 55.)

There prevailed at one time an absurd rule in actions of slander, that the words should always be taken in the mildest sense which could be put upon them, and that if by any intendment they could have been innocently spoken, they should not be held actionable. One of the most singular instances of the application of this rule is to be found in *Cro. Jac.* 181. The words were "H. struck his cook on the head with a cleaver, and cleaved his head; the one part lay on the one side, and the other on the other;" and they were adjudged not actionable, *it not being averred unless argumentatively, that the cook was killed.* So, where the words were, "He is a great rogue, and deserves to be hanged as well as Gale, who was condemned to be hanged at Newgate sessions;" they were adjudged not actionable, for they only shewed the defendant's opinion, and perhaps, he might not think that Gale deserved hanging. (*T. Jones*, 157.) It is scarcely necessary to add, that this rule of law has been long abandoned, and that now all words are taken in their ordinary sense.

Those who are desirous of seeing a very com-

plete collection of vituperative expressions, (not indeed of the most decent kind,) may find it in *Viner's Abridgment*, title "Actions for Words."

#### LEGAL POETS.

It must be confessed, that the study of the law is far from being favourable to the growth of a poetical genius. The laurel will not flourish within the precincts of Westminster-hall; and yet there are numerous instances of lawyers who have attempted to be poetical,—an attempt in which, however, very few of them have succeeded. Lord Clarendon at one period sacrificed to the Muses; and even Sir Matthew Hale was ambitious of a poet's fame. It must be admitted that Sir Matthew's verses do not possess much merit; but it may be doubted, whether they deserve the severe censure of Roger North. "He published much in speculative devotion, part prose, part verse, and the latter hobbled so near the style of the other, as to be distinguished chiefly by being worse." (*Life of Lord Guilford*, i. p. 116.) Aubrey tells us, that "Lord Bacon was a good poet, but concealed, as appears by his Letters."—(*Walp. Cat. Royal Authors*, ii. p. 205-208.) Sir Edward Coke was much attached to the practice of citing from the poets, and boasts that he has referred to Virgil three hundred times. "It standeth well," he observes "with the gravity of our lawyers to cite verses."

Lord Harcourt, Chancellor in the reign of Queen Ann, was really no mean poet, and has left some excellent verses addressed to Pope on the publication of his works. Lord Somers also was the author of some very tolerable translations from the Latin Classics, and other poems. (See *his Life*, by Mr. Maddock, p. 95.) Every one remembers Pope's praise of Lord Mansfield:

“How sweet an Ovid was in Murray lost.”

We are told also, that an extemporaneous addition to Lord Lyttleton's poem of *Virtue and Fame*, by Lord Chancellor Hardwicke, had so much merit as to induce the former to observe, “If your Lordship can write such verses extempore, it is well for other poets that you chose to be Lord Chancellor rather than Laureate.” His Lordship's talent is said to have descended to his son, the “all-accomplished” Charles Yorke, who has left several proofs of a fine poetical talent. Some verses addressed by him to his sister, Miss Yorke, afterwards Lady Anson, may be found in the Annual Register for 1770. “He used to call himself,” says Dalrymple, in the Preface to his Memoirs, “a fugitive from the Muses.” Sir John Davies, a celebrated lawyer in the reign of James I. was a poet of very considerable merit. His poem on the Immortality of the Soul, entitled *Nosce te ipsum*, is said, by a very competent judge, to be one of

the closest, the most ingenious, and at the same time the clearest pieces of reasoning ever couched in rhyme. (*See Miss Aikin's Memoirs of James I. v. i. p. 93.*) Lord Chancellor Hatton, whose saltatory excellences are celebrated by Gray, is said to have been addicted to the Muses, and to be the undoubted author of the four acts of the old tragedy of Tancred and Gismunda. (*Hist. of Engl. Poetry, iii. 97.*) This play is supposed to have been the joint production of five students of the Inner Temple, and was acted by that society before the queen in 1568, but not printed till 1592. It is contained in the second edition of Dodsley's *Old Plays*.

Sir William Blackstone was very much attached to poetical pursuits. His verses on the death of Frederick, Prince of Wales, father of George III., printed with the signature of James Clithero, are esteemed one of the best compositions in the Oxford Collection of 1751. (*See Preface to Blackstone's Rep. p. vi. and Catalogue of the Works of Sir William Blackstone, p. 13.*) The most pleasing of Sir William's poems is that entitled,

THE LAWYER'S FAREWELL TO HIS MUSE.

As, by some tyrant's stern command,  
A wretch forsakes his native land,  
In foreign climes condemn'd to roam  
An endless exile from his home ;

Pensive he treads the destined way,  
And dreads to go, nor dares to stay ;  
Till on some neighbouring mountain's brow  
He stops, and turns his eyes below ;  
There, melting at the well-known view,  
Drops a last tear, and bids adieu :  
So I, thus doom'd from thee to part,  
Gay Queen of Fancy, and of Art,  
Reluctant move with doubtful mind,  
Oft stop and often look behind.

Companion of my tender age,  
Serenely gay, and sweetly sage,  
How blithsome were we wont to rove  
By verdant hill, or shady grove,  
Where fervent bees with humming voice  
Around the honey'd oak rejoice,  
And aged elms, with awful bend,  
In long cathedral walks extend !  
Lull'd by the lapse of gliding floods,  
Cheer'd by the warbling of the woods,  
How blest my days, my thoughts how free,  
In sweet society with thee !  
Then all was joyous, all was young,  
And years unheeded roll'd along :  
But now the pleasing dream is o'er,  
These scenes must charm me now no more,  
Lost to the field, and torn from you—  
Farewell !—a long, a last adieu !

The wrangling courts, and stubborn law,  
 To smoke, and crowds, and cities draw ;  
 There selfish faction rules the day  
 And pride and avarice throng the way ;  
 Diseases taint the murky air,  
 And midnight conflagrations glare ;  
 Loose revelry and riot bold  
 In frightened streets their orgies hold ;  
 Or when in silence all is drown'd,  
 Fell murder walks her lonely round ;  
 No room for peace, no room for you—  
 Adieu, celestial Nymph, adieu !

Shakespeare no more, thy sylvan son,  
 Nor all the art of Addison,  
 Pope's heaven-strung lyre, nor Waller's ease,  
 Nor Milton's mighty self must please :  
 Instead of these, a formal band  
 In furs and coifs around me stand,  
 With sounds uncouth, and accents dry,  
 That grate the soul of Harmony.  
 Each pedant sage unlocks his store  
 Of mystic, dark, discordant lore ;  
 And points with tottering hand the ways  
 That lead me to the thorny maze.

There, in a winding, close retreat,  
 Is *Justice* doom'd to fix her seat ;  
 There, fenced by bulwarks of the *Law*,  
 She keeps the wondering world in awe ;

And there from vulgar sight retired,  
Like Eastern Queens, is much admired.

Oh! let me pierce the secret shade  
Where dwells the venerable maid!  
There humbly mark, with reverent awe,  
The Guardian of Britannia's Law;  
Unfold with joy her sacred page,  
(The united boast of many an age,  
Where mix'd, though uniform, appears  
The wisdom of a thousand years,  
In that pure spring the bottom view,  
Clear, deep, and regularly true,  
And other doctrines thence imbibe  
Than lurk within the sordid scribe;  
Observe how parts with parts unite  
In one harmonious rule of right;  
See countless wheels distinctly tend,  
By various laws, to one great end;  
While mighty Alfred's piercing soul  
Pervades and regulates the whole.

Then welcome business, welcome strife  
Welcome the cares, the thorns of life;  
The visage wan, the pore-blind sight,  
The toil by day, the lamp by night,  
The tedious forms, the solemn prate,  
The pert dispute, the dull debate,  
The drowsy Bench, the babbling Hall,  
For thee, fair *Justice*, welcome all!



Thus, though my noon of life be past,  
Yet let my setting sun at last  
Find out the still, the rural cell  
Where sage retirement loves to dwell !  
There let me taste the home-felt bliss  
Of innocence and inward peace ;  
Untainted by the guilty bribe,  
Uncursed amid the harpy tribe ;  
No orphan's cry to wound my ear,  
My honour and my conscience clear ;  
Thus may I calmly meet my end,  
Thus to the grave in peace descend.

CANDOUR OF AN IRISH DEPONENT.

In a very excellent series of articles, entitled "Sketches of the Irish Bar," which have lately appeared in a periodical publication, we meet with the following highly ludicrous statement in the affidavit of a "process-server."—"And this deponent further saith, that on arriving at the house of the said defendant, situate in the county of Galway aforesaid, for the purpose of personally serving him with the said writ, he, the said deponent, knocked several times at the outer, commonly called the Hall-door, but could not obtain admittance ; whereupon this deponent was proceeding to knock a fourth time, when a man, to this deponent unknown, holding in his hands a musket or blunderbuss loaded with balls or slugs,

as this deponent has since heard and verily believes, appeared at one of the upper windows of the said house, and presenting said musket or blunderbuss at this deponent, threatened, 'that if said deponent did not instantly retire, he would send his, this deponent's soul, to *hell*,' *which this deponent verily believes he would have done*, had not this deponent precipitately escaped."

## LORD COKE AND HIS COACHMAN.

When Sir Edward Coke was brought before the Privy Council, and reprimanded for certain supposed errors in his Reports, a singular charge was made against him by the Lord Treasurer: "The Lords having thus far proceeded, the Lord Treasurer told him, that he had one thing more to let him know, that belonged to the Earl Marshall to take notice of, which was, that his coachman used to ride bare-headed before him, which was more than he could any ways assume or challenge to himself, and required him to forbear it for the future. To which the Lord-Chief-Justice answered, that his coachman did it only for his own ease, and not by his commandment." (*Life of Coke, in Biogr. Britt.*)

## BURKE'S OPINION OF LAWYERS.

Burke, who was educated to the bar, appears not to have entertained any very great respect in

his after life for the professors of the law. On the question, whether the impeachment of Warren Hastings abated by the dissolution of parliament in 1790, Burke, Fox, and Pitt maintained that it did not, contrary to the opinion of nearly all the lawyers in the house. "This circumstance drew from Mr. Burke many sarcastic remarks, especially after one of them had remarked, that they were not *at home* in that house, when Mr. Burke said, he believed they were not; 'they were birds of a different feather, and only perched in that house on their flight to another,—only resting their tender pinions there for a while, yet ever fluttering to be gone to the region of coronets; like the Hibernian in the ship, they cared not how soon she foundered, because they were only passengers; their best bower anchor was always cast in the House of Lords.'" In another sentence he expressed a wish to see the country governed by law, but not by lawyers. On the 14th February, when Mr. Erskine, who had already sustained many of his biting sarcasms, complained of the length of the trial, Mr. Burke, after an able defence of the managers, upon whom certainly no blame rested, in the opinions both of the ministry and opposition, asked, "whether the learned gentleman remembered, that if the trial had continued three years, the oppressions had continued or twenty years? Whether, after all, there

were hour-glasses for measuring the grievances of mankind? Or whether those whose ideas never travelled beyond a *nisi prius* cause, were better calculated to ascertain what ought to be the length of an impeachment, than a rabbit who breeds six times in a year, had to judge of the time proper for the gestation of an elephant?" Mr. Fox was equally severe in his strictures upon the legal profession. (*Prior's Life of Burke*, p. 399.) The trial of Warren Hastings, which occupied three years, might, it is said, have been concluded in two months, had the House of Lords sate like an ordinary court of judicature, ten hours a day.

## PERILS OF THE LAW IN IRELAND.

The following animated description of the dangers attending the administration of the law in the sister island, is given by a very clever writer. "The office of a process-server in Ireland, appears to be, indeed, a most perilous occupation, and one that requires no common qualities in the person that undertakes it; he must unite the courage and strength of the common soldier, with the conduct and skill in stratagem of the experienced commander; for woe betide him if he be deficient in either. The moment this hostile herald of the law is known to be hovering on the confines of a Connaught gentleman's domains, (that sacred

territory into which his Majesty's writs have no right to run,) the proud blood of the defendant swells up to the boiling point, and he takes the promptest measures to repel and chastise the intruder : he summons his servants and tenants to a council of war, he stiffens their fidelity by liberal doses of the ' mountain dew,' (illicit whiskey,) they swear they will stand by ' his honour ' to the last. Preparations, as against a regular siege, ensue ; doors and windows are barred ; sentinels stationed ; blunderbusses charged ; approved scouts are sent out to reconnoitre ; and skirmishing parties, armed with cudgels and pitch-forks, are detached along every avenue of approach. Having taken these precautions, the magnanimous defendant shuts himself up in his inmost citadel to await the result. The issue may be anticipated ; the messenger of the law is either deterred from coming near, or, if he has the hardihood to face the danger, he is way-laid, and beaten black and blue for his presumption. If he shows the king's writ, it is torn from him, and flung back in fragments in his face. Resistance, remonstrance, and entreaties are all unavailing ; nothing remains for him but to effect his retreat, if the powers of moving be left him, to the nearest magistrate, not in the interest of the defendant, where, with the help of some attorney that will venture to take a fee against ' his honour,' he

draws up a bulletin of his kicks and bruises in the form of an affidavit, to found a motion 'that another writ do issue,' or as it might be more correctly worded, 'that another process-server do expose himself to as sound a threshing as the last.' "

## HORNE TOOKE AND THE BAR.

The prosecution of Horne Tooke for a libel, in 1777, when he conducted his own defence, appears to have given him a great predilection for the profession of the law. In the year 1779, he applied to be called to the bar by the Benchers of the Inner Temple; but an objection was made to his call, that he had received priest's orders. Upon this occasion three Benchers only, (Sir James Burrow, Baron Mazeret, and Mr. Wood) voted in his favour, while eight voted against him. He repeated the attempt in 1782, when he had six votes in his favour and eight against him. It was subsequently determined, by an aggregate meeting of delegates from the four Inns of Court, that a person in deacon's orders ought not to be called to the bar. It is laid down by Lord Mansfield, (*Doug.* 353,) that all the power of the Inns of Court concerning admission to the bar, is delegated to them from the Judges, and that in every instance the conduct of those societies is subject to the controul of the Judges as visitors. A man-

damus will not lie to compel the Masters of the Bench of an Inn of Court to call a candidate to the bar. From the first traces of the existence of the Inns of Court, no example can be found of the interposition of the Courts of Westminster Hall proceeding according to the general law of the land, but the judges have acted as a domestic forum. (*See also 2 Br. Ch. Rep. 241, and 20 How. State Trials, 689.*)

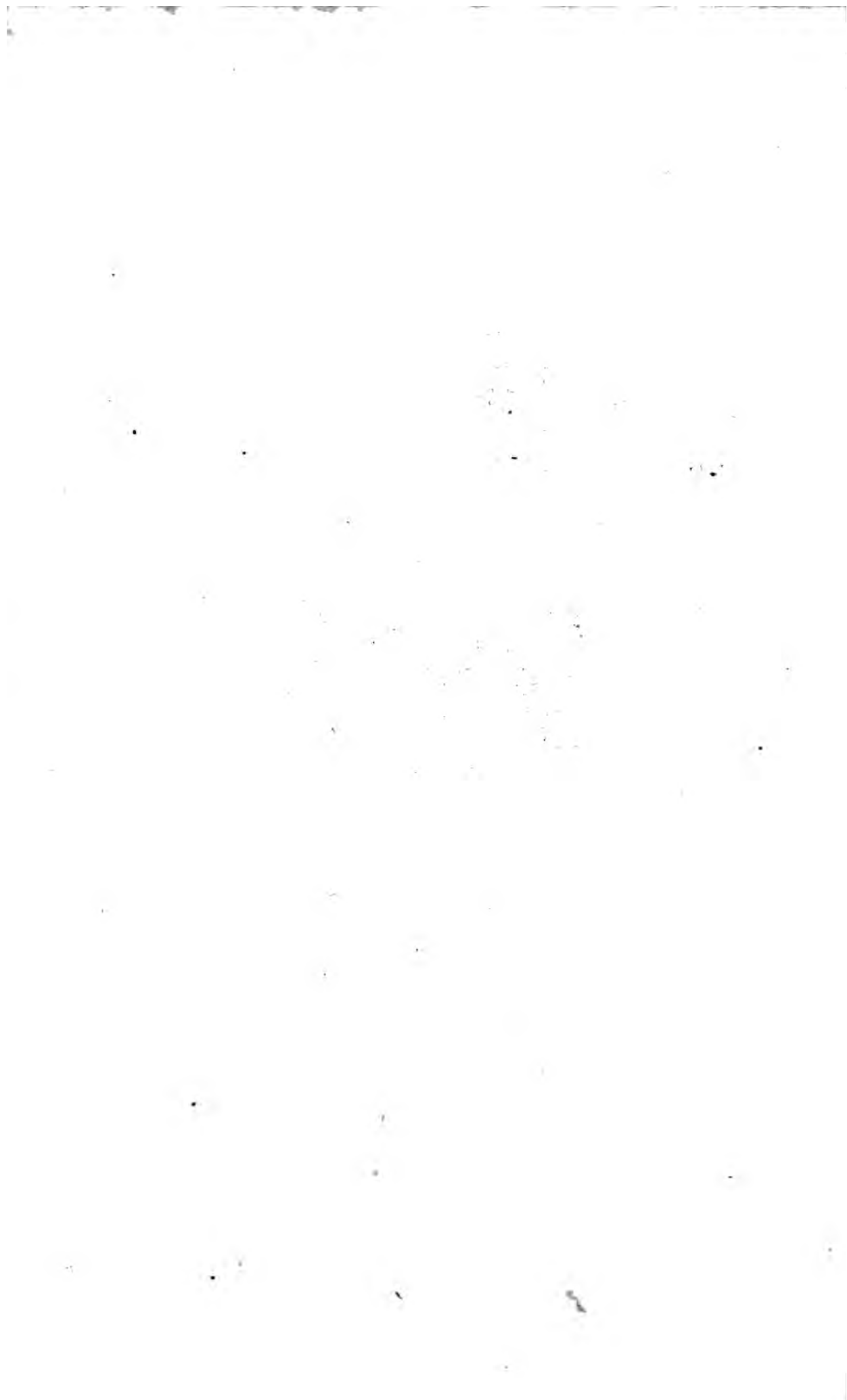
#### QUARRELS BETWEEN COKE AND BACON.

The hostility which existed between these two celebrated men appears to have had its origin in professional rivalry. The seniority of Coke, and his reputation as a lawyer, had raised him to honours of which Bacon was very ambitious, and which he imagined that Coke had prevented him from obtaining, by casting reflections upon his legal acquirements. It is probable also that Coke felt some jealousy at Bacon's great proficiency in other pursuits. The different tempers of the two men, and their very opposite political principles, must likewise have tended to keep open the breach between them. Bacon had endeavoured for some time to obtain the place of Solicitor-General, and attributed his ill-success to the interference of Sir Edward Coke : under this impression, he addressed the following letter to his adversary, at that time Attorney-General :—



**SIR FRANCIS BACON.**





“ Mr. Attorney,

“ I thought it best, once for all, to let you know in plainness what I find of you, and what you shall find of me, to take to yourself a liberty to disgrace and disable my law, my experience, my discretion : what it pleaseth you I pray think of me ; I am one that knows both my own wants and other men's, and it may be perchance that while mine mend, others stand at a stay. And surely I may not endure in public place to be wronged, without repelling the same to my best advantage to right myself. You are great, and therefore have the more enviers, which would be glad to have you paid at another's cost. Since the time I missed the solicitor's place, (the rather, I think, by your means,) I cannot expect that you and I shall ever serve as attorney and solicitor together ; but either to serve with another upon your remove, or to step into some other course : so as I am more free than ever I was from any occasion of unworthy conforming myself to you, more than general good manners, or your particular good usage, shall provoke ; and if you had not been short-sighted in your own fortune, as I think, you might have had more use of me. But that side is passed. I write not this to show my friends what a brave letter I have written to Mr. Attorney ; I have none of those humours, but that I have written is to a good end ; that is,

to the more decent carriage of my master's service, and to our particular better understanding of one another. This letter, if it shall be answered by you in deed and not in word, I suppose it will not be worse for us both; else it is but a few lines lost; which for a much smaller matter I would have adventured. So this being to yourself, I for my part rest, &c."

On his obtaining office, Bacon did not scruple to use every means of rendering himself agreeable to the King, and at the same time exerted all his influence to shake the credit of his old rival, Coke, who had been promoted to the chief seat in the King's Bench. Some account of the manner in which Bacon conducted himself at this time, will be found in another part of these volumes. It is creditable to Sir Edward Coke, that on Bacon's impeachment and disgrace, he made no ungenerous use of his triumph. The differences which existed between Bacon and Coke do not appear to have put an end to all the offices of friendship between them. In the library of Mr. Coke, at Holkham, there exists a presentation copy of the *Novum Organum*, (Edit. Joan. Bell, 1620,) with an inscription in it "To Sir Edward Coke," and at the top of the title-page appear the following words in the hand-writing of Sir Edward:—

“ Edward C. ex dono Authoris :

“ Authori Consilium.

“ Instaurare paras veterum documenta sophorum,  
Instaura leges justitiamque prius.”

The Honourable Charles Yorke, who had seen these lines at Holkham, remarks, in a note to Dr. Birch, preserved in the British Museum, that the verses not only reprove Sir Francis Bacon for going out of his profession, but allude to his character as a prerogative lawyer, and his corrupt administration of the Chancery. It may be observed, that the *Novum Organum* was published in October, 1620, a few months before Bacon's impeachment.

In the title-page of the same book, over the device of the ship passing between Hercules's Pillars, are two English verses, also in the handwriting of Sir Edward Coke, which, though intended to convey a censure upon Bacon, are, in fact, much more discreditable to the writer.

“ It deserveth not to be read in Schools,  
But to be freighted in the Ship of Fools.”

Mr. Yorke supposes, that the conceit in the last line was suggested by a satirical work of Du Bartas, entitled *The Ship of Fools*.

#### THE CHAPTER OF THE DOUBLE MISTRESS.

One of the most amusing mockeries ever written of the solemnity of judicial proceedings, is to

be found in the 13th chapter of the "Memoirs of Martinus Scriblerus," the chapter of the Double Mistress, as it is termed. The grave humour with which the arguments of the civilians are parodied is altogether inimitable. We regret that the grossness of this witty composition prevents us from extracting any part of it into these pages. That circumstance, however, has not prevented two reverend divines, Dr. Warton and the Rev. W. L. Bowles, from inserting this chapter in their editions of the Works of Pope. It is probable, that this portion of the Memoirs of the learned Scriblerus is the joint production of Dr. Arbuthnot and Fortescue Aland, afterwards Master of the Rolls. In one of Ben Jonson's plays, (*Epicene, or the Silent Woman*,) there is likewise a humorous parody of the proceedings of the ecclesiastical courts.

#### LEGAL VULGAR ERRORS.

When the extent and intricacy of our system of law is considered, it cannot be thought surprising, that a number of vulgar errors upon legal questions should exist. Mr. Barrington, in his *Observations on the Ancient Statutes*, has collected a number, which we have transcribed.

"It may, perhaps, be thought singular to suppose, that this exemption from serving on juries is the foundation of the vulgar error, that a sur-

geon or butcher, from the barbarity of their business, may be challenged as jurors. It is difficult to account for many of the prevailing vulgar errors with regard to what is supposed to be law. Such are, that the body of a debtor may be taken in execution after his death; which, however, was practised in Prussia before the present king abolished it by the *Code Frederique*. Other vulgar errors are, that the old statutes have prohibited the planting of vineyards, or the use of sawing-mills; which last notion, I should conceive to have been occasioned by 5 and 6 *Edw. VI. cap. 22*, forbidding what are called *gig-mills*, as they are supposed to be prejudicial to the woollen manufacture. There is likewise an act of 23 *Eliz. cap. 5*, which prohibits any iron-mills within two-and-twenty miles of London, to prevent the increasing dearness of wood for fuel. As for sawing-mills, I cannot find any statute which relates to them; they are, however, established in Scotland, to the very great advantage both of the proprietors and the country.

“ It is supposed likewise to be penal to open a coal-mine, or to kill a crow, within five miles of London; as also to shoot with a wind-gun, or to carry a dark-lantern. The first of these I take to arise from a statute of Henry the Seventh, prohibiting the use of a cross-bow; and the other from Guy Fawkes’s dark-lantern in the powder-

plot. To these vulgar errors may be added, the supposing that the king signs the death-warrant, (as it is called,) for the execution of a criminal ; as also, that there is a statute, which obliges the owners of asses to crop their ears, lest the length of them should frighten the horses which they meet on the road.

“ To these vulgar errors may be, perhaps, added, the notion, that a woman’s marrying a man under the gallows will save him from the execution. This, probably, arose from a wife having brought an appeal against the murderer of her husband, who, afterwards repenting the prosecution of her lover, not only forgave the offence, but was willing to marry the appellee. It is also a prevailing error, that those who are born at sea belong to Stepney parish. I may likewise add to these, that any one may be put into the crown-office for no cause whatsoever, or the most trifling injury. An ingenious correspondent, to whom I have not only this obligation, suggests two additional vulgar errors. ‘ When a man designs to marry a woman who is in debt, if he take her from the hands of the priest clothed only in her shift, it is supposed that he will not be liable to her engagements.’ The second is, ‘ That there was no land-tax before the reign of William the Third.’ ”

To the above enumeration, a writer in the Re-

rospective Review (vol. 9, p. 262,) has added the following observations.

“ An instance of the first of these vulgar errors may be found in a note to Rousseau's *Emile*, p. 137. Rousseau had in that work adduced it as a proof of the humanity of our laws, that butchers are not received as *witnesses* in matters of life and death; but, in a note to the later editions, he adds, that the English translators of his work had corrected his mistake, and had mentioned the cause of it, *viz.* that butchers were not admitted *as jurors* in criminal cases !

“ To Mr. Barrington's list of vulgar errors may be added the following :—That if a criminal has been hung and revives, he cannot afterwards be executed :—That a funeral passing over any place makes a public highway.—That a husband has the power of divorcing his wife by selling her in open market with a halter round her neck.—That second cousins may not marry, though first cousins may.—That it is necessary, in some species of legal process against the king, to go through the fiction of arresting him, which is done by placing a ribbon across the road as if to impede his carriage.—That the lord of a manor may shoot over all the lands within his manor.—That pounds of butter may be made of any number of ounces.—That bull-beef shall not be sold unless the bull has been baited previously to being killed.—That



leases are made for the term of 999 years, because a lease for 1000 years would create a freehold.—That deeds executed on a Sunday are void.—That in order to disinherit an heir at law, it is necessary to give him a shilling by the will, for that otherwise he would be entitled to the whole property.”

THE “COMMON BAYLERS.”

The surprise of a stranger who happens to enter Serjeant's Inn while the judges are sitting, has something very amusing in it. No sooner has his foot crossed the threshold, than a number of officious gentlemen press around him with the kind offer, “Do you want bail, Sir?” at the same time endeavouring to thrust a small piece of paper into his hand. The ready benevolence of these individuals is naturally very marvellous to him, and it is not until he learns that they expect their services to be rewarded with half-a-crown, that his surprise ceases. It is often found convenient to put in bail immediately, and the names of these men of straw are accordingly inserted, until some substantial persons can be obtained, who may be able to *justify*, or swear they are worth a certain sum. In one of the public libraries at Cambridge is preserved a small tract, which gives a curious account of this class of people, such as they existed upwards of two centuries ago. The title is as follows :

“ The Discoverie of the Knights of the Poste, or the Knights of the Poste, or Common Baylers newly descried, &c.” By E. S. at London. Printed by G. S. & are to be sold neare the Golden Lyon, in the Olde Bayly. 1597.”

“ How doe all our ancient acquaintance, the good oath-takers, or common baylers, alias, the knights of the poste, the lords of Lob’s-pound, and heires apparent to the pilory,—for it was a small matter, instead of hearing morning praier, to goe fasting before a justice, and forswear himself, whereby he hath gotten many a crowne. When he was hired to come before any judge to baile a mau, it was his accustomed use to call himself by a wrong name; and if he dwelt in Long-lane, perhaps he would say he dwelt in White-chappell, and so neither certifie them of his right name, nor of his true dwelling place, so that if any enquierie be made of him, in such place where he affirmed himself to dwell, there is no such man to be found, and by this meanes he scapes manie a scouring.

“ There is a most braue fellow, but very newly crept into this crew, and his name is N., well-known, one that looks very high, and at every word casteth his eye above Powls steeple, as if he would quarrel with the moone, or had some controversie against the seuen starres. In his attire he is neat and fine, also in his speche stately, and

of a scornfull countenance, and when he comes into Westminster Hall, he bends his browes, as if he would beare downe the King's Bench barre with his lookes.—Twenty more of such fellows could I name, if that leasure would serue me, and as I have rehearst their names, so could I shew you many of their actions, what wylie and amusing pranks they play.—And, through want of meate, many times they walke out their dinner in Duke Humfrey his allie, or else fetch a sleepe under a pillar in Powle, only to beguile hunger.—You may have them most commonly in Fleet-streete, about Serjeant's-inn, or else about Chancery-lane, or else in some of the pudding-pie houses at Westminster; out of term-time, you shall have them commonly once or twice a day, walking in Duke Humfrey's-alley, in Powles, or at the Lion, at the back-side of St. Nicholas-shambles, or at the Rose in Pannier-alley, or at the Dolphin, at the end of Carter-lane, and sometimes at the Wooll-sack, in the same Lane, and there lye crushing of the two-penny ale pot by halfe a day together.—Thus, most gentle reader, have you heard of the cunning shiftes and wicked devices of those lewde and evile-minded persons.”

#### CHARACTER OF SAUNDERS.

One of the most admirable biographical sketches in the language is that of Sir Edmund Saunders,

Chief-Justice of the King's Bench, in the reign of Charles II., by Roger North, in the Memoirs of his Brother, the Lord Keeper Guilford. The character is drawn in North's somewhat rude style, but possesses wonderful vivacity and spirit.

“ The Lord Chief-Justice Saunders succeeded in the room of Pemberton. His character and his beginning were equally strange. He was at first no better than a poor beggar-boy, if not a parish foundling, without known parents or relations. He had found a way to live by obsequiousness, (in Clement's Inn, as I remember,) and courting the attornies' clerks for scraps. The extraordinary observance and diligence of the boy, made the society willing to do him good. He appeared very ambitious to learn to write; and one of the attornies got a board knocked up at a window on the top of a staircase; and that was his desk, where he sat and wrote after copies of court and other hands the clerks gave him. He made himself so expert a writer, that he took in business, and earned some pence by hackney-writing. And thus by degrees, he pushed his faculties, and fell to forms, and, by books that were lent him, became an exquisite entering clerk; and, by the same course of improvement of himself, an able counsel, first in a special pleading, then at large. And, after he was called to the bar, had practice, in the King's Bench Court, equal with any there.

As to his person, he was corpulent and beastly ; a mere lump of morbid flesh. He used to say, *by his troggs*, (such an humorous way of talking he affected,) none could say he wanted issue of his body, for he had nine in his back. He was a fetid mass, that offended his neighbours at the bar in the sharpest degree. Those whose ill-fortune it was to stand near him, were confessors, and, in summer time, almost martyrs. This hateful decay of his carcase, came upon him by continual sottishness,—for, to say nothing of brandy, he was seldom without a pot of ale at his nose, or near him. That exercise was all he used ; the rest of his life was sitting at his desk, or piping at home ; and that home was a tailor's house in Butcher Bow, called his lodging, and the man's wife was his nurse, or worse ; but, by virtue of his money, of which he made little account, though he got a great deal, he soon became master of the family ; and, being no changeling, he never removed, but was true to his friends, and they to him, to the last hour of his life.

“ So much for his person and education. As for his parts, none had them more lively than he. Wit and repartee, in an affected rusticity, were natural to him ; he was ever ready, and never at a loss ; and none came so near as he to be a match for Serjeant Mainard. His great dexterity was in the art of special pleading, and he would lay

snare that often caught his superiors, who were not aware of his traps. And he was so fond of success for his clients, that, rather than fail, he would set the court hard with a trick; for which he met sometimes with a reprimand, which he would wittily ward off, so that no one was much offended with him. But Hales could not bear his irregularity of life; and for that, and suspicion of his tricks, used to bear hard upon him in the court. But no ill-usage from the bench was too hard for his hold of business, being such as scarce any could do but himself. With all this, he had a goodness of nature and disposition in so great a degree, that he may be deservedly styled a philanthrope. He was a very Silenus to the boys, as, in this place, I may term the students of the law, to make them merry whenever they had a mind to it. He had nothing rigid or austere in him. If any near him at the bar grumbled at his stench, he ever converted the complaint into content and laughing, with the abundance of his wit. As to his ordinary dealing, he was as honest as the driven snow was white; and why not, having no regard for money, or desire to be rich? and for good-nature and condescension there was not his fellow. I have seen him, for hours and half-hours together, before the court sat, stand at the bar, with an audience of students over against him, putting of cases, and debating so as suited

their capacities, and encouraged their industry. And so in the Temple, he seldom moved without a parcel of youths hanging about him, and he merry and jesting with them.

“ It will readily be conceived, that this man was never cut out to be a Presbyter, or any thing that is severe and crabbed. In no time did he lean to faction, but did his business without offence to any. He put off officious talk of government or politics with jests, and so made his wit a catholicon or shield to cover all his weak places and infirmities. When the court fell into a steady course of using the law against all kinds of offenders, this man was taken into the king's business, and had the part of drawing, and perusal of almost all indictments and informations that were there to be prosecuted, with the pleadings thereon, if any were special, and he had the large pleadings in the *quo warranto* against London. His Lordship had no sort of conversation with him, but in the way of business, and at the bar ; but once, after he was in the king's business, he dined with his lordship, and no more, and there he shewed another qualification he had acquired, and that was to play jigs upon an harpsichord ; having taught himself with the opportunity of an old virginal of his landlady's ; but in such a manner, not for defect, but for figure, as to see him play were a jest. The king, observing him to be of a

free disposition, loyal, friendly, and without greediness, or guile, thought of him to be the Chief-Justice of the King's Bench, at that nice time, and the ministry could not but approve of it. So great a weight was now at stake, as could not be trusted to men of doubtful principles, or such as any thing might tempt to desert them. While he sat in the Court of King's Bench, he gave the rule to the general satisfaction of the lawyers. But his course of life was so different from what it had been, his business so incessant, and withal crabbed, that the constitution of his body, or rather head, could not sustain it, and he fell into an apoplexy and palsy, which numbed his parts, and he never recovered the strength of them. He outlived the judgment in the *quo warranto*; but was not present, otherwise than by sending his opinion, by one of the judges, to be for the king, who, at the pronouncing of the judgment, declared it to the court accordingly, which is frequently done in like cases."

#### BURNING OF THE TEMPLE IN THE GREAT FIRE.

The great fire of 1666, extended as far as, and consumed a great part of, the Temple. The best and most minute account of this terrible conflagration is given in Clarendon's Life, from which it appears that the fire was stopped in the Temple. "On Wednesday, about four or five o'clock in the



afternoon, the wind fell ; and as in an instant the fire decreased, having burned all the Thames-side to the new buildings of the Inner Temple next to White Friars, and having consumed them, was stopped by that vacancy from proceeding further into that house ; but laid hold on some old buildings which joined to Ram Alley, and swept all those into Fleet-street." Kennet says, " By the favour of God the wind slackened a little on Tuesday night, and the flames meeting with brick buildings at the Temple, by little and little it was observed to lose its force on that side, so that on Wednesday morning we began to hope well, and his Royal Highness, never despairing or slackening his personal care, wrought so well that day, assisted in some parts by the Lords of the Council, before and behind it, that a stop was put to it at the Temple Church, &c." Clarendon relates a very characteristic anecdote of the lawyers on this emergency.—" The Lord Mayor, though a very honest man, was much blamed for want of sagacity in the first night of the fire, before the wind gave it much advancement, for though he came with great diligence as soon as he had notice of it, yet never having been used to such spectacles, his consternation was equal to that of other men, nor did he know how to apply his authority to the remedying the present distress, and when men who were less terrified with the object

pressed him very earnestly that he would give order for the present pulling down those houses which were nearest, and by which the fire climbed to go further, (the doing whereof at that time might probably have prevented much of the mischief that succeeded,) he thought it not safe, and made no other answer than that he durst not do it without the consent of the owners. His want of skill was the less wondered at when it was known afterward, that some gentlemen of the Inner Temple would not endeavour to preserve the goods which were in the lodgings of absent persons, *because, they said, it was against the law to break up any man's chamber.*"

The commendable caution evinced in these instances is not without a parallel.—A tanner, it is said, invited a supervisor to dine with him : after pushing the bottles about pretty freely, the visitor took his leave, but in crossing the tanyard, unfortunately fell into a vat, and called loudly for assistance ; the tanner speedily ascertained his friend's situation, but declined interfering ; " For," he observed, " if I draw a hide without giving twelve hours' notice I shall be exchequered ; but I will go and inform the exciseman." !

#### LAWS AGAINST WITCHES.

In the very early periods of our law, it appears

that witchcraft was considered a heresy, and punished accordingly by the Ecclesiastical Courts. The Mirror says, *Que sorcery et divinal sont members de heresie* ; and according to Fleta, *Christiani autem Apostatae, sortilegi et hujusmodi detractari debent et comburi*. "I have seen," says Sir Edward Coke, (3 *Inst.* 44,) "a report of a case in an ancient register, that in October, anno 20 Hen. VI., Margery Gudeman, of Eye, in the county of Suffolk, was, for witchcraft and consultation with the devil, after sentence, and a relapse, burnt, by the king's writ, *de heretico comburendo* ; and this agreeth with antiquity, for witches, &c. by the laws before the Conquest, were burnt to death. It had been," continues his Lordship, "a great defect in government if so great an abomination had passed with impunity ; and this is the cause why we have proved how and in what manner conjuration, witchcraft, &c., were punished with death, &c. before the making of the said late statutes, &c." The statutes here alluded to by Coke are the 33 Hen. VIII. c. 8, whereby all witchcraft and sorcery were declared to be felony, without benefit of clergy, and the 1 Jac. 1. c. 12, which enacts that all persons invoking any evil spirit, or consulting, convenanting with, entertaining, employing, feeding, or rewarding any evil spirit ; or taking up dead bodies from their graves to be used in any witchcraft, sor-

cery, charm, or enchantment; or killing or otherwise hurting any person by such infernal arts, shall be guilty of felony without benefit of clergy, and suffer death; and if any person should attempt by sorcery to discover hidden treasure, or to restore stolen goods, or to provoke unlawful love, or to hurt any man or beast, though the same were not effected, he or she should suffer imprisonment and pillory for the first offence, and death for the second." This statute probably originated with James himself, who assigns the increase of witches and the denial of their existence as reasons for the publication of his "Demonology," and who doubtless took the earliest opportunity, on his accession to the Crown of England, of enacting this law in favour of his theory.

"The fearful abounding," observes this learned Monarch, "at this time, in this country, of these detestable slaves of the devil, the witches or enchanters, hath moved me, beloved reader, to dispatch in post this following Treatise of mine, not in anywise, as I protest, to serve as a shew of my learning and ingine, but only (moved of conscience,) to endeavour thereby, as far as I can, to resolve the doubting hearts of many, both that such assaults of Satan are most certainly practised, and *that the instruments thereof merit most severely to be punished*, against the damnable opinions of two, principally in our age, whereof the one called

Scott, an Englishman, is not ashamed in public print to deny that there can be such a thing as witchcraft."

The accounts vary as to the number of persons who suffered under these most cruel and absurd Statutes. Hutchinson, in his Historical Essay concerning witchcraft, tells us, that in 103 years from the statute against witchcraft in the 33 Hen. VIII. till 1644, he finds but fifteen executed; but that in the sixteen years following there were 109, if not more, condemned and hanged. In the five years following, he found five witches condemned, and three of them, if not all five, executed, and three more at Exeter, in 1682. Since that time, he informs us, he had not met with one witch hanged in England, though in Scotland and New England several had suffered: indeed, so late as the year 1692, he states that nineteen persons were hanged at Salem, in New England, and many more imprisoned. Howell, the letter-writer, states the number executed in the middle of the seventeenth century to have been much greater. In a letter, dated Feb. 3rd, 1646, and another dated Feb. 20th, 1647, he says that in two years there were indicted in Suffolk and Essex between 200 and 300 witches, of whom more than half were executed. It was not until towards the conclusion of the seventeenth century that this infamous superstition began to decline. "It is seldom,"

says Roger North, (*Life of L. K. Guilford, v. i. p. 280,*) "that a poor old wretch is brought to trial upon that account, but there is at the heels of her a popular rage that does little less than demand her to be put to death, and if a judge is so clear and open as to declare against that impious vulgar opinion, that the devil himself has power to torment and kill poor innocent children, or that he is pleased to divert himself with the good people's cheese, butter, pigs, and geese, and the like errors of the ignorant and foolish rabble; the countrymen (the triers) cry, this judge hath no religion, for that he doth not believe witches, and so to show that they have some, hang the poor witches." The same writer proceeds to give a curious account of two women who were tried before Mr. Justice Raymond, at Exeter, as witches, and convicted. "His Lordship was somewhat more thoughtful upon this subject, because that in the year in which Mr. Justice Raymond was his Co-Judge, on the circuit, two old women were hurried out of the country to be tried at Exeter for witchcraft; and the city rung with tales of their preternatural exploits, as the current of such tattle useth to overflow. Nay, things went so far as to say that the judge's horses were at a stand, and could not draw the coach up the castle lane: all which the common sort of people firmly believed. It fell out that Ray-

mond sate on the crown side there, which freed his Lordship of the care of such trials. But he had really a concern upon him at what happened ; which was that his brother Raymond's passive behaviour should let these poor women die. The cases were so far clear, viz. that the old women confessed and owned in court that they were witches. These were two miserable old creatures, that one may say, as to sense or understanding, were scarce alive, but were overwhelmed with melancholy and waking dreams, and so stupid as no one would suppose they knew either the construction or consequence of what they said. All the rest of the evidence was trifling. I, sitting in the Court the next day, took up the file of informations taken by the justices, which were laid out upon the table, and against one of the old women read thus :—“ This informant saith he saw a cat leap in at her (the old woman's) window, when it was twilight, and this informant further saith that he verily believeth the said cat to be the devil, and more saith not.”—The judge made no nice distinctions, as, how possible it was for old women, in a sort of melancholy madness, by often thinking in pain and want of spirits, to contract an opinion of themselves that was false, and that their confession ought not to be taken against themselves, without a plain evidence that it was rational and sensible, no more than that of a lunatic or distracted person, but he left the

point upon the evidence fairly, (as they called it,) to the jury, and they convicted them both, as I remember, but most certainly one was hanged."

A striking instance of the real nature of these confessions, is mentioned in Sinclair's *Satan's invisible world discovered*. Several witches were tried in 1649, and all condemned except one. This woman, previous to her examination, made a confession of her dealings with the devil, and though urged to revoke it, persisted, and was taken to execution with the rest. At the stake she spoke as follows:—"Now all you that see me this day know that I am now to die a witch by my own confession, and I free all such, especially the ministry and magistrates, from the guilt of my blood. I take it wholly upon myself: my blood be upon my own head. And as I must make answer to the God of heaven presently, I declare I am as free of witchcraft as any child; but being delated by a malicious woman, and put in prison under the name of a witch, disowned by my husband and friends, and seeing no ground of hope of my coming out of prison, or ever coming in credit again, through the temptation of the devil, I made up that confession on purpose to destroy my own life, being weary of it, and chusing rather to die than live." This unhappy creature is said to have been executed amid the tears of the spectators.



Lord Chief Justice North had, upon one occasion, an opportunity of putting his more enlightened principles to the test.—“His Lordship,” says Roger North, (*vol. i. p. 253,*) “had not the good fortune of escaping all business of that kind, for at Taunton-Dean he was forced to try an old man for a wizzard; and for the curiosity of observing the state of a male witch or wizzard, I attended in court and sate near where the poor man stood. The evidence against him was the having bewitched a girl about thirteen years old; for she had strange and unaccountable fits, and used to cry out upon him, and spit out of her mouth straight pins, and whenever the man was brought near her, she fell in her fits and spit forth straight pins. His Lordship wondered at the straight pins which could not be so well couched in the mouth as crooked ones, for such only used to be spit out by persons bewitched. He examined the witnesses very tenderly and carefully, so as none could collect what his opinion was, for he was afraid of the jurymen’s precipitancy if he gave them any offence. When the poor man was told he must answer for himself, he entered upon a defence as orderly and as well expressed as I ever heard spoken by any man, counsel or other, and if the Attorney-General had been his advocate, I am sure he would not have done it more sensibly. The substance of it was

malicious threatening, and circumstances of imposture in the girl; to which matters he called his witnesses and they were heard. After this, the judge was not satisfied to direct the jury before the imposture was fully declared, but studied and beat the bush awhile, asking sometimes one and then another question, as he thought proper. At length he turned to the Justice of Peace that committed the man, and took the first examinations, and "Sir," said he, "pray, will you ingenuously declare your thoughts, if you have any, touching these straight pins which the girl spit; for you saw her in her fit?" "Then, my Lord," said he, "I did not know that I might concern myself in this evidence, having taken the examination and committed the man; but since your Lordship demands it, I must needs say that I think the girl doubling herself in her fit, as being convulsed, bent her head down close to her stomacher, and with her mouth took pins out of the edge of that, and then righting herself a little, spit them into some by-stander's hands." This cast an universal satisfaction upon the minds of the whole audience, and the man was acquitted. As the judge went down stairs out of the Court, an hideous old woman cried, "God bless your Lordship!" "What's the matter, good woman?" said the judge. "My Lord," said she, "forty years ago they would have hanged me for a witch, and they could not, and now they would have hanged my poor son."

fore put her into a sack, and being in the same, she still moved and stirred; whereupon they put her out again and cast her under a pair of stairs, purposing in the morning to get more help and carry her away, but then she could not be found, though all the doors that night were locked, and they never heard what afterwards became thereof."

The conduct of Sir Matthew Hale, on the trial of several persons for witches, at Bury St. Edmund's, in 1665, (*see Howell's State Trials*, vi. 1047,) has been deservedly the subject of great reprehension, and is said to have justified the remark that "his piety and theological reading seemed only to have the effect of rendering him credulous and unrelenting." Alluding to the same trial, Foster, in his preface to his *Crown Law*, has observed of Hale more leniently "that the rectitude of his intentions, while under the strong bias of strong prejudices, might sometimes betray him into great mistakes." The conduct of the Chief Justice was more unpardonable, as from an experiment made in Court, Lord Cornwallis, Sir Edmund Bacon, and Mr. Sergeant Keeling, openly protested "that they did believe the whole transaction of this business was a mere imposture." Hale, however, like Raymond, left the matter fairly to the jury, and the wretched prisoners were convicted.

When Holt was made Chief Justice, the prosecution of witches began gradually to fall into discredit. Eleven persons were tried before him for this crime, and notwithstanding the usual evidence of vomiting pins, devil's marks, and sucking imps, were all acquitted. Chief Justice Parker, who succeeded him, put a stop to the summary rustic practice of trying witches by the water ordeal, by declaring at the Essex Summer Assizes, in 1712, that if the suspected witch was drowned, all the parties concerned were guilty of murder.

The exploits of Hopkins, the celebrated witchfinder, have lately been made the subject of a novel, and had they not been of so fatal a character, might afford much food for laughter. The enumeration of the names of the infernal imps, or familiars employed by a certain witch, is very amusing :—The first was *Holt*, “ who came in like a white kitling ;” second, *Jarmara*, “ who came in like a fat spaniel without any legs at all ;” third, *Vinegar Tom*, “ who was like a long-legged greyhound, with a head like an ox ;” fourth, *Sack-and-Sugar*, “ like a black rabbit ;” fifth, *Newes*, “ like a polecat ;” *Elemanzer*, *Pyewacket*, *Peck-in-the-Crown*, *Grizzle*, *Greedigut*, &c. This Hopkins is said to have hanged thirty suspected witches in one year. Selden, in his *Table-Talk*, has justified the laws against witches in a most extraor-

dinary manner. "The law against witches does not prove that there be any, but it punishes the malice of those people that use such means to take away men's lives. If one should profess that by turning his hat thrice and crying *buz*, he could take away a man's life, (though in truth he could do no such thing,) yet this were a just law made by the state, that whosoever should turn his hat thrice and cry *buz*, with an intention to take away a man's life, shall be punished with death." "Such a law," observes Mr. Barrington, "as that suggested by Selden, may be declared not only to be ridiculous and futile, but highly unjust."

A copious article on the subject of witchcraft, and of which we have occasionally made use in the foregoing pages, is to be found in the *Retrospective Review*, vol. v. p. 86.

#### HENRY V. AND THE CHIEF-JUSTICE.

Mr. Luders, a Bencher of the Inner Temple, whose rare *Tracts* are known and highly valued by all legal antiquaries, is the author of "An Essay on the Character of Henry V. when Prince of Wales," in which he has examined and questioned the correctness of the commonly received accounts of the prince's dissolute conduct in his earlier life. He enquires at some length into the truth of the story respecting the prince rescuing a prisoner under trial, and insulting the chief-justice;

a story, which he shews to be partly founded upon dramatic exaggerations. The account of this transaction, as given by Sir Edward Coke in his Third Institute, is as follows: "This was that Prince Henry who, keeping ill-company, and led by ill-counsel, about this time, assaulted, (some say,) and struck Gascoyne, Chief Justice, sitting in the King's Bench; for that the prince endeavouring, with strong hand, to rescue a prisoner, one of his unthrifty minions, indicted and arraigned at the King's Bench bar for felony, was prevented of his purpose by the persuasion and commandment of the Chief Justice. For which the Chief Justice committed the prince to the King's Bench, whereof some of his followers instantly complained to the king, his father; who, informing himself of the true state of the case, gave God infinite thanks that he had given him such a judge as feared not to administer justice, and such a son as could suffer semblably and obey justice. And this is that prince, who, abandoning his former company and counsel, and following the advice of grave, wise, and expert men, whom he made choice of to be of his council, became a victorious and virtuous king, and prosperous in all that he took in hand at home and abroad."

Sir Edward Coke cites as his authority Sir Thomas Ellyott's *Governor* and Holinshed's *Chronicle*. Ellyott's account of the affair is certainly

more favourable to the prince, for "being abashed, and also wondering at the marvellous gravity of that worshipful justice, the noble prince, laying his weapon apart, doing reverence, departed, and went to the King's Bench as he was commanded." In Holinshed, the passage respecting *striking the judge* first appears. It is, indeed, suspected by Mr. Luders, that this incident was probably borrowed by the historian from an old play, entitled, "The famous Victories of Henry V., containing the honourable Battle of Agincourt." (See the Collection of *Six Old Plays, on which Shakespeare founded his, &c.* 1779.) The following is the scene with the Chief Justice.

- "*Enter the Young Prince with Ned and Tom.*

*Henry V.* Come away, my lads. Gogs wounds, ye villaine, what make you here? I must goe about my businesse myselfe, and you must stand loytering here.

*Theefe.* Why, my Lord, they have bound mee, and will not let mee goe.

*Henry V.* Have they bound thee, villaine? Why, how now, my Lord!

*Judge.* I am glad to see your Grace in good health.

*Henry V.* Why, my Lord, this is my man.—'Tis marvellous you knew him not long before this. I tell you, he is a man of his hands.

*Theefe.* I, gogs wounds, that I am, try me who dare.

*Judge.* Your grace shall finde small credite by acknowledging him to be your man.

*Henry V.* Why, my Lord, what hath he done ?

*Judge.* And it please your Majesty, he hath robbed a poor carrier.

\* \* \* \* \*

*Henry V.* And will you not let him goe ?

*Judge.* I am sorry that his case is so ill.

*Henry V.* Tush ! case me no caseings. Shall I have my man ?

*Judge.* I cannot, nor I may not, my Lord.

*Henry V.* Nay, and I shall not, say, and then I am answered.

*Judge.* No.

*Henry V.* Then I will have him.

*(He giveth him a box on the ear.)*

*Ned.* Gogs wounds, my Lord, shall I cut off his head ?

*Henry V.* No ! I charge you, draw not your swords.—But get you hence ; provide a noyse of musitians.—Away, be gone ! [*Exeunt the Theefe.*

*Judge.* Well, my Lord, I am content to take it at your hands.

*Henry V.* Nay, and you be not, you shall have more.

*Judge.* Why, I pray you, my Lord, who am I ?

*Henry V.* You, who knows not you ?—Why, man, you are Lord Chief Justice of England.



*Judge.* Your Grace hath saide truth : therefore in striking me in this place, you greatly abuse me, and not me only, but also your father, whose lively person here in this place I do represent.— And, therefore, to teach you what prerogatives mean, I commit you to the Fleete, until we have spoken with your father.

*Henry V.* Why, then, belike you mean to send me to the Fleete.

*Judge.* I do, indeed ; and therefore carry him away. [*Exeunt Henry V. with the officers.*]

It is unnecessary to remind the reader of the scene between Henry, the Chief Justice, and Falstaff, at the conclusion of Shakspeare's Henry IV.

LORD-KEEPER NORTH AND THE RECORDER OF  
COLCHESTER.

“ Before I mention the further steps of his lordship's rising, I must get rid of a scurvy downfall he had, which had well nigh cost him his life. That he was what was called a sober person, was well known ; but withal, that he loved a merry glass with a friend. But once in the circuit, being invited with the rest of the counsel, to dine at Colchester with the recorder, Sir John Shaw, who was well known to be one of the greatest kill-cows at drinking in the nation ; he, with the rest of his brethren, by methods too well known, got very drunk. They were obliged to go on, and in that

condition mounted ; but some dropped, and others proceeded. His lordship had a clerk, one Lucas, a very drunken fellow, but at that time not far gone. He thought it his duty to have a tender care of his master, who having had one fall, (contrary to the sound advice of his experienced clerk,) would needs get up again, calling him all to nought for his pains. His lordship was got upon a very spirited nag, that trotted on very hard, and Lucas came near to persuade him not to go so fast ; but that put the horse upon the run, and away he went with his master full speed, so as none could follow him. The horse, when he found himself clear of pursuers, stopped his course by degrees, and went with his rider (fast asleep upon his back) into a pond to drink ; and there sat his lordship upon the sally ; but, before he fell, Mr. Andrew Card, now an eminent practiser of conveyancing in Gray's-Inn, and then Mr. Coleman's clerk, came up time enough to get the horse out of the pond before he fell off, else he had been lost : for which service his lordship ever had a value for Mr. Card.

“ They took him into a public-house nigh at hand, and left him to the care of his man ; but so dead drunk, that he knew nothing that happened to him. He was put into a bed, and the rest of the company went on, for fear of losing their market. Next morning, when his lordship awaked,

he found he was in a strange place, and that, at a fire-side in that room, there were some women talking softly, (for talk they must,) he sent out all his senses to spy, if he could, what the matter was. He could just perceive they talked of him. Then he called for Lucas, and bid all go out of the room but him ; and then, ' Lucas,' said he, ' *where am I ?*' He was glad the danger (of which Lucas gave him a sensible account,) was over, and got him up to go after his fellows.

" I remember, when his lordship told this story of himself, he said, the image he had when his horse first trotted, and so faster and faster, was as if his head knocked against a large sheet of lead, as a ceiling over him ; and, after that, he remembered nothing at all of what happened till he awoke. His lordship, of one that was not morose and uncomplaisant, was the most sober that ever marched through the world as he did. I, that was almost continually with him, never saw him in a condition they call overtaken ; and the most hath been but just discoverable in his speech ; for he had strength of head to bear a great deal ; and when he found that infirmity coming upon him, he used to sit smiling, and say little or nothing ; so harmless a thing of a *petit* good fellow was he : and this only in company that, in some sort, constrained him, and that was very seldom. As once, when he was attorney-general, he dined with

the Earl of Sandwich, and, in the afternoon, went to the privy-council to plead, upon a petition, before the king : and the next day after, the earl asked one of the lords how Mr. Attorney behaved himself ; ‘ *very well,*’ said that lord. ‘ I thought so,’ answered the earl, ‘ for I sent him instructed with at least three bottles in his belly.’ That was a good medicine for his modesty, and, perhaps, at court, no ill preparative. But, setting aside that rhodomontade, his lordship, by a steady temperance and sobriety, held the empire of his reason, and vigour of his constitution, safe and upright till, under the cold hand of death, both fell together. But, as for such entertainments as these, it is great pity that the tokens of barbarity should yet remain ; and much more, that the consequences, often fatal, should be as braves of conquests, with a people who would take it ill not to be accounted civil, wise, and learned.” (*Life of Lord-keeper Guilford, vol. i. p. 88.*)

#### THE CREST OF THE TEMPLE.

The Pegasus which appears over the principal entrance of the Inner Temple, and which is the Crest of that society, takes its origin from the seal used by the first Knights Templars. Hugh de Payens and Geoffrey de St. Aldemar, had, it is said, engraved upon their seal the figures of two men riding upon one horse,—a type of their po-

verty. A rude representation of this seal may be seen in the *Historia Minor* of Matthew Paris. This emblem was corrupted by the lawyers, the successors to the Knights Templars, into a Pegasus, and to this day remains their Crest. The Society of the Middle Temple adopted the emblem of a lamb bearing a banner, or in heraldic language, *a device of a field argent charged with a cross gules, and upon the nombrel thereof a holy lamb with its nimbus and banner.* These two devices, which are scattered very liberally over all the gateways in the Temple, gave rise to the following

*Epigram.*

As by the Templars' holds you go,  
 The *horse* and *lamb*, display'd  
 In emblematic figures, shew  
 The merits of their trade.

That clients may infer from thence  
 How just is their profession,  
 The *lamb* sets forth their innocence,  
 The *horse* their expedition.

O happy Britons ! happy isle !  
 Let foreign nations say,  
 Where you get justice without guile,  
 And law without delay.

*Answer.*

Deluded men, these holds forego,  
 Nor trust such cunning elves ;  
 Those artful emblems tend to show  
 Their clients, not themselves.

'Tis all a trick, these are all shams  
 By which they mean to cheat you ;  
 But have a care !—for you're the lambs ;  
 And they the wolves that eat you.

Nor let the thought of no delay,  
 To these their courts misguide you,  
 'Tis you're the showy horse, and they  
 The jockeys that will ride you !

## POETICAL REPORTS.

Cowper, (neither the Lord Chancellor nor the Reporter, but the Poet,) in one of those beautiful and playful letters which he used to write,

“While his cold heart to ruin ran darkly the while,”  
 has made the following humorous proposal for the publication of poetical law-reports :—

“ Poetical reports of Law-cases are not very common ; yet it appears to me desirable that they should be so ;—many advantages would accrue from such a measure. They would in the

first place be more commodiously deposited in the memory, just as linen, grocery, and other articles, when neatly packed, are known to occupy less room, and to lie more conveniently in any trunk, chest, or box, to which they may be committed. In the next place, being divested of that infinite circumlocution, and the endless embarrassment in which they are involved by it, they would become surprisingly intelligible in comparison with their present obscurity. And lastly, they would by that means be rendered susceptible of musical embellishment; and instead of being quoted in the country with that dull monotony, which is so wearisome to by-standers, and frequently lulls even the judges themselves to sleep, might be rehearsed in recitative, which would have an admirable effect in keeping the attention fixed and lively, and would not fail to disperse that heavy atmosphere of sadness and gravity which hangs over the jurisprudence of our country. I remember many years ago being informed by a relation of mine, who in his youth had applied himself to the study of the law, that one of his fellow students, a gentleman of sprightly parts, and very respectable talents, of the poetical kind, did actually engage in the prosecution of such a design, for reasons I suppose somewhat similar to, if not the same with, those I have now suggested. He began with Coke's Institutes, a book so rugged in its style that an

attempt to polish it seemed an Herculean labour, and not less arduous and difficult than it would be to give the smoothness of a rabbit's fur to the prickly back of a hedgehog. But he succeeded to admiration, as you will perceive by the following specimen, which is all that my said relation could recollect of the performance.

Tenant in fee-  
Simple is he,  
And need neither quake nor quiver,  
Who hath his lands  
Free from demands  
To him and his heirs for ever."

The hint which he thus threw out, Cowper has himself acted upon, and has given in the following lines a report of the case of

*Nose v. Eyes.*

Between Nose and Eyes a sad contest arose,  
The Spectacles set them unhappily wrong ;  
The point in dispute was, as all the world knows,  
To which the said spectacles ought to belong.

So Tongue was the Lawyer and argued the cause  
With a great deal of skill and a wig full of  
learning,  
While Chief Baron Ear sat to balance the laws,  
So famed for his talent of nicely discerning.



“ In behalf of the Nose it will quickly appear,  
And your Lordship,” he said “ will undoubtedly  
find,

That the nose has had spectacles always to wear,  
Which amounts to possession time out of mind.”

Then holding the spectacles up to the Court,  
“ Your Lordship observes they are made with a  
straddle

As wide as the ridge of the nose is, in short  
Designed to sit close to it just like a saddle.

Again, would your Lordship a moment suppose  
(Tis a case that has happen'd, and may be again)  
That the visage or countenance had not a nose,  
Pray who would, or who could, wear spectacles  
then ?

On the whole, it appears, and my argument shews,  
With a reasoning the Court will never condemn,  
That the spectacles plainly are made for the nose  
And the nose was as plainly intended for them.”

Then shifting his side as a lawyer knows how,  
He pleaded again in behalf of the eyes,  
But what were his arguments few people know,  
For the Court did not think they were equally wise.

So his Lordship decreed with a grave solemn tone,  
Decisive and clear without one if or but,  
That whenever the nose put his spectacles on,  
By day-light or candle-light, eyes should be shut.

*(Life of Hayley, vol. i. p. 298.)*

Cowper was probably not aware that an ingenious author has actually versified the substance of Sir Edward Coke's Reports. The point of each case, (with the name,) is comprised in a couplet, as in the following instances :—

ARCHER. If he for life enfeoff in fee  
It bars remainders in contingency.

SNAGG. If a person says, " he kill'd my wife,"  
No action lies if she be yet alive.

FOSTER. Justice of Peace may warrant send  
To bring before him such as do offend.

The only other instance which at present occurs to us of a poetical Report, is a poor-law case in Burns' Justice, which runs as follows :—

A woman having a settlement  
Married a man with none ;  
The question was, he being dead,  
If that *she* had was gone.

Quoth Sir John Pratt, " The settlement  
Suspended doth remain,  
Living the husband, but him dead,  
It doth revive again."

*Chorus of the Puisne Judges.*

" Living the husband, but him dead,  
It doth revive again !"

## AN AGREEABLE SURPRISE.

Lutwyche in speaking of the inconvenience of suffering small debts to be recovered in the superior Courts at Westminster, thus quaintly expresses himself in the law-language of his day :—

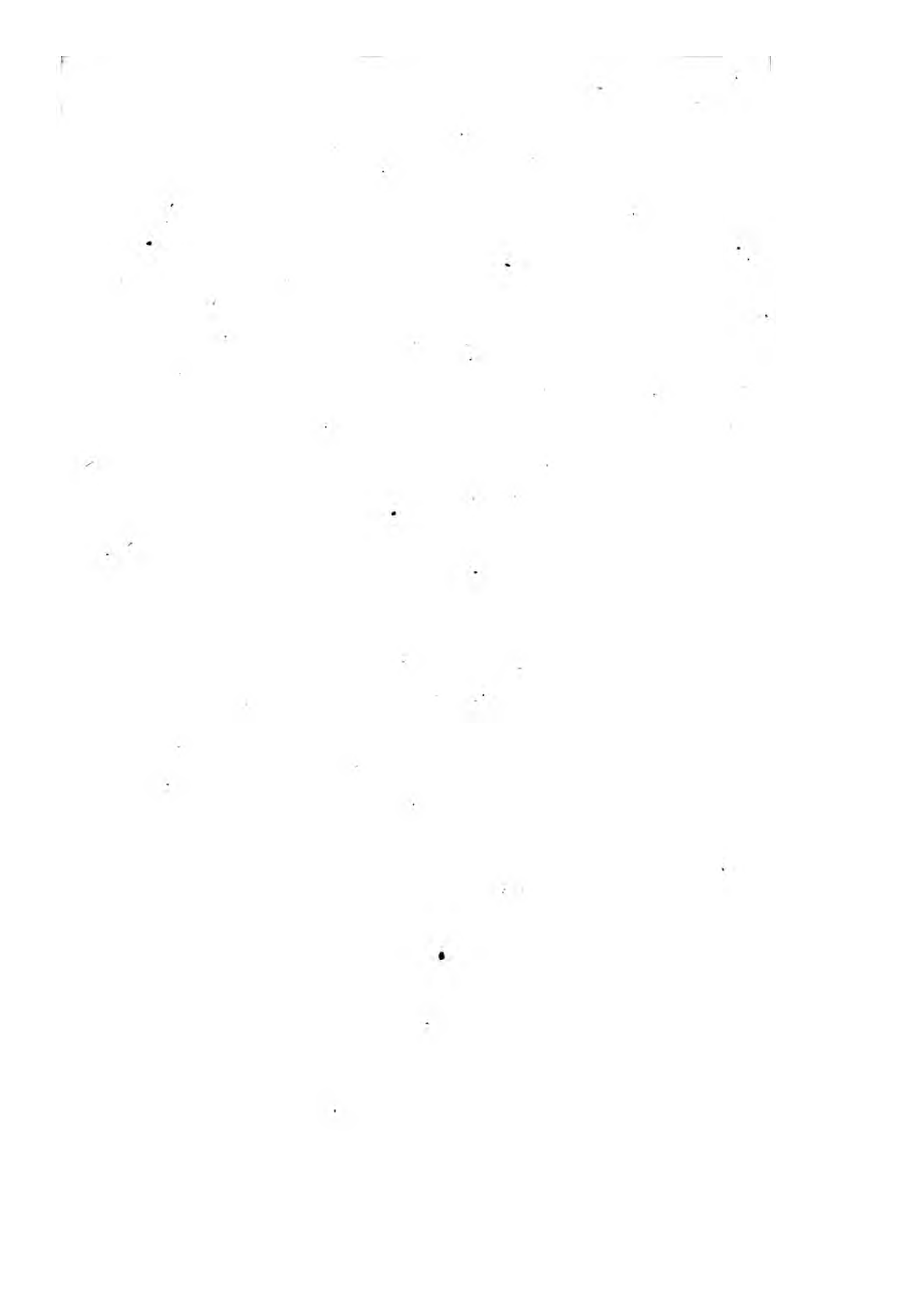
“ Mes en ceux matters nous doiomus aver greinder regard al benefit del publick que al enlargement de nostre jurisdictions, car si cest action giseroit, la serroit nul remedy en effects pur petits debts en les superior Courts, le attorney pur le plt sovent foits recover le debt et receive l'argent, mes quand le Plt. expect d'aver l'argent del attorney, *en lieu de ceo il receive un Bill de son attorney per que ouster le debt receive il est débtor a son attorney* ; issint que il avoit estre mieux pur luy d'avoir perde son debt, puis toft que a prendre ceo remedy. (2 *Lutw.* 1570.)

## MR. BUTLER'S ADVICE ON THE STUDY OF REAL PROPERTY LAW.

“ The student should begin by reading *Littleton's Tenures*, with extreme attention, meditating on every word, and framing every section into a diagram, abstaining altogether from the Commentary, but perusing *Gilbert's Tenures*. After this, he should peruse *Sir Martin Wright's Tenures*, and *Mr. Watkins's Treatise on Descents*, and then give *Littleton's Tenures* a second perusal.



JUDGE LITTLETON.



After this second perusal of the text, he should peruse it a third time, with the *Commentary of Lord Coke*; and afterwards peruse *Sheppard's Touchstone* in Mr. Preston's invaluable edition of that work. The Reminiscent presumes to suggest, that the student may then usefully peruse the *Notes on Feuds, on Uses, and on Trusts*, in the last edition of Coke upon Littleton, and then read Littleton and Coke, and the *Notes of the last Editors*.

“ The Reminiscent may appear to recommend too much attention to Littleton and Coke; but he never has yet met with a person thoroughly conversant in the law of real property, who did not think with him, that *he* is the best lawyer, and will succeed best in his profession, who best understands Coke upon Littleton. Against one error he begs leave particularly to caution the student;—not to suspect for a moment, that because he himself does not see the utility of what he reads in this work, or the application of the parts of it which he is reading to any practical purpose, it is therefore useless. There is not, in the whole of the golden book, a single line which the student will not, in his professional career, find on more than one occasion, eminently useful.

“ Being thus saturated with the venerable black-letter, he should peruse with the most profound attention, *Mr. Saunders's Treatise on Uses*

*and Trusts*, and *Mr. Preston's Treatise on Fines and Recoveries*, and then proceed to *Mr. Fearne's Essay on Contingent Remainders*, and *Mr. Sugden's Treatise on Powers*. After this, he should read for law, *Plowden's Commentaries*, for equity, the article *Chancery*, in *Comyns's Digest*, comparing it throughout with *Mr. Peere Williams's Reports*, in Mr. Cox's edition, and reading all the cases to which these refer. His own experience and feelings will then direct his future studies.

“ But in the outset of his study he should place himself with some professional gentleman engaged in drawing conveyances or forensic proceedings, and as far as it is compatible with this engagement, should attend the courts of justice.

“ The whole course of study suggested by the *Reminiscent* may be achieved in four years, if they are employed in the manner described in the well-known verses of Lord Coke :

“ Sex horas somno, totidem des legibus æquis,  
 Quatuor orabis, des epulisque duas,  
 Quod superest sacris ultro largite camænis.”

“ If the student cannot bestow the whole of this period on legal reading, he should peruse Mr. *Cruise's Digest*, an able abridgment, but not without original matter, of the most useful parts of all the works which we have recommended the student to peruse.” (*Butler's Reminiscences*, p. 64.)

CHARACTER OF THE LORD-KEEPER GUILFORD IN  
EARLY LIFE.

“ I have so far conducted his lordship, as to be ready for the bar. But, before I touch upon that, I shall take some notice of his character, as the same appeared in the first stage of his life. He was of a low stature, but had an amiable ingenious aspect, and his conversation was answerable, being ever agreeable to his company. His hair grew to a considerable length, but was hard and stiff, and did not fall as the rest of the family, which made it bush somewhat, and not without a mixture of red and grey. As to his humour, he was free from vanity himself, and hated it in others. His youthful habits were never gay, or topping the mode, like other inns of court gentlemen, but always plain and clean, and shewed somewhat of firmness or solidity beyond his age. His desire was rather not to be seen at all, than to be marked by his dress. In those things, to the extreme was his aim; that is, not to be censured for a careless sloven, rather than to be commended for being well-dressed. But, as to his appearing in public, the composition of his temper was extraordinary, for he had wit, learning, and elocution, and knew it, and was not sensible of any notable failings, whereof to accuse himself; and yet was modest, even to a weakness. I believe a more



shamefaced creature than he was, never came into the world : he could scarce bear the being seen in any public places. I have heard him say, that, when he was a student, and ate in the Temple-hall, if he saw any company there, he could not walk in till other company came, behind whom, as he entered, he might be shaded from the view of the rest ; and he used to stand dodging at the screen till such opportunity arrived, for it was death to him to walk up alone in open view. This native modesty was a good guard against vice, which is not desperately pursued by young men without a sort of boldness and effrontery in their natures. Therefore ladies, and other fond people, are greatly mistaken, when they desire that boys should have the garb of men, and usurp assurance in the province of shamefacedness. Bashfulness in the one hath the effect of judgment in the other : and where judgment, as in youth, is commonly wanted, if there be not modesty, what guard has poor nature against the incentives of vice ? Therefore it is an happy disposition ; for when bashfulness wears off, judgment comes on ; and by judgment, I mean a real experience of things that enables a man to choose for himself, and, in so doing, to determine wisely.

“ His loose entertainments, in this stage, were, as usual with gentlemen cadets of noble families in the country, sporting on horseback ; for which

there was opportunity enough at his grandfather's house, where was a very large and well-stocked deer-park, and, at least twice a week in the season, there was killing of deer. The method then was, for the keeper, with a large cross-bow and arrow, to wound the deer, and two or three disciplined park-hounds pursued till he dropped. There was most of the country sports used there for diverting a large family, as setting, coursing, bowling; and he was in it all; and, within doors, backgammon and cards with his fraternity and others, wherein his parts did not fail him, for he was an expert gamester. He used to please himself with raillery, as he found any that, by minority of age, or majority of folly and self-conceit, were exposed to be so practised upon. I could give instances enough of this sort, and not unpleasant, if such trifles were to be indulged in a design such as mine is. His most solemn entertainment was music, in which he was not only master but doctor. This for the country; where, to make good his exhibition, he was contented (though, in truth, forced,) to pass the greater part of his time. But in town he had his select of friends and acquaintance; and with them he passed his time merrily and profitably, for he was as brisk at every diversion as the best. Even after his purse flowed sufficiently, a petit supper and a bottle always pleased him; but he fell into no

course of excess or vice ; and whenever he was a little overtaken, it was a warning to him to take better care afterwards : and against women his modesty was an effectual guard ; though he was as much inclined as any man, which made him desirous to marry ; and that made his continence a positive virtue ; for who may not be good that is not inclined to evil ? The virtue of goodness is, where a contrary inclination is strove with and conquered. He was in town a noted hunter of music-meetings ; and very often the fancy prevailed to go about town and see trades work ; which is a very diverting instructive entertainment. There was not any thing extraordinary which he did not, if he might, visit for his information as well as diversion ; as engines, shews, and lectures, and even so low as to hear Hugh Peters preach. I have heard him say, that when Hugh made his close, he told his congregation, that a gifted brother had a desire to hold forth ; and then up rose Sir Peter Pet ; and he, though a mere layman, prayed and preached his turn out. That gentleman lived to be an old man in town ; and most people knew him, that little thought he had been once a preacher. The old Lord and Lady Anglesey (while she lived,) supported him ; and, at the revolution, Sir Peter and his lordship published books, wherein one of the performances lay in the commending each other ; which notable

band of friendship had its root in the time of the Irish rebellion." (*Life of Lord Guilford, vol. i. p. 43.*)

CERTAINTY TO A CERTAIN INTENT IN EVERY PARTICULAR.

When a fact is stated with such precision as to exclude every implication contrary to such statement, it is said, in legal language, to be "certain to a certain intent in every particular;" and this is termed the highest degree of certainty, as though there were degrees of comparison in certainty, (in the manner of the Irishman's portrait, which was more like than the original.) In the following passage Lord Eldon appears to have employed this highest degree of certainty in defining the exact shade of doubt with which his mind was impressed.

In this case a specific performance of an agreement was sought, and a variation was attempted to be introduced by parol, on the ground of mistake and surprise, which was positively denied by the defendant. "His Lordship said that he would not say that upon the evidence without the answer, he should not have had so much doubt whether he ought not to rectify the agreement, as to take more time to consider whether the bill should be dismissed!" (*Marquis of Townsend v. Stangroom, 6 Ves. p. 328.*)

CEREMONIES FORMERLY OBSERVED ON THE  
CREATION OF A JUDGE.

“ The Lord Chancellor having taken his seat in the Court where the vacancy is to be filled, bringing with him the King’s letters patent, shall cause the sergeant elect to be brought in, to whom, in open Court, he notifies the King’s pleasure, causing the letters to be publicly read; which done, the Master of the Rolls shall read to him the oath that he is to take, ‘ that he shall indifferently minister justice to all men, as well foes as friends, that shall have any suit or plea before him; and this he shall not forbear to do, *though the King’s Letters,\* or by express word of mouth would command the contrary*; and that from time to time he shall not receive any fee or pension, or living of any man, but of the King only, nor any gift, reward, or bribe, of any man having suit or plea before him, saving meat and drink, which shall be of no great value;’ † and on this oath

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\* As to the oath of the Judges, see 3 *Inst.* 223. Lord Coke in resisting the King’s commands in the case of Commendams, relied upon this oath. See 1 *Col. Jur.* 1.

† Sir Matthew Hale appears to have put a very strict construction on these words. See his *Life*, by Burnet, p. 31.

being administered, the Chancellor shall deliver to him the King's Letters aforesaid, and the Lord Chief Justice of the Court shall assign him a place in the same, where he shall then place him, and which he shall afterwards keep.

“ The Justice thus made, shall not be at the charges of any dinner, solemnity, or other costs, because there is no degree in the faculty of the law, but an office only, and a room of authority to continue during the King's pleasure.

“ The Judges anciently rode to Westminster in great state after they were so made. Mr. Justice Coventrie, a Bencher of the Inner Temple, being chosen a Judge of the Common Pleas, proceeded from his chambers in Serjeant's Inn to Westminster, accompanied by the gentlemen of the Temple and the Students of the Inns of Chancery. The Judge went foremost, after him the Bench, and then the Bar, then the Gentlemen of the House, and then the Students of the various Inns. But the order of this procession being found to be erroneous, (for the Inns of Chancery should go first, then the young Gentlemen of the House in which the Judge has studied, then the Bar, then the Bench, after that the ancients, and last of all the Judge,) the error was corrected on the following day, in accompanying Judge Tanfield of the Temple.

“ In the same manner was conducted the pro-

cession of Sir Henry Montague, who succeeded Sir Edward Coke in the Chief Justiceship of the King's Bench, Michaelmas Term, 1616.\* First went on foot the young Gentlemen of the Inner Temple, (of which house he was,) after them the Barristers, according to their seniority, next the Officers of the King's Bench, then the Chief Justice himself on horseback in his robes, the Earl of Huntingdon on his right and the Lord Willoughby of Eresby on his left, with about fifty Knights and Gentlemen of quality following." (*Herbert's Inns of Court*, 91.)

#### ELOQUENCE OF THE EARLY ENGLISH LAWYERS.

The early English Lawyers do not appear, from what we know of the subject, to have been a very eloquent race of men. If we may judge from the reports transmitted to us in the year-books, their arguments were exceedingly pithy, and never wandered beyond the technical limits of the question. There is a passage in Sir Thomas Elyot's *Governor*, which confirms this view of the subject. "But for as much as the tongue wherein it (the law,) is spoken, is barbarous, and the stirring of affections of the mynde in this nature was

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\* See Bacon's Speech to Montague, on his being sworn in as Chief Justice, *Moor's Rep.* 826.

*never used*, therefore there lacketh elocution and pronounciation, two of the principal parts of rhetorike, notwithstanding some lawyers, if they be well reteined, will in a meane cause pronounce right vehemently." (*Governor*, p. 48.) The *vehemence* of the Lawyers is also noticed by Ascham in his *Toxophilus*: "When a man is alwaye in one tune like a humble bee, or els now in the top of the church, now downe no man knoweth where to have him, or piping like a reed, or *roaring like a bull*, as some Lawyers do, who think they do best when they cry loudest; these shall never greatly move, as I have known many well learned have done, because their voice was not stayed afore with learning to singe." (*Toxoph.* p. 30.)

Our old Lawyers appear to have been even more noisy than some of their brethren at the present day. "You are," says Lord Bacon in his speech to Sir Henry Montague, when the latter was sworn in as Lord Chief Justice, "You are to admonish, to reprehend, and to correct lawyers that observe not that discretion and duty which it becomes them. It is said, in France, that there is a *rabiosa litigandi facultas*; if you find this in any *brabbling and tumultuous Lawyers*, you are not only to enjoin them silence, but to sequester them from their practice of exercise before you, if you see cause." *Moor's Rep.* 827.

The lawyers of Elizabeth and James's day were



much too quaint to be eloquent. Some idea may be formed of their style, by looking into the judgments in Coke's Reports, and into the speeches in the State Trials. *Chudleigh's Case* on the Statute of Uses, 1 *Rep.*, furnishes some excellent specimens of the judicial eloquence of that period. Thus, "Baron Clarke said some have supposed these future uses were preserved in the bowels of the land, and that the land should be charged with them in whose hands soever it should come; and some have supposed they were preserved *in nubibus* and in the custody of the law, but he said, in our case, be they below in the land, there they should be perpetually buried and should never rise again, and be they above in *nubibus*, in the clouds, there they should always remain and should never descend." Another of the Judges "resembled the Statute of Uses to Nebuchadnezzar's Tree." Sir Edward Coke may, perhaps, be said to furnish a fair specimen of the forensic oratory of his time, and his speech, when Attorney-General, on the trial of Garnet the Jesuit, may be taken as a favourable example of his powers. It is full of the quaintness which at that day was so much in fashion. "He hath many gifts," says Coke, speaking of Garnet, "and endowments of nature, by art learned, a good linguist, and by profession a Jesuit, and a Superior, as indeed he is superior to all his predecessors in devilish treason; a doctor

of Jesuits, that is, a doctor of five D D's, as dissimulation, deposing of Princes, disposing of kingdoms, daunting and deterring of subjects, and destruction." (2 *St. Tr.* 234.)

In the reign of Charles I. a finer style of oratory began to prevail in our Courts of Justice, as the following speech of Lord Chief Justice Crewe, will sufficiently demonstrate. In the year 1626, a contest arose on the death of Henry de Vere, Earl of Oxford, respecting the right to that Earldom, between Robert de Vere, claiming under an entail created 16 Rich. II. as heir male of the body of Aubrey de Vere, and Lord Willoughby of Eresby, claiming as heir general to the last Earl. The following is the eloquent exordium of Chief Justice Crewe's speech upon this occasion.

"This great and weighty cause, incomparable to any other that hath happened at any time, requires great deliberation, and solid and mature judgment to determine it; and I wish that all the Judges of England had heard it, (being a fit case for all,) to the end we all together might have given our humble advice to your Lordships herein. Here is represented to your Lordships *certamen honoris*, and as I may well say *illustris honoris*, illustrious honour. I heard a great peer of this realm and a learned, say, when he lived there was no King in Christendom had such a subject as Ox-

ford.\* He came in with the Conqueror, Earl of Gwynes ; shortly after the Conquest, made Great Chamberlain of England, above 500 years ago, by Henry I. the Conqueror's son, brother to Rufus ; by Maud, the Empress, Earl of Oxford ; confirmed and approved by Henry II. *Alberico comiti*, so Earl before. This great honour, this high and noble dignity, hath continued ever since in the remarkable surname of De Vere, by so many ages, descents, and generations, as no other kingdom can produce such a peer in one and the self-same name and title. I find in all this length of time but two attainders of this noble family, and those in stormy and tempestuous times, when the government was unsettled and the kingdom in competition. I have laboured to make a covenant with myself that affection may not press upon judgment, for I suppose there is no man that hath any apprehension of gentry or nobleness, but his affection stands to the continuance of so noble a name and house, and would take hold of a twig or a twine-thread to uphold it. And yet Time hath his revolutions ;—there must be a period and an end to all temporal things—*finis*

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\* It has been said that the three noblest names in Europe were the De Veres of England, the Fitzgeralds of Ireland, and the Montmorencys of France.

*rerum*, an end of names and dignities, and whatsoever is terrene, and why not of De Vere? For where is Bohun? Where is Mowbray? Where is Mortimer? Nay, which is more and most of all, where is Plantagenet? They are entombed in the urns and sepulchres of mortality.—And yet let the name and dignity of De Vere stand so long as it pleaseth God!" (See *Sir W. Jones's Rep.* 101.)

## BAXTER AND JEFFERIES.

The coarse violence of Jefferies's temper was never exhibited in a stronger light than upon the trial of Richard Baxter, the well-known non-conformist minister; he was indicted for his Paraphrase on the New Testament, and committed to the King's Bench, on a warrant issued by Jefferies. "He was," says Mr. Fox, "a pious and learned man, of exemplary character, always remarkable for his attachment to monarchy, and for leaning to moderate measures, in the differences between the church and those of his persuasion. The pretence for this prosecution was a supposed reference of some passages in one of his works to the bishops of the Church of England, a reference which was undoubtedly not made by him, and which certainly could not have been made out to any jury that had been less prejudiced, or under any other direction than that of Jefferies. The

real motive was his desire of punishing an eminent dissenting minister, whose reputation was high among his sect, and who was supposed to favour the political opinions of the whigs." (*Fox's Historical Work*, p. 96.) On May 14, 1685, being indisposed, Baxter moved, by his Counsel, that he might have further time given him for his trial; a request which was denied, Jefferies exclaiming, "I will not give him a minute's time more to save his life. We have had to do with other sort of persons; but now we have a saint to deal with, and I know how to deal with saints as well as sinners. Yonder stands Oates in the pillory, (as he actually did at that time in New Palace Yard,) and he says he suffers for the truth, and so says Baxter; but if Baxter did but stand on the other side of the pillory with him, I would say two of the greatest rogues and rascals in the kingdom stood there." On the 30th May, he was tried at Guildhall, before Jefferies, when his Counsel, Mr. Wallop, made the following observations: "He conceived," he said, "that the matter depending, being a point of doctrine, ought to be referred to the Bishop, his Ordinary; but if not, he humbly conceived the doctrine was innocent and justifiable; setting aside the *inuendos* for which there was no colour, there being no antecedent to refer them to, (that is, no Bishop or Clergy of the Church of England named,) he

said, the Book accused, i. e. the Comment on the New Testament, contained many eternal truths ; but they who drew the information were the libelers, in applying to the Prelates of the Church of England, those severe things which were written concerning some Prelates who deserved the character he gave. ‘ My Lord,’ (said he,) ‘ I humbly conceive the bishops Mr. Baxter speaks of, as your Lordship, if you have read Church history, must confess, were the plagues of the church and the world.’ ‘ Mr. Wallop,’ (said the Lord Chief Justice,) ‘ I observe you are in all these dirty causes ; and were it not for you Gentlemen of the Long Robe, who should have more wit and honesty than to support and hold up these factious knaves by the chin, we should not be at the pass we are at.’ ‘ My Lord,’ (said Mr. Wallop,) ‘ I humbly conceive that the passages accused are natural deductions from the text.’ ‘ You humbly conceive,’ said Jefferies, ‘ and I humbly conceive ! swear him, swear him !’ ‘ My Lord,’ said he, ‘ under favour I am counsel for the defendant, and if I understand either Latin or English, the information now brought against Mr. Baxter upon so slight a ground, is a greater reflection upon the Church of England, than anything contained in the book he is accused for.’ ‘ Sometimes you humbly conceive,’ replied Jefferies, ‘ and sometimes you are very positive ; you talk of

your skill in church history, and your understanding Latin and English.—I think I understand something of them as well as you ; but in short, I must tell you that if you do not understand your duty better, I shall teach it you.' Upon which Mr. Wallop sat down."

On Baxter asserting that he had acted moderately with respect to the Church of England, and thereby incurred the censure of many of the dissenters, Jefferies exclaimed, "Baxter for Bishops ! that is a merry conceit indeed ! turn to it, turn to it !" Upon this one of Baxter's counsel turned to a place in the book where it was said, that great respect is due to those truly called to be Bishops among us. "Ay," said Jefferies, "that is your Presbyterian cant, 'truly called to be Bishops !' that is himself and such rascals called to be Bishops of Kidderminster, (where Baxter was used to preach,) and such other like places ; Bishops set apart by such factious, snivelling Presbyterians as himself ; a Kidderminster Bishop he means, according to the saying of a late learned author, and every parish shall maintain a tythe-pig metropolitan." Mr. Baxter beginning to speak again, Jefferies interrupted him : "Richard, Richard, dost thou think we will hear thee poison the Court ? Richard, thou art an old fellow, an old knave ; thou hast written books enough to load a cart ; every one is as full of sedition, I might say

treason, as an egg is full of meat: hadst thou been whipt out of the writing trade, forty years ago, thou hadst been happy. Thou pretendest to be a preacher of the Gospel of Peace, and thou hast one foot in the grave; it is time for thee to begin to think what account thou intendest to give; but leave thee to thyself, and I see thou wilt go on as thou hast begun; but by the grace of God I will look after thee; I know thou hast a mighty party, and I see a great many of the brotherhood in corners waiting to see what will become of their mighty Don; and a doctor of the party, (looking at Doctor Bates,) at your elbow; but by the grace of Almighty God I will crush you all."

When Jefferies had finished his address to the Jury, Baxter said to him, "Does your Lordship think any Jury will pretend to pass a verdict upon me after such a trial?" "I'll warrant you, Mr. Baxter," said the Chief Justice, "don't trouble yourself about that." The prediction was correct, for the Jury immediately found the prisoner guilty, and he was fined 500*l.* As he was leaving the bar, he told Jefferies that a predecessor of his (meaning Sir M. Hale,) had other thoughts of him; to which Jefferies replied, that there was not an honest man in England but what took him for a great knave." (xi. *State Trials*, 494.)



## SINGULAR BILL IN EQUITY.

It is said that a bill was once brought in the Exchequer by a highwayman, of the name of Everett, against his Coadjutor, (Williams,) in order to compel the latter to account for a moiety of the partnership effects. The Bill did not state the unlawful employment in direct terms, but alleged that the plaintiff was skilled in dealing in several commodities, such as plate, rings, watches, &c. ;—that the defendant applied to him to become a partner, that they entered into partnership, and it was agreed that they should equally provide all sorts of necessaries, such as horses, saddles, and bridles, and should equally bear all expenses on the roads, and at inns, taverns, or alehouses, or at markets or fairs. “ And your Orator and the said Joseph Williams proceeded jointly, and with good success, in the same business on Hounslow heath, where they dealt with a gentleman for a gold watch ; and afterwards the said Joseph Williams told your Orator that Finchley, in the county of Middlesex, was a good and convenient place to deal in, and that commodities were very plenty at Finchley aforesaid, and that it would be almost all clear gain to them ; that they went accordingly, and dealt with several gentlemen, for divers watches, rings, swords, canes, hats, cloaks, horses, bridles, saddles, and other things,

and that about a month afterwards, the said Joseph Williams informed your Orator that there was a gentleman at Blackheath, who had a good horse, saddle, bridle, watch, sword, cane, and other things to dispose of, which he believed might be had for little or no money; that they accordingly went and met with the said gentleman, and after some small discourse, they dealt for the said horse, &c. That your Orator and the said Joseph Williams continued their joint dealings together at several places; viz. at Bagshot, in Surrey; Salisbury, in Wiltshire; Hampstead, in Middlesex; and elsewhere to the amount of 2000*l.* and upwards." The rest of the bill was in the ordinary form for a partnership account. It was referred for scandal and impertinence, and the solicitors were attached and fined, while the Counsel, who signed the bill, was directed to pay the costs. The plaintiff was afterwards executed, and one of the solicitors convicted of a robbery and transported. (*See Appendix to Clifford's Report of Southw. Elec. European Mag.* v. ii. p. 360. *Noy's Maxims*, 9th Edit. 205.

SUMPTUARY LAWS OF THE TEMPLE RESPECTING  
DRESS.

The young lawyers of former days, if we may judge from the various orders of the inns of court respecting dress, were exceedingly sumptuous in

their apparel. In 4 *Ph.* and *M.* it was ordered, "That none of this society should thenceforth wear any great *bryches* in their hoses, made after Dutch, Spanish, or Almon fashion, or lawnde upon their cappes, or cut doublets, upon pain of 3s. 4d. forfeiture for the first default, and the second time to be expelled the house." In 26 *Eliz.* the following regulations were directed to be observed: "1. That no great ruff should be worn. 2. Nor any white colour in doublets or hozens. 3. Nor any facing of velvet in gowns, but by such as were of the bench. 4. That no gentlemen should walk in the streets in their cloaks, but in gowns. 5. That no hat, or long or curled hair, be worn. 6. Nor any gowns but such as were of a *sad* colour." By an order made 11 *Charles* I. no gentlemen of any house were to come into the several halls, or places of public prayer, with hats, cloaks, boots, spurs, swords, or daggers, or to wear long hair, but were to order their habits and hair to decency and formality, according to the orders of the house, and to yield due respect and observance to the benchers and ancients, their governors, as they expected and desired to receive the preferment of the bar, &c." Even Sir Matthew Hale, in his earlier days, "loved fine clothes," though on his devoting himself to the study of the law, "he threw them aside, and betook himself to a plain fashion, which

he continued to use, in many points, to his dying day." The plainness of Sir Matthew Hale's apparel proved upon one occasion somewhat inconvenient to him. "Passing from the extreme of vanity in his apparel to that of neglecting himself too much, he was once taken, when there was a press for the king's service, as a fit person for it, for he was a strong and well-built man; but some that knew him coming by, and giving notice who he was, the pressmen let him go. This made him return to more decency in his clothes; but never to any superfluity or vanity in them."

"He was a great encourager," continues Burnet, "of all young persons that he saw followed their books diligently, to whom he used to give directions concerning the method of their study, with a humanity and sweetness that wrought much on all that came near him; and, in a smiling pleasant way, he would admonish them, if he saw any thing amiss in them, *particularly if they went too fine in their clothes*, he would tell them that it did not become their profession. *He was not pleased to see students wear long perriwigs*, or attorneys go with swords; so that such young men as would not be persuaded to part with these vanities, when they went to him laid them aside, and went as plain as they could, to avoid the reproofs which they knew they might otherwise expect." (*Life of Hale*, p. 23.)

Of the Lord Keeper Guilford, we are told by his brother, that "His youthful habits were never gay or topping the mode, *like other Inns of Court gentlemen*, but always plain and clean, and shewed somewhat of firmness and solidity beyond his age. His desire was rather not to be seen at all, than to be marked by his dress. In those things to the extreme was his aim, that is, not to be censured for a careless sloven, rather than to be commended for being well-dressed." (*Life of North, vol. i. p. 44.*)

SIR WALTER RALEIGH AND SIR EDWARD COKE.

Whatever may have been Raleigh's guilt, (and whether he was, in fact, involved in any treasonable plot, appears exceedingly problematical,) nothing can justify the intemperance and violence displayed towards him by Sir Edward Coke, who, at the time of his trial, in 1603, was Attorney General. Osborn has remarked, that "Sir Walter Raleigh was tired out of his life by the bawling of the king's counsel on the one side, and the bench insisting on a confession extorted by fear from the Lord Cobham, on the other." It is thought that Bacon alludes to the conduct of Coke upon this occasion, in a letter which he addressed to him some years afterwards, in which we find the following expressions. "As in your pleadings you were wont to insult over misery, and to inveigh

bitterly against the persons, which bred you many enemies, whose poison yet swelleth, and the effects now appear, &c." (*Bacon's Works*, iv. 626.) The following extract from the Trial of Raleigh, gives a very unfavourable impression of Coke's temper and humanity.

"*Raleigh*. You have not proved any one thing against me by direct proofs; but all by circumstances.

*Att.* Have you done? The king must have the last.

*Raleigh*. Nay, Mr. Attorney, he which speaketh for his life must speak last. False repetitions and mistakings must not mar my cause. You should speak *secundum allegata et probata*. I appeal to God and the king on this point, whether Cobham's accusation be sufficient to condemn me?

*Att.* The king's safety and your clearing cannot agree. I protest, before God, I never knew a clearer treason.

*Raleigh*. I never had intelligence with Cobham since I came to the Tower.

*Att.* Go to! I will lay thee upon thy back, for the confidentest traitor that ever came at a bar. Why should you take 8000 crowns for a peace?

*Lord Cecil*. (One of the commissioners who presided at the trial.) Be not impatient, good Mr. Attorney; give him leave to speak!

*Att.* If I may not be patiently heard, you will

encourage traitors and discourage us. I am the king's sworn servant, and must speak. If he be guilty, he is a traitor ; if not, deliver him.

*Note.* Here Mr. Attorney sat down in a chafe, and would speak no more until the commissioners urged and entreated him. After much ado, he went on, and made a long repetition of all the evidence, for the direction of the jury, and at the repeating of some things Sir Walter Raleigh interrupted him, and said he did him wrong.

*Att.* Thou art the most vile and execrable traitor that ever lived.

*Raleigh.* You speak indiscreetly, barbarously, and uncivilly.

*Att.* I want words sufficient to express thy viperous treasons.

*Raleigh.* I think you want words, indeed ; for you have spoken the same things half a dozen times.

*Att.* Thou art an odious fellow ; thy name is hateful to all the realm of England for thy pride.

*Raleigh.* It will go near to prove a measuring cast between you and me, Mr. Attorney.

*Att.* Well, I will now make it appear to the world, that there never lived a viler viper on the face of the earth than thou art."

In another part of the trial, Coke was, if possible, even more coarse and violent.

" *Raleigh.* I do not hear, yet, that you have

spoken one word against me ; here is no treason of mine done ; if my Lord Cobham be a traitor, what is that to me ?

*Att.* All that he did was at thy instigation, thou viper, for I *thou* thee, thou traitor.

*Raleigh.* It becometh not a man of quality and virtue to call me so.—But I take comfort in it, it is all you can do.

*Att.* Have I angered you ?

*Raleigh.* I am in no case to be angry.

*C. J. Popham.* Sir Walter Raleigh, Mr. Attorney speaketh out of the zeal of his duty for the service of the king ; be valiant on both sides.”

It has been thought that Shakspeare alludes to Coke's expression, *for I thou thee, &c.* in *Twelfth Night*, where he makes Sir Toby, in giving directions to Sir Andrew for his challenge to Viola, say, “ If thou *thousts* him some thrice, it may not be amiss.” But the phrase was probably a common one at that day.

Amongst other unmannerly and abusive epithets which the Attorney General bestowed upon Raleigh, he called him a “ damnable atheist ;” an accusation to which Sir Walter's philosophical pursuits had probably subjected him. When, after the lapse of several years, Sir Walter Raleigh was brought up for judgment, Coke was Chief Justice, and, as such, it became his duty to pass sentence on the man against whom he had been



so intemperate an advocate. On this occasion, he appears to have been willing to make some amends for the violence and cruelty of his former conduct, and to wipe out some of the aspersions which he had cast on the character of the prisoner. He especially alluded to the imputation of irreligion, which he declared to be unfounded. The conclusion of Sir Edward Coke's judgment, in this case, is one of the best specimens which remain of his style of speaking.

“ I know that you have been valiant and wise ; I doubt not but you retain both those virtues, for now you shall have occasion to use them. Your faith hath heretofore been questioned ; but I am resolved you are a good Christian, for your book, which is an admirable work, doth testify as much. I would give you counsel ; but I know you can apply unto yourself far better than I am able to give you ; yet will I, with the good neighbour in the Gospel, who finding one in the way wounded and distressed, poured oil into his wounds, and refreshed him, give unto you the oil of comfort, though in respect that I am a minister of the law, mixed with vinegar. Sorrow will not avail you in some kind ; for were you pained, sorrow would not ease you ; were you afflicted, sorrow would not relieve you ; were you tormented, sorrow could not content you ; and yet the sorrow for your sins, would be an everlasting comfort to you.

You must do as that valiant captain did, who, perceiving himself in danger, said, in defiance of death, ‘ Death, thou expectest me ; but maugre thy spite, I expect thee.’ Fear not death too much, nor fear not death too little ; not too much, lest you fail in your hopes ; not too little, lest you die presumptuously. And here I must conclude with my prayers to God for it, and that he would have mercy on your soul.” And so the Lord Chief Justice ended with these words, “ Execution is granted.” (2 *How. State Trials*, 85.)

#### MODE OF RAISING A BENEVOLENCE.

In the twelfth part of Coke’s Reports, (which was not published until after the author’s death,) there are some remarks, under the title of “ Exactions of Benevolence,” which prove how much the writer was opposed to this illegal mode of levying taxes. He cites from Holinshed and Stow, an instance of an attempt made by Edward IV. to raise money in this manner : “ The success and event of which was, that whereas the king called this a Benevolence to please the people, yet many of the people did much grudge at it, and called it a *Malevolence*.” In one case, indeed, he succeeded better.

“ The king called before him at several times, a great number of the wealthiest of his subjects, to declare to them his necessity, and his purpose

to levy war for the honour and safety of the kingdom, and demanded of each of them a certain levie of money; and the king treated with them with such great grace and clemency, and with such gentle prayer, to assist him in his necessity, for the honour of the realm, that they very freely yielded to his request, for the honour and safety of the realm. Among the rest there was a widow of a very good estate, of whom the king merely asked what she would willingly give him, for the maintenance of his wars? ‘By my faith,’ quoth she, ‘for your lovely countenance sake, you shall have twenty pounds,’ which was more than the king expected. The king thanked her, and vouchsafed to kiss her; upon which she presently swore, he should have twenty pounds more.” (12 *Report*, 119.)

#### MARRIAGE OF LORD KEEPER GUILFORD.

The matrimonial speculations of Sir Francis North, (Lord Keeper in the reign of Charles II.) are related in so amusing a manner by his brother, Roger North, that we shall be pardoned for inserting the whole narrative.

“After he was called to the bar, he applied himself closely to the attendance and operations of the law, and wanted refreshment, such as was reasonable to be enjoyed at vacant times; and he was weary of being at the loose hand as to com-

pany, which he could not have, at all times, to his mind. He was no clubster, listed among good fellows ; and often passed his evenings in walking, or solitary, (if it may be so termed, when he had only me with him,) rather than join in any promiscuous society, or of such as were not either in his friendship, or distinguished by some notable talents that recommended them : and thought it would be an ease to his mind to know continually, after his business was done, what was to become of him ; and that he thought best provided for by a family and house-keeping ; which is never well settled without a mistress, as well as a master of a family. These considerations inclined him to look out for a suitable match. And, to say truth, his constitution required it as much as any man's whatever ; but, being excessive modest, and by resolution virtuous, he was solicitous and ardent in the pursuit of it, and not a little encouraged by a manifest feeling he had of success in his profession, which dismissed all fears of the lean wolf. And not being insensible of a fair character in general, which, together with some quality and happy relation that fell to his share, he fancied he might pretend to as good a fortune in a match, as many others had found, who had less reason to expect it ; but without some advancement in that way, he was not disposed to engage himself.

“ That which sat hardest upon his spirits, was,

how he should give a fair answer to the question, *what jointure and settlement?* He used to own but one rood of ground in the world, that yielded him any profit, which was Westminster Hall : a meagre particular, unless he might have added, as Finch did, his bar-gown, 20,000l. There came to him a recommendation of a lady, who was an only daughter of an old usurer of Gray's Inn, supposed to be a good fortune in present, for her father was rich ; but, after his death, to become worth nobody could tell what. His lordship got a sight of the lady, and did not dislike her ; thereupon he made the old man a visit, and a proposal of himself to marry his daughter. There appeared no symptoms of discouragement ; but only the old gentleman asked him what estate his father intended to settle upon him for present maintenance, jointure, and provision for children. This was an inauspicious question ; for it was plain that the family had not estate enough for a lordship, and none would be to spare for him. Therefore he said to his worship, only, *That when he would be pleased to declare what portion he intended to give his daughter, he would write to his father, and make him acquainted with his answer.* And so they parted, and his lordship was glad of his escape, and resolved to give that affair a final discharge, and never to come near the terrible old fellow any more. His lordship had, at that time, a stout heart, and could

not digest the being so slighted ; as if, in his present state, a profitable profession and future hopes, were of no account. If he had had a real estate to settle, he should not have stooped so low as to match with his daughter, and thenceforward despised his alliance.

“ His lordship’s next amour was, in all respects, better grounded ; but, against all sense, reason, and obligation, proved unsuccessful. When Mr. Edward Palmer, his lordship’s most intimate and dear friend died, he left a flourishing widow, and very rich. The Attorney General, and all his family, had projected a match of their cousin North with this lady, who were no strangers to each other ; nor was there wanting sufficient advices, or rather importunities of the whole family, for her to accept him ; against which she did not seem to reluct ; but held herself very reserved. In the mean time his lordship was excited to make his application ; which he had never done, or, at least, not persisted so long as he did, but out of respect and compliance with the sense of that worthy family, which continually encouraged him to proceed. Never was lady more closely besieged with wooers : she had no less than five younger brothers sat down before her at one time ; and she held them in hand, as they say, giving no definitive answer to any one of them, till she cut the thread, and after a clancular proceeding, and

match with a jolly knight of a good estate, she dropped them all at once, and so did herself and them justice.

“There were many comical passages in this wooing, which his Lordship, without much pleasantry, used to remember, and, however fit for a stage, would not muster well in an historical relation ; for which reason, as his lordship was dropped, I drop them. The unhappiness was, that he never could find out her resolution as to him ; for she stood in some awe of Sir Jeoffry Palmer’s family, and his Lordship would not slight their excessive kindness to him, by deserting his post at which they had placed him ; so between the one and the other, he was held at the long saw above a month, doing his duty as well as he might ; and that was but clumsily, for he neither dressed nor danced, when his rivals were adroit at both ; and the lady used to shuffle her favours amongst them affectedly and on purpose to mortify his Lordship ; and, at the same time, be as civil to him, with like purpose to mortify them : and his Lordship was not so mystified by his amour, as not to discern these arts ; and nothing but the respects I hinted could have held him in harness so long. For it was very grievous to him that had his thoughts upon his client’s concerns, which came in thick upon him, to be held in a course of bo-peep play with a crafty widow. And I have

heard him often say, that he never was, in all his life, more rejoiced, than when he was told madam was married; whereby he was escaped from a miserable confinement. And the fastidium, upon this occasion contracted, and his increase of business, which gave him little time to think of any thing else, diverted his mind from undertaking any more such projects; and so he went on his way.

“Another proposition came to his Lordship, by a city broker, from Sir John Lawrence, who had many daughters, and those reputed beauties; and the fortune was to be 6000l. His Lordship went and dined with the alderman, and liked the lady, who (as the way is) was dressed out for a muster. And coming to treat, the portion shrank to 5000l. And upon that, his Lordship parted, and was not gone far before Mr. Broker following, came to him and said, Sir John would give 500l. more, at the birth of the first child; but that would not do, for his Lordship hated such screwing. Not long after this dispatch, his Lordship was made the King’s Solicitor-General, and then the broker came again, with news that Sir John would give 10,000l. No; his Lordship said, after such wages, he would not proceed, if he might have 20,000l. So ended that affair; and his Lordship’s mind was once more settled in tranquillity.

“It is said that marriages are made in heaven;



and if frequent and unforeseen accidents (often observed to be productive of them,) are any argument, the proverb hath countenance; for so it happened in his Lordship's case; for out of a contingent interview, a proposition sprang, pregnant with all advantages of honour, person, and fortune; more than which was not to be desired or expected. And it was for a match with the lady Frances Pope, the middle daughter of three co-heirs of Thomas, Earl of Down, who lived at Wroxton, in Oxfordshire. The eldest was married to Mr. Soams, of Thirlow in Suffolk, within four miles of Catlidge, the seat of his Lordship's father. And as the use is, the grave countess of Down, with her two younger daughters, attended the new-married couple to their habitation, and made some stay there; during which time the visits of joy came in, and amongst the rest, the family from Catlidge made their appearance; and the countess, and her daughters, in due time made their return, which happened to be at a time when his Lordship was at Catlidge. His mother laid her eyes on the eldest unmarried daughter, and when they were gone, turned about and said, 'Upon my life, this lady would make a good wife for my son Frank.' And, in short, at the next visit, with his Lordship's fair consent, she moved it to the countess, who consented that his Lordship might make his advances. His

next business was to muster what sums of money he could, in order to make an honourable proposition ; and, with 600l. borrowed of a friend, he could compass but 6000l. in all to join her fortune, which was estimated at 14,000l. for making the jointure and settlement intended to be 1000l. per annum. After this he ventured down with a decent equipage and attendance ; and, in less than a fortnight, fixed his point with the lady, and appointed another time to come and finish what was so auspiciously begun. And then his Lordship went with full attendance and some friends ; and, after the necessary writings were sealed, the lovers were happily married in Wroxton church. But I well remember the good countess had some qualms, and complained that she knew not how she could justify what she had done, (meaning the marrying her daughter with no better settlements.) ‘Madam,’ said his Lordship, ‘if you meet with any question about that, say that your daughter has 1000l. per annum jointure.’ It is certain that (besides some private reasons the countess might have,) the friends of the family looked upon this as a very desirable match, not on account of an estate in present, but of much greater, little less than certain, to come ; for his Lordship was Solicitor-General ; and I may say, a favourite of the law, and his character unexcep-

tionable, besides his family, which was styled honourable.

“ It is not easy, nor very material, to describe the feasting and jollities that were in the country round about, upon this occasion. It was a cavalier country, and the Popes eminent sufferers for their loyalty in the late wars : and his lordship having the like character, and known to be an obliging, as well as flourishing loyalist, there was scarce a family which did not shew all respect imaginable to the new-married folks, by visits, invitations, and festival rejoicings. So that it was about three weeks before his lordship could clear himself of these well-intended importunities. At length, we decamped for London, and his lordship took first, lodgings, and then a house, and lived consistent with his business, in a way most agreeable to him. It was wondered that his lady, being such a fortune, had no separate maintenance assigned her. I believe the true reason was, that, considering his lordship's known good-nature and honour, they thought there would be no need of it, and it would, as a distrust, have disoblighd him to have mentioued it ; and I am partly certain he would not have agreed to it : and, in the same family, the younger sister was matched with a large separate maintenance. And, to shew how little such provisions (except in extreme cases, the supposition of which, almost in possibility, is suffi-

ent to divert a match,) signify, a lady though suffering in her person for want of reasonable supplies, never profited the least by it; but, upon expostulation, the answer was, *Get you gone to your trustees.* But for certain, the Lady Frances Pope was matched into the land of plenty, and in saying that, I have said all." (*Life of Lord Guilford, vol. i. p. 145.*)

## SIR EARDLEY WILMOT'S ESCAPE.

"In March, 1757," says the biographer of Sir Eardley Wilmot, "Sir Eardley had a most providential escape from being destroyed at Worcester, while sitting in court, and just beginning to sum up the evidence, by the fall of a stack of chimneys through the roof into court. His first clerk, Mr. John Lawes, was killed at his feet, and some other person also was killed, and several very dangerously hurt. Most of the counsel were gone, and those who remained got under the great table round which they had been sitting. Among the counsel present, were Mr. Aston, Mr. Nares, Mr. Ashhurst, Mr. Skinner, and Mr. Griffith Price, all of whom, it is remarkable, except Mr. Price, (who afterwards had a silk gown, and was eminent as a Chancery Counsel,) ascended the bench. The safety of the judge was owing, perhaps, to his presence of mind and resignation, in sitting still till the confusion was over. The following

is the account of the accident, given by Sir Eardley himself in a letter to his wife.

“ *Worcester, 15 March, 1757,*

“ *Four in the Afternoon.*

“ I send this by express, on purpose to prevent your being frightened, in consequence of a most terrible accident at this place. Between two and three, as we were trying causes, a stack of chimneys blew from the top of that part of the hall where I was sitting, and beat the roof down upon us; but as I sat close up to the wall, I have escaped without the least hurt. When I saw it begin to yield and open, I despaired of my life, and the lives of all within the compass of the roof. Mr. John Lawes is killed, and the attorney in the cause which was trying is killed, and I am afraid some others: there were many wounded and bruised. It was the most frightful scene I ever beheld. I was just beginning to sum up the evidence in the cause which was trying to the jury, and intending to go immediately after I had finished, and most of the counsel were gone, and they who remained in court are very little hurt, though they seem to have been in the place of greatest danger. If I am thus miraculously preserved for any good purpose, I rejoice in the event, and both you and the little ones will have reason to join with me in returning God thanks for this signal deliverance; but if I have escaped

to lose either my honour or my virtue, I shall think, and you ought all to concur with me in thinking, that the escape is my greatest misfortune.

“ I desire you will communicate this to my friends, lest the news of such a tragedy, which fame always magnifies, should affect them with fears for me.

“ Two of the jurymen who were trying the cause were killed, and they are carrying dead and wounded bodies out of the ruins still. I will write to you again soon.

“ JOHN EARDLEY WILMOT.”

In another letter on the same occasion, Sir Eardley says: “ It was an image of the last day, when there shall be no distinction of persons, for my robes did not make way for me. I believe an earthquake arose in the minds of most people, and there was an apprehension of the fall of the whole hall.” (*Life of Sir E. Wilmot, p. 20.*)

#### THE ESTUIS OR BORDELLOES.

“ The word estuis or stewes,” says Lord Coke, “ is French, we having no word for it; and the keeper, he or she, of such houses, is punishable by indictment, at the common law, by fine and imprisonment.” He then proceeds to inform us, that Henry VIII., by proclamation under the great seal, suppressed all the stews which had long con-

tinued on the Bank-side in Southwark. "And those infamous women were not buried in Christian burial when they were dead, nor permitted to receive the rites of the church while they lived." "Before the reign of Henry VII. there were 18 of these infamous houses, and Henry VII. for a time forbade them, but afterwards 12 only were permitted, and had signs painted on their walls, as a Boare's Head, the Crosse Keys, the Gun, the Castle, the Crane, the Cardinall's Hat, the Bell, the Swan, &c." The selection of their abode by a number of these ladies in the following instance, presents a very suspicious appearance. "Many wicked and common women had seated themselves in a lane called Water Lane, next to the House of the Friars Carmelites in Fleet St. This being an open and known wickedness, King Edward III. to the end these Friars might perform their vows, one of which was to live in perpetual chastity, took order for removing of those women. The record saith, *Rex præcessit Majori Civitatis, London, quod amoveri faciat omnes mulieres meretrices in venellâ prope fratres Carmelitarum in Fleet-street inhabitantes.*" "And by the common law, it appertaineth to the Marshal of the King's house, to free, or protect the Court from *femes puteins*, which is more particularly explained by Fleta; who saith: *Mareschalli interest virgatam a meretricibus omnibus protegere et deliberare, et habet Mareschallus ex consuetudine pro quali-*

bet meretrici communi infra metas hospitii inventâ, 4d. primo die; quæ si iterum in ballivâ suâ inveniatur, capiatur et coram Seneshallo inhiatur ei hospitium Regis Reginae et liberorum suorum, ne iterum ingrediatur et nomina earum inebreviantur; quæ si iterum inventæ fuerint hospitium secutrices, tunc aut remaneant in prisonâ in vinculis, aut sponte prædicta hospitia abjurent; quæ si autem tertio inventæ fuerint, considerabitur quod amputentur eis tressoria et tondeantur, quæ quidem si quarto invenientur, tunc amputentur eis superlabia, ne de cætero concupiscant ad libidinem.'

"In R. 2, it is enacted that no estuis or brothel houses should be kept in Southwark, but in common places therefore appointed.

"So odious and so dangerous was this infamous vice, the fairest end whereof is beggary, that men in making leases of their houses, did add an express condition that the lessee, &c. should not suffer, harbour, or keep any feme puteine within the said houses, &c.

"See the case of Hen. VII. the custom of London for entering into a house and arresting of an Avowterer and carrying her to prison. In ancient times, adultery and fornication were punished with fine and imprisonment, and inquirable in Turnes and Leets by the name of Letturwhite." (See *Coke's 3d Institute*, 205, and *the case of the Marshalsea*, 10 *Rep.* 77.)



## LORD KENYON'S CRITICISM.

Soon after Lord Kenyon was appointed Master of the Rolls, he was listening attentively to a young clerk, who was reading to him the conveyances of an estate, and on coming to the word *enough*, pronounced it *enow*. His Honour immediately interrupted him: "Hold, hold, you must stand corrected, — *e n o u g h* is, according to the vernacular custom, pronounced *enuff*, and so must all other English words, which terminate in *ough*, as, for example, *tough*, *rough*, *cough*, &c." The clerk bowed, blushed, and went on for some time, when coming to the word *plough*, he, with a loud voice, and a penetrating look at his Honour, called it *pluff*! The great lawyer stroked his chin, and with a smile candidly said, "Young man, I sit corrected."

Sir William Jones, Attorney General in the reign of Charles I., according to Roger North's account of him, agreed entirely with Lord Kenyon in his pronunciation. "He affected," says North, "somewhat of the rustic phrase of his own country, which was Gloucestershire, as to instance in a word, *althoff* instead of *although*, as we pronounce it, which was no disadvantage, but rather set him off."

## SIR THOMAS MORE'S AUSTERITIES.

"The Lord Chancellor, albeit he was to God

and the world well known to be of notable virtue, though not so of every man considered, yet for the avoiding of singularity would he appear no otherwise than other men in his apparel, and other behaviour. And albeit he appeared outwardly honourable like one of his calling, yet inwardly he no such vanities esteeming, secretly next his body wore a shirt of hair, which my sister More, a young gentlewoman, in the summer, as he sate at supper, singly in his doublet and hose wearing thereupon a plain shirt, without either ruff or collar, chancing to espy, began to laugh at it. My wife, not ignorant of his manner, perceiving the same, privily told him of it, and he being sorry that she saw it, presently amended it. He also sometimes used to punish his body with whips, the cords knotted, which was known only to my wife, his eldest daughter, whom for her secrecy above all other he specially trusted, causing her, as need required, to wash the same shirt of hair." (*Roper's Life of Sir Thomas More*, p. 47.)

CIRCUMSTANTIAL EVIDENCE.—HARRIS'S CASE.

"Thomas Harris kept the Rising Sun, a public house, about eighteen miles from York, on the road to Newcastle. Harris had a man and maid servant: the man, whose name was Morgan, he kept in the threefold capacity of waiter, hostler, and gardener. James Gray, a blacksmith, travel-

ling on foot to Edinburgh, stopped at Harris's, supped, and lay there. Early in the morning, Morgan went secretly to a neighbouring magistrate, and gave information that his master, Harris, had just then murdered the traveller, James Gray, in his bed. A warrant was issued, and Harris was apprehended. Harris positively denied the charge, and Morgan as positively affirmed it; deposing, that he saw Harris at the stranger's bed, strangling him, but that he came too late to save him; and that Harris's plea was, the deceased was in a fit, and he was only assisting him. Morgan further deposed, that he instantly retired, and made a feint as if going down stairs, but creeping up very softly to an adjoining room, he there, through a key-hole, saw his master rifling the breeches of the deceased.

“Harris peremptorily denied every part of this story from the beginning to the end; and the body having, by order of the magistrate, been inspected, and no mark of violence appearing thereon, Harris was nearly on the point of being discharged, when the maid servant desired also to be sworn. She deposed that almost directly after her master came down in the morning, as she must conceive, from the traveller's room, she saw him go into the garden, (being unknown to her master in a back wash-house, which overlooked it,) saw him take some gold out of his pocket,

wrap it up in something, and bury it at the foot of a tree, in a private corner of the place.

“ Harris turned pale at this information. He would give no direct answer as to the circumstances of the money. A constable was dispatched with the girl, and the cash to the amount of upwards of thirty pounds was found! The accused acknowledged the hiding of the money, but he acknowledged it with so many hesitations, and answered every question with such an unwillingness, such an apparent unopenness, that all doubts of his guilt was done away, and the magistrate committed him for trial. Harris was brought to the bar at the York Summer Assises, which happened about a week after his commitment, 1642. Morgan deposed the same as when before the justice. The maid servant and constable deposed to the circumstance of the money; the first, as to the prisoner's hiding, and both as to the finding it; and the magistrate gave testimony to the confusion and hesitation of Harris on the discovery of, and being questioned about, the hiding of the money.

“ Harris, on his defence, endeavoured to invalidate the charge by assertions, that the whole of Morgan's evidence was false; that the money which he had buried was his own property, honestly come by, and buried there for his better security, and that his behaviour before the magis-

trate on this particular, arose from the shame of acknowledging his natural covetousness,—not from any consciousness of guilt. The Judge then summed up the evidence, remarking strongly on the *circumstance* of the hiding of the money, and the weakness of the prisoner's reasons for his so hiding of it; and the jury just consulting together for *two minutes*, brought in their verdict—*Guilty*.

“ Harris was executed pursuant to his sentence, persevering in his declarations of innocence, but desiring all persons to guard against the effects of an avaricious disposition: for it was that sordidness of temper which had led him, he said, into general distrustfulness, and that into the expedient of hiding his money; which circumstance had alone furnished the means to his enemies, (for what reason they were, he said, he knew not, but whom he forgave,) for bringing him to an ignominious death.

“ The truth of the fact at last came out: Harris was, indeed, entirely innocent! Morgan and the maid were not only fellow-servants but sweethearts. Harris's suspecting covetous temper was well-known to both, and the girl once, by accident, perceiving her master burying something, discovered the circumstance to Morgan; he, acting as gardener, took an opportunity when at work, to dig for it; it proved to be five guineas;

he left it, and informed the girl of it. They settled it not to touch the money, but to keep watching their master, as they had no doubt but he would add to it; and when it arose to a good sum, they agreed to plunder the hiding-place together, marry, and with the spoil, set up in some way of business. As they imagined, so it happened; they got several occasions to see the stock increasing, but (equally covetous with their master,) the golden harvest was not yet ripe.

“ One day in a quarrel, Harris strikes his man, Morgan, several times. Morgan determines on revenge; at this fatal period arrives James Gray; Morgan finds him next morning dead in his bed, a diabolical thought strikes Morgan, of first charging Harris with the murdering and robbing of Gray, and then of plundering his master's hiding-place, whilst he, the master, should be in prison. Morgan communicates this intention to the maid; she approves of it; they consult, and fix upon the plan, and Morgan gives the information to the magistrate, as before related. The girl, unexpectedly, finds the accusation not sufficiently supported, and fearing that her sweetheart, of whom she is fond, will be punished for perjury if her master is released, who, indeed, unfortunately had just hinted as much before the justice, the expedient, in a moment, strikes her to sacrifice the hidden money, with her master, to the safety of

her paramour ; and the idea, as the reader already knows, fatally succeeds. The whole of this stupendous piece of wickedness came to light in the beginning of the year 1643, on a quarrel between Morgan and the girl, who, after the death of Harris, had lived together as man and wife. They were taken up in consequence, and committed to prison ; but escaped the public punishment due to their crime, by both of them dying of a jail disease.

“ Harris’s innocence became afterwards further illustrated, by its being found out, that James Gray, the supposed murdered person, had had two attacks of an apoplexy, some months previous to his death, and that he was never master of five pounds at one time in his life.” (*Theory of Presumptive Proof.*)

OUTRAGEOUS ATTACK UPON LORD CHANCELLOR  
CLARENDON.

After Lord Clarendon’s disgrace, he retired to France, where he was very coldly received by the government. During his journey to the waters of Bourbon, a most outrageous attempt was made upon his life, which he has related in the following words :—

“ There happened to be at that time quartered there a foot company of English seamen, who had been raised and were entertained to serve the

French in attending upon their artillery, some of them being gunners ; and none of them had the language, but were attended by a Dutch conductor, who spake ill English, for their interpreter. Their behaviour there was so rude and barbarous, in being always drunk, and quarrelling and fighting with the townsmen, who would not give them any thing they demanded, that the city had sent to the court their complaints, and expected orders that night for their remove. They quickly heard of the chancellor's being come to the town, and calling their company together, declared, ' That there were many months' pay due to them in England, and that they would make him pay it before he got out of the town.'

" He was scarce got into his ill ground lodging when many of them flocked about the house upon which the gates of the inn were shut, they making a great noise, and swearing they would speak with the chancellor, and being about the number of fifty, they threatened to break open the gate, or pull down the house. The mutiny was notorious to all the street ; but they had not courage to appear against them. The magistrates were sent to, but there was a difference between them upon the point of jurisdiction, this uproar being in the suburbs. In short, they broke open the door of the inn : and when they were entered into the court, they quickly found which was the chan-



cellor's chamber ; and the door being barricadoed with such things as were in the room, they first discharged their pistols into the window, with which they hurt some of the servants, and Monsieur Le Fonde, who with his sword kept them from entering in at the window with great courage, until he was shot with a brace of bullets in the head, with which he fell : and then, another of the servants being hurt, they entered in at the window, and opened the door for the rest of their company, which quickly filled the chamber.

“ The Chancellor was in his gown, sitting up on the bed, being not able to stand, upon which they all came with their swords drawn : and one of them gave him a blow with a great broadsword upon the head, which, if it had fallen upon the edge, must have cleft his head ; but it turned in his hand, and so struck him with the flat, with which he fell backwards on the bed. They gave him many ill words, calling him ‘ Traitor,’ and swore, ‘ Before he should get out of their hands, he should lay down all their arrears of pay.’ They differed amongst themselves what they should do with him, some crying ‘ That they would kill him,’ others, ‘ That they would carry him into England :’ some had their hands in his pockets, and pillaged him of his money and some other things of value ; others broke open his trunks and plundered his goods. When himself

recovered out of the trance in which he was stunned by the blow, they took him by the hand who spake of carrying him to England, and told him 'it was the wisest thing they could do to carry him thither, where they would be well rewarded : ' another swore, ' that they should be better rewarded for killing him there.' And in this confusion, the room being full and all speaking together, the fellow who had given him the blow, whose name was Howard, a very lusty strong man, took him by the hand, and swore, ' that they should hurt one another if they killed him there ; and therefore they would take him into the court, and dispatch him where there was most room.' And therefore others laid their hands upon him and pulled him to the ground, and then dragged him into the court, being in the same instant ready to run their swords into him together : when, in the moment, their Ensign, and some of the magistrates with a guard, came into the court, the gate being broken ; and so he was rescued out of their bloody hands, and carried back to his chamber.

" Howard and many of the others, some whereof had been hurt with swords as they entered at the window, were taken and carried to prison, and the rest dispersed, vowing revenge when they should get the rest of the company together : and it cannot be expressed with how much fear the

magistrates and the poor guard that attended them, apprehended their coming upon them together again.

“ The Chancellor himself had the hurt before mentioned in his head, which was a contusion, and already swollen to a great bigness ; Monsieur Le Fonde was shot in the head with a brace of bullets, and bled much, but seemed not to think himself in danger ; two of the Chancellor’s servants were hurt with swords, and lost much blood. So that they all desired to be in some secure place, that physicians and surgeons might visit them. And by this time many persons of quality of the town, both men and women, filled the little chamber, bitterly inveighing against the villainy of the attempt, but renewing the dispute of their jurisdiction. And the Provost, who out of the city was the greater officer, would provide an accommodation for them in his own house in the city, and appoint a guard for them ; which the magistrates of the city would not consent to, nor he to the expedient proposed by them. And this dispute, with animosity and very ill words, continued in the chamber till twelve of the clock at night ; the hurt persons being in the mean time without any remedy or ease : so that the magistrates, though they were not so dangerous, were as troublesome as the seamen, against whom they were not yet secure from a second attempt.

“ In the end, Monsieur le Fonde was forced to raise his voice louder than was agreeable to the state he was in, to threaten to complain of them to the King, for their neglect before and after the mischief was done; by which they were much moved, and presently sent to the governor of the duke of Bouillon's Castle, (which is a good and noble house in the town,) ‘ That he would receive the Chancellor and Monsieur Le Fonde, with such servants as were necessary for their attendance ;’ which he did with great courtesy, and gave them such accommodation as in an unfurnished house could on the sudden be expected. And so physicians and surgeons visited their wounds, and applied such remedies as were necessary, till upon some repose they might make a better judgment.

“ The same night there were expresses dispatched to the court to give advertisement of the outrage; and to Roan, to inform the intendant in whose province it was committed: and he, the next day, with a good guard of horse, arrived at Eureux. After he had visited the Chancellor, with the just sense of the insolence he had undergone, and of the indignity that the King and his government had sustained, he proceeded in the Court of Justice to examine the whole proceedings, and much blamed the magistrates on all sides for their negligence and remissness. Upon the whole examination, there appeared no cause

to believe that there was any formed design in which any others had concurred, than they who appeared in the execution, who defended themselves by being drunk, which did not appear in any other thing than in the barbarity of the action. Yet it was confessed, that upon their first arrival at Dieppe, and whilst they were quartered there, the Chancellor then passing by, between Roan and Calais, they had a resolution to have robbed or killed him, if they had not been prevented by his getting the gates opened, and so going away before the usual hour." (*Clarendon's Life*, v. 3. p. 896.)

ON THE USE OF TORTURE IN JUDICIAL  
PROCEEDINGS.

“ Fuller informs us, that one Hawkins suffered this punishment in the reign of Henry the VIth, in order to extort evidence from him ; and Sir Edward Coke, in the case of Lady Shrewsbury, says, that “ the nobility of England are not subject to torture in *crimine læsæ majestatis* ;” which seems to admit, that in other crimes they were liable to it ; or otherwise, affords a strong inference, that persons of a lower rank might, in treason, be subject to this sentence. King James, in his works, mentions, that the rack was *shewn* to Guy Fawkes, during his examination ; and yet this attempt of procuring evidence is not taken

notice of by any historian or lawyer of the times; though every circumstance relative to the powder-plot must have been publicly known. Upon the murder of the Duke of Buckingham by Felton, the judges were asked, whether he could be tortured in order to extort a confession? They answered, indeed, to their honour, in the negative; but their being thus consulted, shews that, in the apprehension of the king's counsellors, they might have inflicted this punishment. It is not pretended by this, that the instances were frequent; and fortunately this most horrid practice hath been discontinued, so that there cannot be the least legal pretence ever to revive it. Torture, indeed, by no means prevails so universally in the other countries of Europe as is generally apprehended; there are express laws against it both in Navarre and Biscay, though in Biscay it hath of late been permitted in treason and heresy. There are also many regulations by the ordinances of the state of Lucca, to prevent its ever being inflicted a second time, but upon fresh as well as stronger proofs; and if the executioner introduces any new severity during the examination of the criminal, he is punished with death. It is used in China, and in most parts of Asia: the act of union hath forbidden it in Scotland."

"There is a parenthesis of some ambiguity likewise thrown into this preamble, which relates to

the confession of the criminal, required by the civil law, (" which they will never do without torture or pains.") I will not dwell, however, upon the true meaning or construction of this recita ; but shall only observe, that the practice of torturing criminals is not spoken of with any great abhorrence by the legislature ; nay, it seems to be recited as allowed to have been practised in this country, in all offences tried before the admiral. I have, in my observations on the Statute of Westminster the first, endeavoured to prove, that torture, though not frequently used, was not absolutely unknown in England, since which some additional proofs have occurred.

" Oldmixon, in his history, asserts, that a confession was thus extorted from one Simpson, in 1558. Sir Walter Raleigh also at his trial mentions, that Kemish was threatened with the rack, and that the keeper of this horrid instrument was sent for, which seems to prove, beyond all doubt, that this mode of punishment had been occasionally used, otherwise there would not have been a regular officer who had the custody of it. Torture still continues to be used in most countries in Europe, and among the rest, in France, though honest Montaigne hath written with great warmth against it. Montesquieu hath likewise a short chapter, by which he would seem to condemn it ; but it is the most fantastical in his whole work of

the *Esprit des Loix*; the very great abilities and learning, which appear in almost every other part of it, entitle him, however, to not only these, but greater liberties with his readers.

“ The present King of Prussia hath, to his honour, abolished it in his dominions : ‘ *La question se donne en Allemagne aux malfaiteurs après qu’ils sont convaincus, afin d’arracher de leur propre bouche l’aveu de leurs crimes : elle se donne en France pour avérer le fait ou pour découvrir les complices ; il y a huit ans que la question est abolie en Prusse.*’

“ The Marquis Beccaria, who seems to have adopted most of Montesquieu’s ideas, makes use of the following argument against the use of torture : ‘ The person suffering this agony, either confesses, or not ; if he is guilty, and does not acknowledge his crime, he is acquitted, when he deserves death : if the accused is innocent, he hath been tortured, when the putting him upon his trial was more than sufficient punishment.’

“ He likewise observes, that those states of Europe who permit torture in the cause of civil justice, never allow it to be made use of in their camps, where the martial law takes place.

“ Ammianus Marcellinus informs us, that the Egyptians shewed remarkable firmness, whilst under the most excruciating pain to extort a discovery from them. *Apud eos (Egyptos,) erubescit,*



si quis non infitiando tributa plurimas in corpore vibices ostendat ; et nulla tormentorum vis inveniri adhuc potuit, quæ obdurato illius tractûs latroni elicere potuit, ut nomen proprium dicat."

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To the foregoing collections, extracted from Barrington's Observations on the Ancient Statutes, a writer in the Retrospective Review has added the following remarks.

" This curious subject had engaged the attention of the late Sir Samuel Romilly, whose benevolent mind was always alive to enquiries in which the interests and happiness of his fellow-creatures were involved. At his death some MS. collections on the use of torture in England were found amongst his papers, and were communicated to Miss Aikin, who has made a judicious use of them in her Memoirs of the Court of King James the First. The authorities thus collected form an admirable Supplement to the Observations of Mr. Barrington, on which account we have thought it proper to insert them in the present article, together with such few illustrations as have casually occurred to ourselves. The whole will thus form a more complete collection of facts than can, perhaps, be met with elsewhere.

" One of the first instances in which a question arose as to the use of torture in judicial cases in this country, was on occasion of the proceedings

against the Knights Templars. In a former volume we gave some account of the torments to which these unfortunate men were subjected in other parts of Europe. In England, the Archbishop of York, during the examinations taken by him against the supposed offenders, was desirous of applying the rack ; but suggested to several monasteries and divines the doubts he entertained, whether he could have recourse to it, seeing, that in this realm of England it had never been seen or heard of. He further desired their opinion, whether, if torture should be applied, it should be done with priests or laymen ; and whether, if no person could be found in England to do the office, he might *send for expert torturers from foreign parts?* (*Walter Hemingford, p. 256.*) It may be added, that the Archbishop was afterwards convinced of the innocence of the Templars, and directed many of the Knights to be supported at his own expense." (*Dugd. Monas. i. 184.*)

"The trial by rack," says Blackstone, (*4 Comm. 326,*) "is utterly unknown to the laws of England, though once, when the dukes of Exeter and Suffolk, and other ministers of Henry VI. had laid a design to introduce the civil law into this kingdom as the rule of government, for the beginning thereof they erected a rack of torture, which was called in derision, the duke of Exeter's daughter, and still remains in the Tower of Lon-

don." In the reign of Edward IV. however, an instance occurs of the judicial employment of the rack. Sir Thomas Cooke, who had been Lord Mayor of London, was arraigned of treason for lending money to Queen Margaret, and a witness was produced against him, who had been examined on the rack. (*Fuller's Worthies*, p. 317.) In the reign of Henry VIII. this instrument of torture was applied to spiritual purposes, and that too upon the person of an unfortunate woman. At the instigation of the respective Chancellors Rich and Wriothesley, Anne Ascough, who was accused of heresy, was racked repeatedly, after her condemnation, for the purpose of extracting evidence against some other court ladies of the same opinions.

“ In the reign of Elizabeth, to the eternal disgrace of that Queen, the rack became an active instrument of torture, and was employed chiefly against the Catholics. The commissioners for inquiring into treason, and the members of the high commission court, appear to have applied it at their will and pleasure ; and a pamphlet was written under the eye of Burleigh, entitled, ‘ A Declaration of the favourable dealings of Her Majesty’s Commissioners,’ in extenuation of the practice. On the trial of the Babbington conspirators, Sir Christopher Hatton, one of the Commissioners, put the following question to one of the prisoners :

‘ I must ask thee one question—was not all this willingly confessed by thyself without menacing, without torture, and without fear of any torture ?’ (*Howell’s State Trials*, v. i. p. 1131.) So Sir Edward Coke, on the trial of lords Essex and Southampton, says, ‘ Though I cannot speak without reverend commendation of her Majesty’s most honourable justice, yet I think her overmuch clemency to some turneth to overmuch cruelty for herself, for though the rebellious attempts were so exceedingly heinous, yet out of her princely mercy, no man was racked, tortured, or pressed to speak anything further than of their own accord and willing minds, for the discharge of their consciences.’ (*State Trials*, v. i. pp. 1338, 1348.) In another place, Sir Edward Coke enumerates, among the privileges of peers, that they are not to be tortured. ‘ For the honor and reverence which the law gives to nobility, their bodies are not subject to torture *in causâ criminis læsæ majestatis*. (12 *Rep.* 96.) In the third Institute, however, he declares that all torture of accused persons is contrary to law (p. 35.), and in his second Institute, he observes, that Magna Charta prohibits torture by the words, *nullus liber homo aliquo modo destruat*, (p. 48.)

“ The use of torture was resorted to occasionally in the reign of James I., if we may trust the authority of Selden. ‘ The rack is used nowhere

as in England : in other countries it is used in judicature, where there is a *sempilena probatio*, a half-proof against a man, then to see if they can make it full, they rack him if he will not confess ; but here in England they take a man, I do not know why, but when somebody bids.' On the trial of Sir Walter Raleigh, which took place in the first year of James's reign, Sir Walter asserted that Keymis, his captain, ' was offered the rack to make him confess.' Lord H. Howard replied, that Keymis ' was never on the rack ;' and the Commissioners protested before God, that ' there was no such matter intended, to their knowledge.' However, on Raleigh's inquiring whether the keeper of the rack had not been sent for, Sir William Wade, one of the Commissioners, admitted, that when the Solicitor and himself examined Keymis, they told him he deserved the rack, but did not threaten him with it. It should appear from Raleigh's question, that there existed at this time an officer, whose duty it was to employ the instrument of torture. (2 *State Trials*, 22.)

“ On the trial of Garnet, the Jesuit, for the Gunpowder Plot, Lord Salisbury asserted that nothing had been drawn from him by ‘ racking or any such bitter torments ; a matter ordinary,’ he said, ‘ in other kingdoms, but now forborne here. However, in an account published by authority, it

is expressly stated that Guy Fawkes came to his trial weakened by the effects of the rack; and Owen, Garnet's servant, who was reported to have died in prison, is said to have expired under the torture. (*Memoirs of the Court of James*, vol. i. p. 260.) Oldcorn, the Jesuit, also is said to have been five several times racked in the Tower, and once with the utmost severity for several hours. (*Butler's Memoirs of English Catholics*, ii. 260.)

“It is a singular fact, that so late as the reign of Charles II. a writer should be found in this country openly to defend the use of torture in judicial proceedings. It is a tract entitled, ‘The Law of all Laws, or the Excellency of the Civil Law above all human Laws whatsoever, by Sir Robert Wiseman, Knight, Doctor of the Civil Laws, 1664.’ The writer enters into an elaborate examination of the subject, and argues it in a manner which, if we were not indignant at its atrocious spirit, would amuse us with its folly. ‘Neither does it derogate,’ says Sir Robert, ‘from the clemency of the civil law, that it seems to deal so sharply with those, against whom there are grounds enough to suspect them of some enormous crimes, whereof they are accused, but not evidence enough to condemn them, as to allow such persons to be set upon the rack, thereby to manifest their innocence by an obstinate denial, or to discover their guilt by a plain

confession.—To bring men to the rack in such cases, for trial's sake, is not to be censured for cruelty. *Non ex sævitiâ sed ex bonitate talia faciunt homines*: such things are done by men, not out of cruelty, but goodness.' It is curious to find the advocates for the rack, the pulley, and the wheel, using precisely the same arguments which some of the supporters of the whip and tread-mill employ at the present day. 'Sane hic juris rigor,' says Mestertius, '(si aliquis sit) utilitate publicâ compensatur;' 'for by the terror thereof,' adds Sir Robert Wiseman, 'it is free from the machinations of wicked and lewd men.' 'These were the cautions,' adds the same writer, after examining the practice of torture by the civil law, 'which the Roman state did prescribe to be used in this sharp, but as their policy stood, (who did not love upon a slender proof to take away the lives of their people,) very necessary course of trial by torture, which peaceable and just men could not be offended with, because it was to defend and secure them from the rage and rapine of vile men, and if evil men did groan under that severity, they had their desert and might thank themselves.' 'When a man,' says a modern Wiseman, 'has been proved to have committed a crime, it is expedient that society should make use of that man for the diminution of crime: he belongs to them for that purpose; and the degree

of severity to be employed is only restrained to that which will not excite compassion for the sufferer and lessen the horror of the crime.' So that in a community where the feelings of the people are sufficiently blunted to endure without sympathy, the spectacle of the rack, it may be highly 'expedient that society should make use of that instrument for the diminution of crime:—' 'Sane hic rigor utilitate publicâ compensatur.' "

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To the preceding notices we may add the observations of Sir Thomas Smith, (who lived in the reign of Elizabeth,) relative to the application of torture in this kingdom. In the 27th chapter of his Commonwealth of England, he says: "Heading, tormenting, dismembering, either arm or leg, breaking upon the wheel, impaling, and such cruel torments, as be used in other nations by the order of the law, we have not; and yet as few murders committed as anywhere, nor is it in the Judge's power to aggravate or mitigate the punishment of the law, but in *the Prince's only*, and his Privy Council, which is marvellously seldom done." Sir Thomas here appears to recognize the dangerous prerogative of aggravating the punishment of the law, a prerogative altogether inconsistent with a free government. A little afterwards he observes: "Likewise torment or question, which is used by the order of the Civil



Law, and custom of the countries, to put a malefactor to excessive pain, to make him confess of himself, or of his fellows or accomplices, it is not used in England ; it is taken for servile."

#### THE TEMPLE CHURCH.

The Temple Church, which belongs in common to the two societies of the Inner and Middle Temple, was founded by the Knights Templars in the reign of Henry II. upon the model of the Church of the Holy Sepulchre, and was consecrated in 1185, by Heraclius, Patriarch of Jerusalem, who was at that time on a visit to England for the purpose of raising contributions in support of the Crusades. This was not the first church founded by the Knights Templars in England, their original seat being near the entrance into Chancery Lane from Holborn, where in 1595, the ruins of an old church, built in a circular form, (the usual form in which the Templars built all their churches,) were discovered. (*Stowe's Survey*, 824. *Dugd. Orig.* 144.) The following is the description of the Temple Church, given in Herbert's *History of the Inns of Court*, (p. 259.)

"This is a very beautiful specimen of the early Gothic architecture. It has three aisles running east and west, and two cross aisles. The windows are *lancet-shaped*, very antique, and the western entrance, which answers to the nave in

other churches, is a spacious round tower, in imitation of the Church of the Holy Sepulchre, (a peculiarity which distinguishes all the churches of the Knights Templars.) This is separated from the choir, not by close walls, but by a handsome screen, which, however, has the effect of obstructing the sight. It is supported by six pointed arches, each resting on four round pillars, bound together by a *faccia*. Above each arch is a window with a rounded top, with a gallery and rich Saxon arches intersecting each other. With- outside of the pillars is a considerable space preserving the circular form. On the lower part of the wall are small pilasters meeting in pointed arches at the top, and over each pillar a grotesque head.

“ The choir is a large building of the square form, evidently erected at another time ; the roof is supported by slight pillars, of what is generally called *Sussex* marble, and the windows on each side, which are three in number, are adorned with small pillars of the same. On the outside is a buttress between each. The entire floor is of flags of black and white marble. The length of the choir is 83 feet, the breadth 60, and the height 34 ; it is unencumbered with galleries. The height of the inside of the tower is 48 feet in diameter, on the floor 51, and the circumference 160.

“The pillars of this tower, (6 in number,) are wainscoted with oak to the height of eight-feet, and some have monuments placed against them, which injures the uniformity of the plan. It is singular that the small pillars, and the heads, which ornament them, are not of stone, but a composition resembling coarse mortar, which is very rotten, and from neglect and damp, threatens (unless repaired,) a very speedy demolition.”

The best description of the monuments in the Temple Church is contained in Pennant's History of London, and is now extracted.

“On the floor of the round church are two groups of knights. In the first are four, each of them cross-legged, three of them in complete mail, in plain helmets, flattened at top, and with very long shields. One is known to have been Geoffrey de Magnaville, created Earl of Essex in 1148. His end was singular, for being driven to despair by the injustice of his monarch, King Stephen, he gave loose to every act of violence. He was mortally wounded in an attack upon Burwell Castle, in Cambridgeshire, and, being found by some Templars, was dressed by them in the habit of the order, and carried from the spot. As he died excommunicated, they wrapped his body in lead, and hung it on a crooked tree in the Temple orchard. On being absolved by the Pope, (it being proved, that he expressed great penitence in

his last moments,) he was taken down, and buried, first in the cemetery, and afterwards in the place where we find this memorial of him."— (*Gough's Monuments*, i. 24. tab. v.)

“ One of these figures is singular, being bare-headed and bald, his legs armed, his hands mailed, his mantle long, round his neck a cowl, as if, according to a common superstition in early days, he had desired to be buried in the dress of a monk, lest the evil spirit should take possession of his body; on his shield are three *fleurs de lis*.

“ In this group is a stone coffin of a ridged shape, conjectured to have been the tomb of William Plantagenet, fifth son of Henry III.

“ In the second group, are other figures, but none of them cross-legged, except the outermost; all of them are armed in mail; the helmets much resemble the former; but few are mailed. One figure is in a spirited attitude, drawing a broad dagger; one leg rests on the tail of a cockatrice, the other is in the action of being drawn up with the head of a monster beneath. None of the eight figures, except that of Geoffrey de Magnaville are ascertained; but Camden conjectures, that three are intended to commemorate William, Earl of Pembroke, who died in 1219, and his sons, William and Gilbert, likewise Earls of Pembroke, and Marshals of England. In the first group, one of the figures bears a lion upon

his shield, the arms of that great family. Gilbert was brought up to the church, and, notwithstanding he was totally unskilled in the exercises of chivalry, would enter into the gallant lists; but mounting a fiery courser was run away with, flung, and killed, at a tournament at Ware, 1242.

“The being represented cross-legged is not always a proof of the deceased having had the merit, either of having been a crusader, or having made a pilgrimage to the Holy Sepulchre. I have seen at Mitton, in Yorkshire, two figures of the Sherbornes thus represented: one died in 1629, the other in 1689, who, I verily believe, could never have had any more than a wish to enter the holy land.

“To these ancient monuments may be added, that of a bishop, in his episcopal dress, a mitre and crosier, well executed in stone.”

The opinion expressed by Mr. Pennant, that the being represented cross-legged is not a proof of the deceased having been a crusader, can scarcely be conceded as borne out by the proofs which he adduces of two monuments erected in the *seventeenth* century, where the same position is observed. The authority of Stowe, Camden, and other antiquaries, is against Mr. Pennant.

The church likewise contains several more modern monuments, amongst the most remarkable of which are those of the celebrated John Selden,

who died in 1654, of his friend, Sir John Vaughan, Lord Chief Justice of the Common Pleas, in the reign of Charles I., and author of the Reports which pass under his name, and of Plowden.

The superior clergyman of the Temple Church, is called the Master, a title which was known in the time of the Knights Templars, in whose histories we read of *ὁ μαιστρος τῆς τεμπλῆς*. He is appointed by the King's Letters Patent, without institution or induction; there is besides a reader and lecturer. "In Stowe's time it had four stipendiary priests, with a clerk, who had stipends allowed them out of the possessions of the destroyed monastery of St. John of Jerusalem. But the establishment was still greater in the Romish times, when the several priests had a hall and lodging assigned them within the house, as appears by testimonials in the reign of Henry VII. The charges of the present church are jointly paid by both societies, who have each their side at divine worship." (*Herbert's Inns of Court*, 262.)

Some mean buildings, which hid a part of this venerable structure, have been lately pulled down.

#### THE LATE GEORGE HARDINGE.

The name of Mr. Hardinge is fast fading away from the recollection of the public. The following pleasing little notice of him has been pre-

served by Miss Hawkins, in her Memoirs, (*vol. i. p. 361.*)

“ Of George Hardinge something may be said. That he was a man of most brilliant talents, those who were at all acquainted with him must confess, but it is scarcely possible to conceive talents less adapted to legal pursuits than his. His conversation, and, in many instances, his speeches at the bar, were replete with wit and merriment. By the concurrence of fortunate circumstances, which no man, even with the greatest pretension, can command, and scarcely ever happen to any one, he found himself, more than once, at the very head of his profession, with profit and honours thrust upon him ; but the vivacity of his temper, habits, and appearance, would not permit him to avail himself of the proffered good, and others more sedulous, were permitted to supplant him, contented to represent himself in the court where he was acting as counsel, as ‘ a very idle fellow,’ and to verify the assertion by a professional life of the grossest negligence. It was, to all who observed it, a matter of deep regret, to see talents thus lost, for Lord Camden, a near relation of Mr. H.’s, is reported to have confessed, that his talents were far superior to his own, and that, if he had had steadiness, every thing was in his power ; but neither what he owed to his own reputation or interest, nor all his classical remi-

niscences, could teach him, that the siren, sloth, was to be shunned; and at last he closed his reckless life in very *confined* circumstances.

“ The lady to whom I owe Mrs. Piozzi’s anticipated review, possessed very early, and allows me to print, the following improviso of Mr. Hardinge, written, it may very truly be said, on the spur of the occasion. It needs a few words of introduction. I give those which were given me.

“ Messrs. Triphook and Company having directed a letter ‘ To George Hardinge, Esq. if living: if dead, to his Executors,’ beginning, ‘ Sir, or Gentlemen,’ and stating, that not having heard from Mr. Hardinge, after repeated applications for settling an enclosed account, they concluded he must be dead; and if that melancholy circumstance was true, requesting that it might be settled by his executors. Mr. Hardinge immediately wrote :—

“ Oh ! Messieurs Triphook, what is fear’d by you,  
The melancholy circumstance is true ;  
For I am dead ; and, more afflicting still !  
My legal assets will not pay your bill.  
For oh ! to name it I am broken-hearted,  
My mortal life, insolvent I departed ;  
So, gentlemen, I’m yours, without a farthing,  
For my Executors and Self,

GEORGE HARDINGE.



*P. S.* Excuse the postage which these lines will cost,  
The dead their franking privilege have lost."

MR. JUSTICE CATLINE.

"Mr. Bromley, Solicitor, giving in evidence for a deed, which was impeached to be fraudulent, was urged by the Counsel on the other side with this presumption, 'That in two former suits when title was made, that deed was passed over in silence, and some other conveyance stood upon.' Mr. Justice Catline taking in with that side, asked the Solicitor, 'I pray thee, Mr. Solicitor, let me ask you a familiar question:—I have two geldings in my stable; I have divers times business of importance, and still I send forth one of my geldings and not the other; would you not think I set him aside for a jade?' 'No, my lord,' said Bromley, 'I would think you spared him for your own saddle.'" (*Bacon's Apothegms.*)

DELIBERATIONS OF JURIES.

The rule of law which compels a jury to be unanimous, however various their opinions may originally be, has doubtless given rise to many singular scenes. On the trial of the seven Bishops, in the reign of James II., the jury withdrew and remained in deliberation the whole of the night, owing, as it is supposed, to the obstinacy of one Arnold, the King's brewer. (*See*

*Macpherson's State Papers, vol. i. p. 265.*) In the following letter an account of the conduct of this Jury is given.

“ *John Ince to the Archbishop of Canterbury.*

“ *June 30, 1688.*

“ MAY IT PLEASE YOUR GRACE,

“ We have watched the Jury carefully all night, attending without the door, on the stair-head. They have, by order, been kept all night without fire and candle, save only some basins of water and towels this morning about four. The officers, and our own servants and others hired by us to watch the officers, have, and shall constantly attend, but must be supplied with fresh men to relieve our guard if need be.

“ I am informed by my servant and Mr. Grange's, that about midnight *they were very loud one with another*, and that the like happened about three in the morning, which makes me conclude that they are not yet agreed. They beg for *a candle to light their pipes*, but are denied.

“ In case a verdict pass for us, which God grant in his own good time, the present considerations will be *how the Jury shall be treated*. The course is usually each man so many guineas, and a common dinner for them all. The quantum is at your Grace's and my Lord's desire. But it seems to my poor understanding, that the dinner might be spared, lest our watchful enemies should inter-

pret it against us. It may be ordered thus, each man                    guineas for his trouble, and each man a guinea over for his own desire.

“ My Lord,

“ Your Grace’s most humble Serv.

“ JOHN INCE.

“ N. B. There must be 200 guineas provided.’  
(*See Macpherson’s State Papers, vol. i. p. 154.*)

By way of appendix to the above, we may add a very entertaining account of the deliberations of a Jury in a late case. The action was brought by Mr. Bodkin, Honorary Secretary to the Mendicity Society, against the Times Newspaper.

“ Immediately after the Jury were shut up in the Bail Court, the tendency of the alleged libel was warmly discussed. The special jurymen used great abundance of language, if not of argument, for the purpose of convincing Mr. Sawyer that it was a false, malicious, and injurious publication. That gentleman manfully defended his opinion against all their objections; alleging, that he thought the remarks made upon Mr. Bodkin’s conduct to be such as the occasion required, and such as he himself should have written, had he possessed the necessary talent. Several speeches were made upon the subject, which produced no effect except it were that of making the speakers more obstinately attached to the side they advocated. A Mr. Cooke, who was a talesman, was a

silent, but not an ineffectual assistant to Mr. Sawyer, in the vast fire of words which his brother jurymen opened upon him. He agreed with Mr. Sawyer, that the paragraphs complained of, formed no libel; and declared that he could not consent to give a verdict which should declare them to be such. Both gentlemen requested their opponents to give them a definition of what was and what was not a libel; and were answered with the usual remarks, that every thing is a libel which tends to bring a man's character into contempt. They were also treated with a dissertation upon the necessity of restraining the licentiousness of the press, which one gentleman recommended as the best means of preserving its liberty. Another told them, that though the press had been styled the palladium of British freedom, he could not consider it as such, when he saw it making attacks like the present upon the character of private individuals. A third declared, that the malice of the article of which Mr. Bodkin complained was so great, that he would consent to nothing less than a verdict which gave him 300*l.* damages. Mr. Sawyer and Mr. Cooke called upon them to point out the malice which was said to be so evident in the alleged libel, asserting that they would have no objection to give a verdict for the plaintiff, if they could be satisfied upon that point. The libel was in consequence read over

paragraph by paragraph, several gentlemen commenting upon it as they went along. Still the two Jurymen remained unconvinced. Under these circumstances, the Jury came into Court about seven o'clock, and the conversation then took place between Mr. Justice Littledale and Mr. Sawyer, which was reported in our paper of Saturday. The result of it was, that Mr. Sawyer and Mr. Cooke, in consequence of the doctrine laid down by Mr. Justice Littledale respecting constructive malice, gave up their intention of finding a verdict for the defendant, and agreed to join their brethren in a verdict for the plaintiff. They then left the box to consider of the damages which they should give the plaintiff for his loss of character. A question then arose as to damages. The two jurors who had reluctantly consented to find a verdict for the plaintiff, said that nothing should induce them to give more than nominal damages; and not knowing that in an action for a libel, a farthing's damages will carry costs, if the Judge does not certify, declared their intention of submitting to starvation before they gave Mr. Bodkin more than his costs of suit. This declaration was not likely to excite much satisfaction in the minds of any of the jurors, and some of the special jurors, we are informed, evinced great displeasure at it. Their usual hour of dinner had arrived, and the sherry and sandwiches which

Mr. Justice Littledale had permitted to be sent in to Mr. Robertson and Mr. Horton, on account of their advanced age, tending only to excite the appetite of their brother jurors, Mr. Godsall, who, we understand, was engaged to dine with his father-in-law, the Lord Chief Justice of the Common Pleas, seemed particularly to regret the loss of his dinner. He tried first by pompous language, then by argument, then by persuasion, then by entreaty, and in the course of the night, by violence, to induce Mr. Sawyer to concur with his brother jurors. Mr. Sawyer, however, was inflexible, and told Mr. Godsall, that even if he were so base as to neglect his oath for the sake of his appetite, there would still be the integrity of Mr. Cooke to overcome—a gentleman who, though he said little, was not the less determined to maintain the opinion he had formed upon the present case. Mr. Godsall appeared to think but lightly of Mr. Cooke's opposition, saying that he had no doubt that Mr. Cooke would yield, if Mr. Sawyer would set him the example. Mr. Godsall then held out other inducements to Mr. Sawyer, which were, however, as unavailing as his prayers, his entreaties, and his subsequent violence. In the midst of these discussions, time wore away, perhaps neither pleasantly nor rapidly to the gentlemen engaged in them. About half-past eight o'clock several jurymen wrote to their families

stating that they must not expect them that night; and their notes were dispatched by the officer of the Court. As it had now become evident to both parties that they could not convince the other, the matter ceased to be one of argument, and became one of starvation. At this stage of the proceeding, the jurors formed themselves into detached groups, and amused themselves as they could in their dark, hungry, and desolate situation. It was a Vauxhall night; and one of the jury attempted to console his fellows by reminding them that at twelve o'clock at night they would have the fire-works at Vauxhall to enlighten their darkness. Twelve o'clock came, but the fire-works, though they were heard, were not seen, for the towers of the Abbey intervened, and interrupted the line of vision. Mr. Godsall, at this hour of the night, was rather obstreperous. He stamped about the room in a great passion, and committed other extravagancies. Mr. Sawyer, having heard all that could be said against him, and having said all that he could say in his own behalf, now prepared himself for sleep, by taking off his coat, rolling it up, and placing it as a pillow upon some chairs, which he had put together to serve him as a bed. His brother jurors expressed dissatisfaction at this proceeding, and urged many objections to his novel mode of discharging the duties of a jurymen. After giving them such answer as he

thought proper, and recommending his seconder, Mr. Cooke, to follow his example, on the ground that sleep was the best antidote against the evils of fasting, he proceeded to carry his own advice into execution as rapidly and comfortably as he could under existing circumstances. This was the gentleman who was described in our paper of Saturday as seen lying upon some chairs at one of the periods when the room was opened by the officer to attend to the complaints of the jury. Day-light at last dawned upon these unhappy jurors, but brought with it little relief to their misery. At half-past five, Mr. Sawyer, who was the only person that had been able to sleep soundly, awoke, and told his brothers in thralldom that he was as much refreshed by his sleep as if he had taken a meal. This was not a very delightful annunciation to those gentlemen who were suffering under the want of sleep and the want of sustenance. To Mr. Godsall it proved particularly exasperating; he exhibited symptoms of temporary insanity; he jumped upon a bench, and threatened destruction to Mr. Sawyer, for detaining him from his family, by his obstinate opposition. He then seized his cane, which was of considerable thickness, and struck it so forcibly upon the Judge's seat as to make several indentations, and did not cease from this violence till he had broken it completely into shivers. He



then began to rail with great vehemence against Mr. Sawyer, who had the good sense not to make any answer to his ravings. This appeared to offend him still more : he cried out, ' I shall go mad, I shall go mad, he—he' (pointing to Mr. Sawyer,) ' is cutting my throat with a feather.' He then made a spring at that gentleman, and would certainly have done him some injury, had he not been prevented by the strong arms of those that surrounded him. It has been stated, that he then endeavoured to tear up a bench as a weapon, and that he broke a window in endeavouring to escape ; but we have reason to believe that there is no truth in either of these statements. He sunk, at last, into a silent melancholy, and was for some time quiet from complete exhaustion.

“ Very early in the morning, the question had been narrowed to this point—whether the verdict should be a farthing or forty shillings. Mr. Sawyer was obliged to consort with his silent but effective seconder, Mr. Cooke. Whenever he approached any of the groups into which the other jurors had formed themselves, they fled from him as from a pestilence. The consequence was, that he was flung upon his own resources for amusement, and at seven o'clock was seen seated at the window, gazing very placidly on the passengers in the street. Poor Mr. Godsall could not, however, conduct himself thus quietly: he

attempted to force himself out of Court, but was unsuccessful, in spite of all his protestations that parties within were driving him to madness."

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" A seaman coming before the judges of the Admiralty for admittance into an office of a ship bound for the Indies, was by one of the judges much slighted, as an insufficient person for that office he sought to obtain ; the judge telling him, ' that he believed he could not say the points of his compass.' The seaman answered, ' that he could say them, under favour, better than he could say his *pater-noster*.' The judge replied, ' That he would wager twenty shillings with him upon that.' The seaman taking him up, it came to trial : and the seaman began, and said all the points of his compass very exactly : the judge likewise said his *pater-noster* : and when he had finished it, he required the wager, according to agreement, because the seaman was to say his compass *better* than he his *pater-noster*, which he had not performed. ' Nay, I pray, Sir, hold,' quoth the seaman, ' the wager is not finished ; for I have but half done :' and so he immediately said his compass backward very exactly ; which the judge failing of in his *pater-noster*, the seaman carried away the prize." (*Bacon's Apothegms.*)

## ANECDOTE OF SIR MATTHEW HALE.

“ Not long after he was made a judge, which was in the year 1653, when he went the circuit, a trial was brought before him at Lincoln, concerning the murder of one of the townsmen, who had been of the king’s party, and was killed by a soldier of the garrison there. He was in the fields with a fowling-piece on his shoulder, which the soldier seeing, he came to him, and said it was contrary to an order which the Protector had made, ‘ That none who had been of the king’s party should carry arms ;’ and so he would have forced it from him ; but as the other did not regard the order, so being stronger than the soldier, he threw him down, and having beat him, he left him. The soldier went into the town, and told one of his fellow-soldiers how he had been used ; and got him to go with him, and lie in wait for the man, that he might be revenged on him. They both watched his coming to town, and one of them went to him to demand his gun, which he refusing, the soldier struck at him, and as they were struggling, the other came behind, and run his sword into his body, of which he presently died. It was in the time of the assizes, so they were both tried ; against the one there was no evidence of forethought felony, so he was only found guilty of manslaughter, and burnt in the

hand ; but the other was found guilty of murder ; and though Colonel Whaley, that commanded the garrison, came into the court, and urged, that the man was killed only for disobeying the Protector's orders, and that the soldier was but doing his duty ; yet the judge regarded both his reasonings and his threatenings very little, and therefore he not only gave sentence against him, but ordered the execution to be so suddenly done, that it might not be possible to procure a reprieve, which he believed would have been obtained, if there had been time enough granted for it." (*Burnet's Life of Hale*, p. 28.)

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" Mr. Howland, in conference with a young student, arguing a case, happened to say, ' I would ask you but this question.' The student presently interrupted him to give him an answer ; whereupon Mr. Howland gravely said, ' Nay, though I asked you a question, I did not mean you should answer me ; I mean to answer it myself.' " (*Bacon's Apothegms*, 121.)

#### LEGAL RECOLLECTIONS OF LONDON.

##### No. I.

The many legal recollections and associations with which London abounds are of a very interesting character. It has been the seat of our

courts of justice from their very foundation, and the domicile of our lawyers; the scene which has witnessed every thing most remarkable in forensic anecdote. Westminster Hall, the home and mansion-house of justice, the Temple and the other Inns of Court, with their dependencies, the Tower, whose walls have enclosed so many illustrious prisoners, nay, even Newgate and the Fleet, all revive a number of highly curious recollections, which, in addition to the amusement they afford us, at the same time throw no inconsiderable light on the pages of history, or the manners and actions of our ancestors. It is proposed, in a series of articles, dispersed through the present volumes, to ramble, as it were, through the metropolis, and to examine the various buildings or sites which are rendered remarkable by their legal associations. At the same time it will not, perhaps, be considered either unamusing or impertinent, to add such historical and antiquarian notes and references as may induce the graver reader to rely on the authority of our pages.

Commencing our peregrinations at the ancient entrance into the city, Temple Bar, we arrive in a few steps at the gate of the Middle Temple, which is comparatively of modern construction. The old gate, which was destroyed in the great fire of 1666, was erected by Sir Amias Powlet, on a singular occasion. It seems, that about the

year 1501, the Knight had thought fit to put Cardinal Wolsey, then parson of Lymington, into the stocks. (*Fiddes's Life of Cardinal Wolsey.*) In 1515, being sent for to London by the Cardinal, on account of this ancient grudge, he was commanded not to quit town until further orders. In consequence he lodged five or six years in this gateway, which he rebuilt, and to pacify his eminence, adorned the front with the cardinal's cap, badges, cognizance, and other devices. So low, observes Mr. Pennant, were the great men obliged to stoop to that meteor of the times. (*History of London, 227.*)

Proceeding down Middle Temple Lane, a dark, narrow, and awkward approach, we arrive at the Hall of the Middle Temple, which, after Westminster Hall, is, perhaps, the finest building of the kind in the country. The foundation of the present Hall was laid in 1562, and the edifice was completed in 1572, during the treasurer'ship of the celebrated Edmund Plowden. In 1574, the curious carved screen at the lower end was added, and paid for by a contribution of 20s. from each bencher, 10s. from each barrister, and from every other member, 6s. 8d.

The Middle Temple Hall is in length, including the passage, one hundred feet, in width forty-four feet, and in height upwards of sixty feet.

The following is the description of this Hall, given in Herbert's History of the Inns of Court.

“ The roof is generally constructed of timber, and the other decorations of the interior are in a style of correspondent grandeur ; but what adds particularly to the splendour of its appearance, is its fine stained windows. They contain the armorial bearings of 154 persons, members of this inn, most of whom were men of eminence, and among them several of royal and noble rank ; the great bay window at the south-west end, alone contains thirty coats of arms, and, when illuminated by the sun, has an uncommonly rich effect.

“ Along the sides, which are wainscoted to a considerable height, are the arms and names of the *readers*, from Richard Swaine, dated 1597, to 1804. This place is still preserved, and the readers annually elected ; but the lectures, or readings, as before observed, have been long disused.

“ The oldest date in the windows is 1540. This coat of arms was probably removed from the former Hall, which stood on this site. Among the more modern ones are those of the Lord Chancellors Cowper, Yorke, and Somers, the late Lord Chief Justice Kenyon, Lord Ashburton, Sir Pepper Arden, (afterwards Lord Alvanley,) and the present Lord Chancellor. The arms of the last four are the work of Mr. Pearson, and are very beautiful.

“ Besides these decorations the Hall contains excellent busts of the twelve Cæsars, in imitation of bronze, and full-length portraits of the following personages : Charles I. and the Duke d’Epernon, (Vandyke,) a very large picture, from which a print has been engraved by Bacon. King Charles II.; the Duke of York, afterwards James II.; William III.; Queen Anne; and King George II. There is likewise at the upper end, near the great window, an ancient painting of the Judgment of Solomon, of considerable merit, with a Latin inscription beneath.

“ The music-gallery at the entrance must not be forgotten; it is of bright wainscot, supported by columns of the Doric order, fluted, and the pedestals enriched with figures in *alto rilievo*; the intercolumniations, the pannels over the doors, and all other parts of this screen, are most elaborately carved; above it hangs several suits of rusty armour, matchlocks, &c. of the Elizabethan æra.

“ The massy oak tables and benches with which this apartment was anciently furnished, still remain, and so may do for centuries, unless violently destroyed, being of wonderful strength. In the Parliament Chamber are painted the arms of the Treasurers, since the first who possessed the office; it is likewise adorned with some of Gibbons’s carving.

“ The building of the Hall, it appears, put the



nouse much in debt, and the incumbrance was not discharged for some years afterwards ; for in 17 Elizabeth, (16 Junii,) there was an order made in the Parliament, ‘ That forasmuch as by one decree, made 8 Feb. 13 Eliz. the old pensions had been augmented for three years then next following, towards the payment thereof ; and by another, held 10 Feb. 16 Eliz. that they had been augmented one year more, to the same purpose, and that all these helps are not sufficient, that the augmentation of the said pensions should continue yet one year longer.’ ” (*Herbert’s Inns of Court*, 246.)

Turning to the left from the Middle Temple Hall, and passing through an arch-way we arrive at the garden of the Inner Temple. Shakspeare has made the Temple Garden the scene of the ‘ brawl’ between the houses of York and Lancaster, when the cognizances of the white and red roses were chosen by the partizans of the two families. Richard Plantagenet’s lodging being in the Temple, renders the locality of the scene more probable. Mortimer says to one of his jailers,

“ Tell me, keeper, will my nephew come ?

*Keep.* Richard Plantagenet, my Lord, will come.

We sent unto the *Temple* to his chamber,

And answer was return’d that he will come.”

The altercation, it appears, had begun in the Temple Hall, for Suffolk says,

“ Within the Temple Hall we were too loud ;  
The garden here is more convenient.”

After the plucking of the roses, Warwick exclaims,

“ This brawl to-day,  
Grown to this faction in the Temple Garden,  
Shall send, between the red rose and the white,  
A thousand souls to death and deadly night.”

There appears to be some doubt whether the Inner or the Middle Temple Garden is entitled to these classical associations. It is thought the latter possesses the preferable claim.

The garden runs along the bank of the Thames, and the walk, or terrace, upon the brink of the river, forms a healthy and pleasant promenade, ornamented with a fine view of Waterloo Bridge and Westminster Abbey to the right, and of Blackfriars' Bridge and St. Paul's to the left. In its prospect the garden of the Inner Temple is much superior to its rival of the Middle Temple, though the latter is adorned with a short avenue of fine lime-trees, which in summer forms a most refreshing shade. May no sacrilegious bencher meditate their destruction ! In these gardens may be seen those pensive *desœuvré* lawyers,

“ Who in trim gardens take their pleasure ;”

while their more fortunate brethren are acquiring fame and profit amid the heat, the noise, and the bustle of the courts.

The great gate of the garden leads directly to the Hall of the Inner Temple, a building inferior in size and beauty to that of which a description has just been given. However, in the Hall of the Inner Temple some of those more jovial customs have lingered, which have become extinct in the other societies. A sound of revelry, which would have delighted the ear of Saunders, may still occasionally be heard amid its walls, though even into this ancient mansion the sober manners of the times have intruded, and the custom of giving wine to the whole Hall on a call to the bar, is becoming unusual.

Attached to the Hall is the Library of the Inner Temple, a neat room; but by no means a building suited to the purpose to which it is devoted. The Library is small, and the times at which it is open are such as to render it of very little, if of any, use, either to the student or to the practising barrister. It is singular, and not altogether creditable, that a society, so superfluously wealthy as that of the Inner Temple, should not have discovered the propriety of applying some part of their useless riches to the formation of a magnificent Library, open during at least two-thirds of the day to all the members of the society. The hours are at present from ten in the morning until three in the afternoon, the very period at which it is impossible either for the student or the barrister to

make use of the Library. It is an usual occurrence to find the room entirely empty.

Nearly opposite to the library stands the Temple church, a very venerable building, of which a detailed account has been already given. No place can awaken more various and interesting associations than this ancient and curious structure. It carries us back to the time of Cœur de Lion and the Crusades, in which the Knights of the Temple were distinguished by their pre-eminent valour. Their lances were first in the field, and their banner the first upon the walls of the Saracens. Of the exploits of the *Milites Christi*, as the Templars were *par excellence* termed, some further account will probably be given in a subsequent part of these volumes.

But there are other associations connected with this church more congenial to the mind of a lawyer. Here repose the ashes of many of those "grave men and singularly well learned," whose names are much more familiar in a legal mouth than any "household words;" Selden, and Plowden, and a long train of other worthies. In the church-yard slumbers one of a far different mould, the simple-hearted Oliver Goldsmith. He lived for some time in the Temple, in Brick Court, and was buried within its precincts.

Several names much celebrated in the annals of our literature are recalled to our mind as we walk

through the Temple. Chaucer is reported to have been a Templar, and in later days, Johnson occupied a miserable set of chambers in Inner Temple Lane. The Mitre Tavern, situated at the termination of a passage leading from the Temple to Fleet-street, was a favourite haunt of the great Lexicographer. The chambers in King's Bench Walk, in which lord Mansfield resided, are immortalized in the verse of Pope:

“ To number five direct your doves,  
There spread round MURRAY all your blooming  
loves ;”

and in the parody of Cibber :

“ Persuasion tips his tongue whene'er he talks,  
And he has Chambers in the King's Bench Walks.”

[*To be continued.*]

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“ A thief being arraigned at the bar for stealing a mare, in his pleading urged many things in his own behalf, and at last nothing availing, he told the Bench, the mare rather stole him than he the mare ; which in brief he thus related: That passing over several grounds, about his lawful occasions, he was pursued close by a fierce mastiff dog, and so was forced to save himself by leaping over a hedge, which, being of an agile body, he effected ; and in leaping, a mare standing on

the other side of the hedge, leaped upon her back, who, running furiously away with him, he could not by any means stop her, until he came to the next town, in which town the owner of the mare lived, and there he was taken and here arraigned." (*Bacon's Apothegms.*)

## LORD MANSFIELD.

The following character of Lord Mansfield is from the pen of Mr. H. Hawkins.

“Of lord Mansfield’s intellectual powers, his great comprehension, or his eloquence, it is needless to say a word, as the concurrent testimony of all who could form a judgment of him, has already placed him among the first men of his time; but of the wise and honourable use of those talents it may be permitted to one who perfectly well remembers him, though but in his latter days, to mention that of which he was an ear-witness. Many a time I have heard him deliver the decision of the court on abtruse points of law, with a profundity of reasoning, where scarcely even a well-informed mind could follow him, and with an accuracy and precision of judgment, so satisfactory, as to induce the parties in the cause, when apprised of the issue of their law-suit, to instruct their counsel to make their acknowledgments to the court, as having been the means of restoring peace and harmony to private families, and hav-

ing done every thing the parties desired. He was not what was considered a *profound lawyer*, when the term is applied to technical niceties in pleading, nor did he seem to have any very elevated opinion of that species of knowledge, or of those who possessed it. Mr. Wallace, who had been Attorney-General, and who was deeply versed in that department of legal information, and Mr. Howarth, who, however honourable and praiseworthy his conduct might be, was infinitely inferior to Wallace, happened to die at the same time. When lord Mansfield was told of their death, he scarcely expressed any concern for Mr. Wallace, but very great regret for Mr. Howarth.

“ His disregard of the lawyers of the description above mentioned, led him to treat lightly those legal ceremonies which were connected with such attainments. At the making of a Sergeant, he has been known to laugh so heartily, that he was scarcely able to do that which his office required him to do.

“ In addition to this instance of lord Mansfield's light estimation of those who were considered, by such as could best judge, as the most skilful, we might subjoin his treatment of Mr. Sergeant Hill, whose name has already been mentioned in this work. I have seen the Sergeant standing up in the court, immoveable as a



**LORD MANSFIELD.**





statue, and looking at no object, and arguing in support of his client's cause, so wrapt up in the workings of his own mind, as, seemingly at least, to be insensible to any objects around him. In the midst of his argument, which was frequently so perplexed by parenthesis within parenthesis, as to excite the laughter of the whole court, lord Mansfield would interrupt him with, 'Mr. Sergeant, Mr. Sergeant;' he was rather deaf,—the words were repeated without effect; at length, the counsel sitting near him, would tell him that his lordship spoke to him: this roused him. Lord M. would then address him with, 'The Court hopes your cold is better.' All this was done with a tone, and in a manner which showed that he wished to make the object of his apparent civility in fact an object of ridicule; and so far it must be considered as having succeeded. How far it was perfectly decorous in a judge, sitting in his Court, to indulge this little mischief, for we do not wish to call it by a harsh name, others may decide; but certainly he was very agreeable to the bar in other respects. Indeed, whenever this foible did not show itself, his patient attention, his assisting questions, if I may be allowed the term, and his intuitive comprehension of what was submitted to his understanding, made him an exceedingly pleasant judge to those who were called to argue deep questions before him.

“Of his eloquence in either the House of Lords or Commons, I cannot say anything; but of his speeches in the Court of King’s Bench, I can say that they were always pertinent with respect to the subject before him; nothing was said for effect, nothing theatrical. It is known that, when in the House of Commons, he was considered as the antagonist to Mr. Pitt; and the writers of that period of our history inform us, that on very many occasions he shewed himself Pitt’s superior, and plucked the laurel from his brows, on questions where, perhaps, the popular feeling was in Pitt’s favour, which is very creditable if his judges were cool and dispassionate, as Pitt’s speeches depended much on his tone and manner to produce the desired effect; without which many of them would be considered as having but slender claims to attention.” (*Miss Hawkins’s Memoirs, vol. i. p. 253.*)

SIR WILLIAM JONES’S FIRST SPEECH IN COURT.

The following amusing account of Sir William Jones’s forensic *début*, is given by Miss Hawkins, in her Memoirs, and is from the pen of her brother.

“Of Sir William Jones, the Memoirs have already appeared before the public; but as what I shall say is not generally known, and is perfectly authentic, it may, perhaps, be acceptable.

I remember to have heard him speak as a counsel in the court of King's Bench: the question before the court, arose from private disagreements in a family, which made a separation between husband and wife necessary; and there being a child, whose interests were to be taken care of, the interference of the court was required. A perfect silence prevailed,—the attention of all present being attracted to hear what 'Linguist Jones,' as he was even then called, would say. Though he could not have been accustomed to hear his own voice in a court of law, for I believe this was his forensic *debüt*, he, nevertheless, spoke with the utmost distinctness and clearness, not at all disconcerted by the novelty of his situation. His tone was highly declamatory, accompanied with what Pope has called, 'balancing his hands,' and he seemed to consider himself as much a public orator as Cicero or Hortensius could have done. His oration, for such it must be called, lasted, I recollect, near an hour. But the orator, however he might wish to give a grand idea of the office of a pleader, did not, in the course of the business, entirely avoid the ridiculous; for, having occasion to mention a case decided by the court, he stated, in the same high declamatory tone in which he had delivered the whole of his speech, that he found, 'that it had been argued by one Mr. Baldwin.' Not being very conversant

with the state of the bar, he did not know that this 'one Mr. Baldwin' was, at the time of which I am speaking, a barrister in great business, and was then sitting not half a yard from the orator's elbow. It occasioned a smile, or, perhaps, more than a smile, on every countenance in court; but the orator proceeded as steadily as before. In the course of his speech, he had occasion to mention the governess of the child; and he had done it in such terms as conveyed, or must have conveyed to any one possessed of ordinary powers of comprehension, an idea that she was an extremely improper person to remain with a young lady: on the next day, therefore, Mr. Jones appeared again in the seat which he had occupied the preceding day; and when the judges had taken their seats, he began, with the same high declamatory tone, to inform the court, 'that it was with the deepest regret, he had learned that, in what he had had the honour to state to their lordships the preceding day, he was understood to mean to say, that Mrs. ——— was a harlot!' The gravity of every countenance in court yielded to the attack thus made upon it, and a general laugh was produced by it." (*Memoirs, &c. vol. i. p. 224.*)

LORD KAIMES.

The late Lord Kaimes used sometimes to let his wit get the better of his dignity as a judge. Be-

ing on the circuit at Perth, after a witness on a capital trial had concluded his testimony, his Lordship said, "Sir, I have one question more to ask you, and remember you are on your oath. You say you are from Brechin?" "Yes, my Lord." "When do you return thither?" "Tomorrow, my Lord." "Do you know Colin Gillies?" "Yes, my Lord, I know him very well." "Then tell him that I shall breakfast with him on Tuesday morning!"

LORD MANSFIELD'S CELEBRATED SPEECH AT THE  
TIME OF WILKES'S RIOTS.

"It is fit to take some notice of the various terrors hung out; the numerous crowds which have attended, and now attend, in and about the Hall, out of all reach of hearing what passes in court, and the tumults which in other places have shamefully insulted all order and government: audacious addresses dictate to us, from what they call the People, the judgment to be given, now and afterwards, upon the conviction. Reasons of policy are urged from danger to the kingdom by commotions and general confusion.

"Give me leave to take the opportunity of this great and respectable audience to let the world know all such attempts are vain: unless we have been able to find an error which will bear us out to reverse the outlawry, it must be affirmed. The

constitution does not allow reasons of state to influence our judgments. God forbid it should! We must not regard political consequences, how formidable soever they might be; if rebellion were the certain consequence, we are bound to say, *Fiat Justitia, ruat cælum*. The constitution trusts the king with reasons of state and policy; he may stop prosecutions, he may pardon offences; it is his to judge whether the law or the criminal should yield. We have no election: none of us encouraged or approved the commission of either of the crimes of which the defendant is convicted; none of us had any hand in his being prosecuted. As to myself, I took no part (in another place) in the addresses for that prosecution. We did not advise or assist the defendant to fly from justice; it was his own act, and he must take the consequences. None of us have been consulted, or had any thing to do with the present prosecution. It is not in our power to stop it; it was not in our power to bring it on. We cannot pardon. We are to say what we take the law to be; if we do not speak our real opinions, we prevaricate with God and our own consciences.

“ I pass over many anonymous letters I have received: those in print are public; and some of them have been brought judicially before the court. Whoever the writers are, they take the wrong

way. I will do my duty unawed. What am I to fear? That *mendax infamia* from the press, which daily coins false facts and false motives? The lies of calumny carry no terror for me: I trust that my temper of mind, and the colour and conduct of my life, have given me a suit of armour against these arrows. If, during this king's reign, I have ever supported his government, and assisted his measures, I have done it without any other reward than the consciousness of doing what I thought right. If I have ever opposed, I have done it upon the points themselves, without mixing in party or faction, and without any collateral views. I honour the king and respect the people; but many things acquired by the favour of either, are, in my account, objects not worth ambition. I wish popularity; but it is that popularity which follows, not that which is run after. It is that popularity which, sooner or later, never fails to do justice to the pursuit of noble ends by noble means. I will not do that which my conscience tells me is wrong, on this occasion, to gain the huzzas of thousands, or the daily praise of all the papers which come from the press. I will not avoid doing what I think is right, though it should draw on me the whole artillery of libels; all that falsehood or malice can invent, or the credulity of a deluded populace can swallow. I can say, with a great magistrate upon an occasion,



and under circumstances, not unlike, ‘ *Ego hoc animo semper fui, ut invidiam virtute partam, gloriam haud infamiam putarem.*’

“The threats go further than abuse ; personal violence is denounced. I do not believe it. It is not the genius of the worst men in this country, in the worst of times ; but I have set my mind at rest. The last end that can happen to any man never comes too soon, if he falls in support of the law and liberty of his country, (for liberty is synonymous to law and government ;) such a shock too might be productive of public good ; it might awake the better part of the kingdom out of that lethargy, which seems to have benumbed them ; and bring the mad part back to their senses, as men intoxicated are sometimes stunned into sobriety.” (*State Trials*, xix. 1111.)

This speech excited much observation at the time, more especially the passage respecting popularity, which was remarked upon by Horne Tooke on his trial for libel. Opposite to the quotation from Cicero, *Ego hoc animo, &c.* Mr. Sergeant Hill had written in his Copy of Burrow’s Reports the following passage from Swift.

“The world will never allow any man that character which he gives to himself by openly professing it to those with whom he converseth. Wit, learning, valour, acquaintance, the esteem of

good men, will be known, although we should endeavour to conceal them, however they may pass unrewarded ; but I doubt our own bare assertions upon any of these points will be of very little avail, except in tempting the hearers to judge directly contrary to what we advanced."

It seems that lord Mansfield and Sergeant Hill were not upon the best terms. Lord Mansfield was probably annoyed by the extensive and recondite legal learning which distinguished the Sergeant.

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" Sir Nicholas Bacon, when a certain nimble-witted counsellor at the bar, who was forward to speak, did interrupt him often, said unto him, ' There is a great difference betwixt you and me : it is a pain to me to speak, and a pain to you to hold your peace.' " (*Bacon's Apothegms.*)

#### LAWS AGAINST THE JEWS.

In that most laborious compilation, Madox's History of the Exchequer, a great body of curious information is to be found relative to the early history of the Jews in England, which has also been fully illustrated by Dr. Tovey in his *Anglia Judaica*. The condition of the Jews at this period was most precarious and wretched. Not only were they liable to be pillaged at the will of the King, but also to be massacred by

the populace. At the commencement of the reign of Richard II. a dreadful transaction of this kind occurred. The King had issued an order that no Jews should be permitted to witness his coronation, which took place in Westminster Hall.

“But several of them who had come a great way off on purpose to behold the bravery of it, not caring to lose the labour and expense of their journey, and persuading themselves that being strangers in London they should pass undiscovered, ventured, notwithstanding the Proclamation, to appear at Westminster; but, being somehow or other found out by the officers of the Abbey, they were set upon with great violence, and dragged half dead out of the church.

“The rumour of which quickly spreading itself into the city, the populace believing they should do the king a pleasure, immediately broke open the Jews’ houses and murdered every one they could meet with, not confining their rage to their persons, but destroying likewise their habitations with fire.

“Happy were they who could find a true friend to shelter them! All kinds of cruelty were exercised against them, insomuch that the soberest part of the citizens who had in vain endeavoured to quiet matters by themselves, sent some passengers to Westminster, desiring some assistance from the king, for fear the tumult should grow so

outrageous as to endanger the whole city." (*Anglia Judaica.*)

Some idea of the nature of the laws enacted at this time against the Jews may be formed from the following specimen.

"In or about the 37th year of King Henry III. it was provided that no Jew should remain in England without doing the King some service; that there should be no schools for Jews in England, except in places where such schools were wont to be in the time of King John; that all Jews in their Synagogues should celebrate with a low voice according to the rite of their religion, and that Christians were not to hear them celebrating; that every Jew should be answerable to the Rector of his parish for all parochial dues chargeable upon his house; that no Christian woman should suckle or nurse the child of a Jew; nor any Christian man or woman serve any Jew or Jewess, or eat with them, or abide in their house; that no Jew or Jewess should eat or buy flesh meat in Lent; that no Jew should detract from the Christian faith, or dispute publicly concerning it; that no Jew should have secret familiarity with any Christian woman, nor any Christian man with a Jewess; that every Jew should wear a badge upon his breast; that no Jew should enter into any church or chapel unless haply in passing to and fro, nor should stay there to

the dishonour of Christ; that no Jew should hinder another Jew who was willing to embrace the Christian religion, and that no Jew should be suffered to abide in any town without the King's special licence, save in those towns wherein Jews were formerly wont to reside. These articles were to be observed by the Jews under pain of forfeiting their goods." (*Madox's Hist. of the Excheq.* i. 248.)

King John at the commencement of his reign had professed great kindness towards the Jews; but,

"In the 11th year of his reign the King began to lay aside his masque, and, finding that no new comers made it worth his while to stay any longer, he set at once upon the old covey which he had drawn into his net, and commanded all the Jews of both sexes throughout England to be imprisoned, until they should make a discovery of their wealth; which he appointed officers to receive in every county, and return to his exchequer. Many of them no doubt pleaded poverty, or pretended to have given up all; but as the tyrant was in earnest to have their last farthing, he extorted it by the most cruel torments.

"Stow says the generality of these had one eye put out; and Matthew Paris tells us that from one particular Jew in Bristol, the King demanded no less than ten thousand marks of silver,

(a prodigious sum in those days!) which being resolutely denied him, he commanded one of his great teeth to be pulled out daily till he consented. The poor wretch, whose money was his life, had the courage to hold out seven operations, but then sinking under the violence of the pain, ransomed the remainder of his teeth at the price demanded. The whole sum extorted from them at this time amounted to threescore thousand marks of silver." (*Tovey's Anglia Judaica.*)

"Howell in his *Londinopolis* tells us, that a Jew in the reign of Henry III. having by accident fallen into a privy on his sabbath, being a Saturday, would not suffer any one to take him out, though rather a necessary work. Common humanity," observes Mr. Barrington, "should not have permitted this obstinate adherence to a religious ceremony; however, the earl of Gloucester not only suffered him to continue in this filthy condition his own sabbath, (being Saturday,) but would not permit any one to take him out on the *Sunday*, being the Sabbath of the Christians: the Jew, by this cruel joke, was suffocated, nor do the Chroniclers of the time reflect upon the barbarity of it." (*Barrington's Ancient Statutes*, p. 203.)

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"The Lord Keeper, Sir Nicholas Bacon, was

asked his opinion by Queen Elizabeth, of one of these monopoly licences. And he answered, 'Madam, will you have me speak the truth? *Licentiâ omnes deteriores sumus*; we are all the worse for licences.' " (*Bacon's Apothegms.*)

EXECUTION OF SIR THOMAS MORE.

" So remained Sir Thomas More in the Tower, more than a sevendnight after his judgment. From whence, the day before he suffered, he sent his shirt of hair, not willing to have it seen, to my wife, his dearly beloved daughter, and a letter written with a cole, (contained in the foresaid book of his work,) plainly expressing the fervent desire he had to suffer on the morrow, in these words following: 'I comber you, good Margaret, much, but would be sorry if it should be any longer than to-morrow, for to-morrow is Saint Thomas even, and the Utas of Saint Peter, and therefore to-morrow I long to go to God: it were a day very meet and convenient for me. Dear Megg, I never liked your manner better towards me than when you kissed me last. For I like when daughterly love and dear charity hath no leisure to look to worldly courtesy.' And so upon the next morrow, being Tuesday, St. Thomas his eve, and the Utas of Saint Peter, in the year of our Lord 1535, according as he in his letter the day before had wished, early in the morning came

to him Sir Thomas Pope, his singular good friend, on message from the King and his council, that he should before nine of the clock of the same morning suffer death ; and that, therefore, he should forthwith prepare himself thereto. ‘ Master Pope,’ quoth Sir Thomas More, ‘ for your good tidings I heartily thank you. I have been always much bounden to the King’s Highness for the benefits and honours that he hath still from time to time most bountifully heaped upon me ; and yet more bounden am I to his Grace for putting me into this place, where I have had convenient time and space to have remembrance of my end. And, so help me God, most of all, Master Pope, am I bounden to his Highness that it pleaseth him so shortly to rid me out of the miseries of this wretched world, and therefore will I not fail earnestly to pray for his Grace, both here, and also in the world to come.’ ‘ The King’s pleasure is farther,’ quoth Master Pope, ‘ that at your execution you shall not use many words.’ ‘ Master Pope,’ quoth he, ‘ you do well to give me warning of his Grace’s pleasure, for otherwise, at that time, had I purposed somewhat to have spoken ; but of no matter wherewith his Grace, or any other, should have had cause to be offended. Nevertheless, whatsoever I intended, I am ready obediently to conform myself to his Grace’s commandment ; and I beseech



you, good Master Pope, to be a mean to his Highness, that my daughter Margaret may be at my burial.' 'The King is content already,' quoth Master Pope, 'that your wife, children, and other friends, shall have liberty to be present thereat.' 'Oh, how much beholden then,' said Sir Thomas More, 'am I unto his Grace, that unto my poor burial vouchsafeth to have so gracious consideration!' Wherewithal Master Pope, taking his leave of him, could not refrain from weeping. Which Sir Thomas More perceiving, comforted him in this wise. 'Quiet yourself, good Master Pope, and be not discomforted: for I trust that we shall once in heaven see each other full merrily, where we shall be sure to live and love together, in joyful bliss eternally.' Upon whose departure, Sir Thomas More, as one that had been invited to some solemn feast, changed himself into his best apparel. Which Master Lieutenant espying, advised him to put it off, saying, 'That he that should have it was but a javill.' 'What, Master Lieutenant,' quoth he, 'shall I account him a javill that shall do me this day so singular a benefit? Nay, I assure you, were it a cloth of gold, I should think it well bestowed on him, as Saint Cyprian did, who gave his executioner thirty pieces of gold.' And albeit, at length, through Master Lieutenant's importunate persuasion, he altered his apparel;

yet, after the example of the holy Martyr Saint Cyprian, did he, of that little money that was left him, send an angel of gold to his executioner. And so was he, by Master Lieutenant brought out of the Tower, and from thence led towards the place of execution; where, going up the scaffold, which was so weak it was ready to fall, he said merrily to the Lieutenant, 'I pray you, Master Lieutenant, see me safe up, and for my coming down let me shift for myself.' Then desired he all the people thereabout to pray for him, and to bear witness with him, that he should now there suffer death in and for the faith of the Holy Catholic Church. Which done, he kneeled down, and, after his prayers said, turned to the executioner with a cheerful countenance, and said unto him: 'Pluck up thy spirits, man, and be not afraid to do thine office: my neck is very short; take heed, therefore, thou strike not awry for saving of thine honesty.' So passed Sir Thomas More out of this world, to God, upon the very same day which he most desired. Soon after his death, came the intelligence thereof to the Emperor Charles. Whereupon he sent for Sir Thomas Elliott, our English Ambassador, and said to him: 'My Lord Ambassador, we understand that the King, your master, hath put his faithful servant, and grave wise counsellor, Sir Thomas More, to death.' Whereupon Sir Thomas Elliott answer-

ed, 'That he understood nothing thereof.' 'Well,' said the Emperor, 'it is too true: and this we will say, that had we been master of such a servant, of whose doings ourselves have had these many years no small experience, we would rather have lost the best city of our dominion, than have lost such a worthy counsellor.' Which matter was by the same Sir Thomas Elliott to myself, to my wife, to Master Clement and his wife, to Master John Heywood and his wife, and unto divers others, his friends, accordingly reported." (*Roper's Life of More.*)

LORD CHANCELLOR COWPER.

William, Earl Cowper, was descended from an ancient family. Soon after he was called to the bar, his eloquence and skill rendered him very conspicuous in his profession. In the reign of King William he was made king's counsel; and in 1695 was chosen one of the representatives in parliament for the town of Hertford, his father, Sir William Cowper, being the other member. On the 11th October, 1705, he was made Lord Keeper of the Great Seal, in the place of Sir Nathan Wright, of which event, the Duchess of Marlborough thus speaks: "I prevailed with her Majesty to take the Great Seal from Sir Nathan Wright, a man despised by all parties, of no use to the crown, and whose weak and wretched

conduct had almost brought his very office into contempt. His successor, my Lord Cowper, was not only of the Whig party, but of such abilities and integrity, as brought a new credit to it in the nation." (*Conduct of Dowager Duchess of Marlborough*, p. 147.) "He was a lawyer," says Smollet, "of superior talents, engaging manners, and eminence in his profession, staunch in his Whig principles, and for many years considered as one of the best speakers in the House of Commons." (*Hist. of Eng. vol. ii. p. 61.*) It is universally agreed, that his manners and style of speaking were exceedingly prepossessing, and "that all the ornaments and graces of eloquence were displayed in him in the greatest perfection." To this distinguishing characteristic an allusion is made by Pope, in the interchange of compliments between the two brother Sergeants :

" 'Twas, ' Sir, your law,'—and, ' Sir, your eloquence,'—  
 ' Yours, Cowper's manner,'—' and yours, Talbot's sense.' "

(*Imit. Hor. Book ii. Epis. 2. l. 133.*)

It may be admitted, that Lord Cowper's abilities were not first rate, and the matter of his arguments was not equal to the manner of their delivery. He is said by Swift to be, "what we usually call a piece of a scholar, and a good logi-

cal reasoner, if this were not too often alloyed by a fallacious way of managing an argument, which makes him apt to deceive the unwary, and sometimes to deceive himself." (*History of Four Last Years of the Queen*, p. 23.)

Lord Cowper seems to have been a man of great urbanity and good feeling. He acted as Lord High Steward at the trial of the Earl of Oxford, to whom he behaved on that occasion with much politeness. He is said also to have been the judge who treated the ex-protector, Richard Cromwell, with so much consideration and respect. (*See Post.*)

He was invested with the dignity of Lord High Chancellor on the 4th May, 1707, and resigned his post, on the removal of the Whig Ministry in August, 1710. Upon the accession of George I. he was restored to the woolsack, 29th August, 1714, and ultimately quitted his high office in April, 1718, in consequence of a change in the cabinet. The act of resignation was in both instances voluntary, as the continuance of his services was solicited by the crown, an offer which his strict political principles would not permit him to accept. Lord Parker was his successor.

With respect to the private character of Lord Cowper, some severe reflections have been thrown out against him. In the twenty-third number of *The Examiner*, Swift has stigmatized him with

the name of *Will Bigamy*, and proceeds to remark: "This gentleman, knowing that marriage-fees were a considerable perquisite to the clergy, found a way of improving them *cent. per cent.* for the good of the church. His invention was, to marry a second wife while the first was alive, convincing her of the lawfulness by such arguments as he did not doubt would make others follow the same example. These he had drawn up in writing, for the general good; and it is hoped he may now have leisure to finish them." It has been said, that in the early part of his life, a pretended marriage, without the forms of law, took place between him and Mrs. Elizabeth Culling, by whom he had two natural children; and hence, probably, originated the story of the Chancellor having two wives, and the name given him by Swift, of *Will Bigamy*.

He died at his seat at Colne Green, in Hertfordshire, on the 10th of October, 1723, and was buried in Hertingfordbury church, not far from Hertford. At Colne Green three portraits of him remain, from which he appears to have been a very handsome man, with an open and intelligent countenance. (*Biog. Brit. vol. iv.*)

#### JUDICIAL CORRUPTION.

A history of Judicial Corruption in this country would, perhaps, furnish an instructive lesson.

If we may believe the author of the *Mirror*, the system took its rise very early in England. In the chapter on the "Abuses of the Common Law," it is said, that "it is abuse that justices and their officers, who kill people by false judgments, be not destroyed as other murderers, which King Alfred caused to be done, who caused forty-four justices in one year to be hanged as murderers, for their false judgments." The details of this wholesale piece of retribution are then given, with the names of all the corrupt judges who suffered. We extract a few of the cases, as specimens of the nature of their crimes.

"He hanged Cadwine, because that he judged Hackery to death without the consent of all the jurors; and whereas he stood upon the jury of twelve men, and because three would have saved him against the nine, Cadwine removed the three, and put others upon the jury, upon whom Hackery put not himself.

"He hanged Cole, because he judged Ive of death, when he was a madman.

"He hanged Athulf, because he caused Copping to be hanged before the age of one-and-twenty years.

"He hanged Athelston, because he judged Herbert to death for an offence not mortal.\*

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\* This retributory sentence will, perhaps, remind the reader of a late case in one of our Colonies, where a

“ He hanged Horne, because he hanged Simon at days forbidden.

“ He hanged Therborne, because he judged Osgot to death for a fact whereof he was acquitted before, against the same plaintiff, which acquittance he tendered to own by oath, and because he would not own it by record, Therborne would not allow of the acquittal which he tendered him.

“ He hanged the Suitors of Cirencester, because they kept a man so long in prison that he died in prison, who would have acquitted him by foreigners that he offended not feloniously.”

There is also a singular fact, mentioned in the same chapter, that in Alfred's time the judges used to take twelve-pence from every plaintiff “ at the journey.”

It appears that in the reign of Edward I. the judges had become very corrupt: *Judicia pervertunt*, says Matthew of Westminster, *et in aliis erraverunt*. The King therefore, on his return from France, in the seventeenth year of his reign, (finding the measure convenient in order to replenish his exchequer, says Blackstone,) resolved to prosecute his judges, against whom many charges

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prisoner was tried by the English Law for an offence by that law not capital, and was yet condemned to death. It was fortunate for the judges that they did not live in Alfred's time.



of erasing and altering records were brought forwards. Thomas Wayland, Chief Justice of the Common Pleas, was attainted of felony as an accessory in murder, and having abjured the realm, forfeited all his estates, which are said to have amounted to the enormous sum of 100,000 marks, or 70,000 pounds. (3 *Pryn. Rec.* 401, 402. 3 *Inst.* 146, 147. 223.)

The charge against Sir Ralph Hengham, or Ingham, was merely that he had, out of compassion, altered the record of a fine which had been imposed upon a very poor man, from 13s. 4d. to 6s. 8d., an offence, for which he was himself fined 800 marks. It appears, however, that though he was at this time removed from the bench, he was, about eleven years afterwards, again made a puisne judge, and subsequently, Chief Justice of the Common Pleas. (See 3 *Bl. Com.* 409. *Note.*) There is a tradition, that with this fine a clock-house was built at Westminster, and furnished with a clock,\* to be heard into Westminster Hall.

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\* Lord Holt appears to allude to this anecdote in the following case, in which the propriety of altering a record came in question. His Lordship's observation must appear ludicrously inapplicable to any one who does not recollect the anecdote. (See 6 *Mod.* 130.)

ANONYMOUS.

In ejectment the term was made for five years; and after a verdict for the plaintiff, he was delayed of judg-

(4 *Inst.* 255.) It has been remarked, in answer to this, that clocks did not come into common use until a hundred years afterwards, about the end of the fourteenth century.

How usual a practice it was in the sixteenth century, to present gifts to the Judges when the donor had a cause depending before them, appears from many anecdotes recorded in our legal biography. In Roper's *Life of Sir Thomas More*, some incidents of this kind are related. "And had he not been one, that in all his great offices and doings for the King and the realm so many years together had from all corruption of wrong-doing, or bribes-taking, kept himself so clear, that no man was able therewith to blame or blemish him; it would, without doubt, in this troublesome time of the King's indignation towards him, have been deeply laid to his charge, and of the King's Highness most favourably accepted. As in the case of

ment and execution, by injunction in Chancery, until the term incurred.

And now it was moved to renew the term, and the case of *Dougell v. Greenville* was quoted, where it was done, and that they used to do it frequently in the Exchequer.

*Curia.* We cannot do it without altering the record.

*Gould, J.* said, that they held in *Sir J. Rolle's* case, that it could be done by consent, but not otherwise.

*Holt, C. J.* said, he considered there wanted a clock-house over against the hall-gate.—And the motion was denied.

one Parnell, it most manifestly appeared, against whom, because Sir Thomas More, when he was Chancellor, at the suit of one Vaughan, his adversary, had made a decree, this Parnell to his Highness most grievously complained that he, for making the decree had, of the said Vaughan, unable to travel abroad himself for the gout, by the hands of his wife, taken a fair *great gilt cup* for a bribe. Who thereupon by the King's appointment being called before the whole council, where the matter was heinously laid to his charge, forthwith confessed that forasmuch as that cup was long after the foresaid decree, brought him for a new year's gift, he upon her importunate pressing upon him thereof, of courtesy refused not to receive it. Then the Lord of Wiltshire for hatred of his religion, preferrer of this suit, with much rejoicing, said unto the Lords, 'Lo! my Lords, did I not tell you, my Lords! that you would find this matter true?' Whereupon Sir Thomas More desired their Lordships, that as they had heard him courteously tell the one part of his tale, so that they would vouchsafe of their honours indifferently to hear the other. After which obtained, he farther declared to them, that albeit he had indeed with much work received that cup, yet immediately thereupon caused he his butler to fill it with wine, and of that cup drank to her, and that when he had so done, and she pledged him,

then as freely as her husband had given it to him, even so freely gave he the same to her to give unto her husband for his new year's gift, which at his instant request, though much against her will, at length, yet she was fain to receive, as herself and certain others, there present before them, deposed. Thus was the great mountain turned scant to a little mole-hill.

“ So I remember that at another time, upon a new year's day, there came unto him one Mistress Croker, a rich widow, for whom with no small pains, he had made a decree in the chancery against the Lord of Arundell, to present him with a pair of gloves, and forty pounds in Angels in them, for a new year's gift, of whom he thankfully received the gloves, but refusing the money, said unto her, ‘ Mistress, since it were against good manners to forsake a gentlewoman's new year's gift, I am content to take your gloves ; as for your money I utterly refuse it ;’ so, much against her mind, enforced he her to take her gold again. And one Master Gresham, likewise, at the same time having a cause depending in the Chancery before him, sent him for a new year's gift a fair gilt cup, the fashion whereof he very well liking, caused one of his own, though not in his fantasy of so good a fashion, yet better in value, to be brought out of his chamber, which he willed the messenger in recompense to deliver

unto his master, and under other conditions would he in no wise receive it." (*Roper's Life of More*, p. 60.)

The practice of Judicial corruption appears to have prevailed to a considerable extent at the commencement of the sixteenth century, as may be inferred from Bacon's address to Sergeant Hutton, on the latter being appointed a Judge of the Common Pleas. He thus solemnly cautions the new Judge: "That your hands and the hands of your hands (I mean those about you) be clean and uncorrupt from gifts, from meddling in titles, and from serving of turns, be they great ones or small ones." It would indeed have been fortunate for Bacon's reputation had he remembered the advice himself which he here gave to another. The charges of accepting bribes were most of them confessed by him, though often with extenuating observations, as that they were received after the causes were ended. The following were amongst some of the most remarkable charges.

Item. In the cause between Hodie and Hodie, a dozen of buttons, after the cause ended, of the value of 50l.

Item. In the cause of Keday and Valore, of Keday, a cabinet worth 800l. Of Valore, borrowed at two times, 2000l.

Item. In the Lord Mountaine's cause, of the

Lord Mountaine, and more promised at the end of the cause, 600l. or 700l.

Item. In a cause between Raynell and Peacock, 200l. in money, and a diamond ring worth 500l. or 600l.—700l. or 800l.

Item. There being a reference from his Majesty to his Lordship of a business between the Grocers and Apothecaries, he had of the Grocers, 200l. Of the Apothecaries, beside a rich present of ambergrease, 150l.

Item. Of the French Merchants, to constrain the Vintners of London to take 1500 tuns of wine; to accomplish which, he used very indirect means, by colour of his office and authority without bill or other suit depending, as threatening the Vintners, for which he received of the Merchants 1000l."

Bacon, it is said, attempted to excuse his corruption by alleging that he had taken bribes "to do justice, not to do injustice." In a letter to the King, he says: "And for the briberies and gifts wherewith I am charged, when the book of hearts shall be opened, I hope I shall not be found to have the fountain of a corrupt heart, in a depraved habit of taking rewards to pervert justice; howsoever I may fail and partake of the corruption of the times." The sentence upon Bacon was, that he should undergo a fine of 40,000l.; that he should be imprisoned in the Tower during the

King's pleasure; that he should for ever be incapable of any office, place, or employment in the State or Commonwealth, and that he should never sit in Parliament, or come within the verge of the Court. The King granted him a full pardon of the whole sentence, but he was not again summoned to Parliament before the reign of Charles I.

In the reign of Charles II. the system of judicial bribery and corruption was in full vigour. The king himself, (*See Barrington's Observations on the Ancient Statutes,*) in appeals to the House of Lords, used to go about whilst the cause was hearing, and solicit particular lords for appellant or respondent. Whitelock, then a barrister, applied to the judges with regard to a prosecution for a libel on his father, who had been on the bench, and was then dead. The libeller was indicted after this previous conversation, and convicted. Sir Matthew Hale appears to have experienced great difficulty in avoiding the importunity of persons who were desirous of securing his favour.

“ He would never receive private addresses or recommendations from the greatest persons, in any matter in which justice was concerned. One of the first peers of England went once to his chamber, and told him, that having a suit at law to be tried before him, he was then to acquaint him with it, that he might the better understand it

when it came to be heard in court. Upon which, the Lord Chief Baron interrupted him, and said, he did not deal fairly to come to his chamber about such affairs, for he never received any information of causes but in open court, where both parties were to be heard alike. So he would not suffer him to go on ; whereupon his Grace (for he was a Duke) went away, not a little dissatisfied, and complained of it to the King as a rudeness which was not to be endured. But his Majesty bid him content himself that he was no worse ; and said, he verily believed he would have used himself no better, if he had gone to solicit him in any of his own causes.

“ Another passage fell out in one of his circuits, which was somewhat censured as an affectation of an unreasonable strictness ; but it flowed from his exactness to the rules he had set himself. A gentleman had sent him a buck for his table, that had a trial at the assizes ; so when he heard his name, he asked, if he was not the same person that had sent him venison ; and finding he was the same, he told him, he could not suffer the trial to go on till he had paid him for his buck ; to which the gentleman answered, that he never sold his venison, and that he had done nothing to him that he did not do to every judge that had gone that circuit, which was confirmed by several gentlemen then present ; but all would not do, for the Lord Chief



Baron had learned from Solomon, that a gift perverteth the ways of judgment, and therefore he would not suffer the trial to go on till he had paid for the present; upon which the gentleman withdrew the record. And at Salisbury, the Dean and Chapter having, according to the custom, presented him with six sugar-loaves in his circuit, he made his servants pay for the sugar before he would try their cause."

The conduct of Lord Hale upon this occasion, might, perhaps, be properly censured as "an affectation of an unreasonable strictness;" for to have accepted the venison as a present, would not have infringed the strict form of the ancient judicial oath, which ran, "not to receive any fee or pension, &c. nor any gift, reward, or bribe, of any man having suit or plea before him, *saving meat and drink, which shall be of no great value.*"

North, when Chief Justice of the Common Pleas, in the reign of Charles II. appears not to have been altogether free from suspicions of bribery, notwithstanding the pure character of him given by his brother, Roger North. "There was," says the author of the *Lives of the Chancellors*, "an odd story of a chancery suit between the Duke of N—— and Sir P—— H——, in his time, and of some gold plate in a box; but it looks too invidious to relate it." (*Vol. i. p. 178.*) After he was made Lord Keeper, he incurred

great blame by the acceptance of a pecuniary present from some of the officers of his court. The anecdote is thus related by Roger North.

“ One thing more is to be remembered, which was talked in coffee-houses, concerning his Lordship ; but by them only who were the culpables. The Six Clerks have great dependance on the course of the Court of Chancery for their profits, and are always disposed to keep the Judge in good humour, and prevent alterations to their prejudice. *And all the Judges of the Courts make no scruple to accept presents of value from the officers,* by way of new year’s gift, or otherwise ; which is a practice not very commendable, because with some it may have bad effects. Accordingly, these Six Clerks clubbed, and made a present to his Lordship of 1000l., which he took as an instance of their respect, without regard to, or knowledge of, any other design or intention of theirs. But soon after this they began to fall out with the sixty under clerks, and pretended to remove them at pleasure, being their substitutes, for whom they were to answer, as masters turn servants away whom they can trust no longer. The sixty, on the other side, stood upon it that they bought and paid for their seats, and were sworn into their places, and however they were subject and accountable to the six, they were not at their mercy to be removed without the authority of the

Court. The six thought fit to put in practice their own authority, and began with one Sewel, a clerk, one of the sixty, and ordered him out of his seat, and, as I remember, gave it to another. This produced a petition of this Sewel to his Lordship, praying to be restored, and the rest of the sixty confirmed in their places; of which decree the justice is unexceptionable. It is no wonder that the six were infinitely disgusted; for if they had any bad design, as it seems plain they had, of adding sixty to their six, they had their reward. I am firmly persuaded that his Lordship knew nothing of it till the cause upon the petition came before him; and if he had known of it before, he had not accepted their kindness, and that afterwards he repented him of it. And of all the actions of his life this came nearest to a colourable misconstruction. Nay, there is no other capable of any. And, I guess, that although I have here related it undisguised, and out of my personal knowledge, many will incline to take it in the worse sense, and, as being a plain bribe, though the consequence flies in the face of it, and for that reason many would have left out this whole passage, so singular as it is; but professing, as I do, to render every action of his Lordship conspicuous, I could not acquit myself to deal so with this, which would have manifestly tainted all

I have shewed for his Lordship's advantage." (*Life of Lord Guilford, vol. ii. p. 246.*)

"The execrable Jefferies was as corrupt as he was cruel, and is said to have received so large a bribe as 14,500*l.* from one individual, whose life was in danger." (*Lives of the Chancellors, vol. i. p. 183.*) So general, indeed, was the practice of judicial corruption in the reign of Charles II. that a member of the House of Commons, (Mr. Booth, afterwards Lord Delamere,) in moving that certain judges should be impeached, thus expressed himself: "Our judges have been very corrupt and lordly; *taking bribes*, and threatening juries and evidence, perverting the law to the highest degree, turning it upside down, that arbitrary power may come in upon their shoulders. The cry of their unjust dealings is great, for every man has felt their hand." (*Lord Delamere's Works.*)

At the commencement of the last century the very corrupt practice which had obtained in the Court of Chancery, and which we have already noticed in the anecdote respecting Lord Guilford, was abolished by Lord Chancellor Cowper. It had been usual, since Lord Ellesmere's time, (James I.) for the gentlemen of the bar to make a new year's gift to the Lord Chancellor, and latterly this gift had been presented in the shape of money. Lord Bacon in his Confessions, generally styles the sums of money which he received,

“New-year’s Gifts.” Lord Cowper, on accepting the seals, not only strictly enjoined the officers of the court to discharge their duties without receiving any extra fees, on pain of being cashiered; but likewise put an end to the custom of new-year’s gifts. The amount of these presents, according to Burnet, was 1500l. a year.

It is observable, that a practice very similar to the one above mentioned has obtained at various times and in different countries. The Athenian magistrates, according to Plutarch, were authorized to require a remuneration from the suitors of their courts. And in Rome, by a Law of Justinian, certain inferior magistrates were allowed to receive presents of a fixed amount from their suitors. The following is the account given by Mr. Butler of a similar practice which existed at one time in France.

“To secure to the judges the proportion which the suitors were to contribute towards the expense of justice, it was provided by an ordonnance of St. Louis, that at the commencement of a suit, each party should deposit in Court the amount of one tenth part of the property in dispute; that the tenth deposited by the unsuccessful party should be paid over to the judges on their passing sentence, and that the tenth of the successful party should be returned to him. This was varied by subsequent ordonnances; insensibly it became

a custom of the successful party to wait upon the Judges after the sentence was passed, and as an acknowledgment of their attention to the cause, to present them with a box of sweet-meats, which were then called *epices*, or spices: by degrees this custom became a legal perquisite of the Judges; it was converted into a present of money, and the payment of it required by the Judges before the cause came to a hearing. *Non deliberentur donec solventur species*, say some of the ancient registers of the Parliaments of France. The practice was afterwards abolished, the amount of the *epices* was regulated, and in many cases the taking of them was forbidden. Speaking generally, they were not payable till final judgment; and, if the matter were not heard in Court, but referred to a Judge for him to hear and report his decision upon it to the Court, he was entitled to the whole of the *epices*, and the other Judges were entitled to no part of them. Those among the magistrates who were most punctual, and diligent in their attendance in Court, and the discharge of their duty, had most causes referred to them, and were therefore richest in *epices*, but the superior amount of them, however it might prove their superior exertions, added little to their fortune, as in the whole year it did not often exceed 50l. and never 100l. The Judges had some other perquisites, and also some remuneration

from Government ; but the amount of the perquisites and remuneration of any Judge, excepting those of the Presidents, amounted to little more than the *epiçes*. The Presidents of the Parliament had a higher remuneration, but the price which they paid for their offices was proportionably higher, and the whole sum received by any Judge for his *epiçes*, perquisites, and other remunerations, fell short of the interest of the money which he paid for the charge, so that virtually the French Judges administered justice not only without salary, but even with pecuniary loss. Their real remuneration was the rank and consideration which their office gave them in society, and the respect and regard of their fellow citizens. How well does this illustrate Montesquieu's aphorism, that the principle of the French Monarchy was honour ! It may be truly said, that the world has not produced a more learned, enlightened, or honorable order of men than the French Magistracy." (*Reminiscences*, p. 38.)

The latest instance of a charge of corruption preferred against an English Judge, is to be found in the case of the Earl of Macclesfield, Lord Chancellor, who was impeached of certain high crimes and misdemeanors in the year 1725. The principal charges against him were, for receiving large sums of money from persons whom he appointed Masters in Chancery, charges against

which the Earl attempted to defend himself, by asserting, "that the same had been long used and practised in the time of his predecessors, and that such presents had been reckoned amongst the ancient and known perquisites of the Great Seal, and the making and accepting thereof had been notorious to all the world, and never before looked upon to be criminal, or complained of as such."—"And the said Earl humbly hopes that the giving or receiving of a present on such occasion is not criminal in itself, or by the common law of this realm, and that there is not any act of Parliament whatsoever by which the same is made criminal, or subject to any punishment or judgment, which can be prayed in this prosecution: and the said Earl thinks himself obliged humbly to lay this before your Lordships, not only in his own defence, but in vindication of the honor of so many great and excellent men who have been his predecessors in the said office, and have all along done the same, for which the said Earl is now complained of, and of others having been Lord Chief Justices of the King's Bench and Common Pleas, Masters of the Rolls, and other Judges, who have likewise received presents in money, upon the admission of several and respective officers under them, in several Courts of Justice, and who, the said Earl is assured, never apprehended themselves to be guilty of any crime



against any of the good and wholesome laws of this realm." The Lord Chancellor was, notwithstanding the practice of his "many great and excellent predecessors," found guilty, and fined in the sum of 30,000l. (*State Trials, vol. xvi.*)

It cannot be supposed that when the great officers of Justice manifested so corrupt a spirit, inferior magistrates should be more pure; and accordingly we find a very indifferent character of the Justices of the Peace given by Sir Nicholas Bacon, in a speech which he delivered, as Lord Keeper, in the reign of Elizabeth, (1571.) "Were it possible," says he, "trow you, that if Justices, being dispersed throughout the whole realm as they be, did carefully and diligently endeavour themselves, according to the trust committed to them by their sovereign, duly and truly to execute their charge, as they be bound by their oath to God, and by their allegiance to their sovereign, and by duty to their natural country, and, rightly considered, by the love they should bear to themselves and their posterity, (for if their country do not well, they will fare but ill-favouredly,) were it possible, I say, if this were so done, that laws should be thus remissly and negligently executed? No, doubtless. Is it not (trow you) a monstrous disguising, to have a Justice a maintainer, to have him that by his oath and duty should set forth justice and right, against his oath offer injury and

wrong; to have him that is specially chosen amongst a number, by a prince, to appease all brawlings and controversies, to be a server and maintainer of strife and sedition, by swaying and leading of Juries according to his will, *acquitting some for gain, indicting others for malice*, bearing with them as his servant or friend, overthrowing others as his enemy; procuring the questmonger to be of his living, or otherwise in his danger; that his winks, frownings, and countenances, may direct all inquests? Surely, surely, these be they that be subverters of all good laws and orders, yea, that make daily the laws, which of their nature be good, to become instruments of all injuries and mischief." (*D'Ewes's Journal*, p. 153.)

We have another character of a Justice of the Peace, in the same reign, given by Mr. Gascock, a Member of the House of Commons.

"A Justice of the peace is a living creature, that for half a dozen of chickens will dispense with a whole dozen of penal Statutes. We search and ingross the retail. These be the basket Justices, of whom the tale may be verified of a Justice that I know, to whom one of his poor neighbours coming said, 'Sir, I am very highly rated in the subsidy book; I beseech you to help me.' To whom he answered, 'I know thee not.' 'Not me, Sir?' quoth the countryman, 'why, your Worship had my team and oxen such a day, and I

have ever been at your Worship's service.' 'Have you so, Sir?' quoth the Justice, 'I never remembered I had any such matter, no, not a sheep's tail.' So unless you offer sacrifice to the Idol Justices, of sheep or oxen, they know you not. If a warrant came from the Lords of the Council to levy a hundred men, he will levy two hundred, and what with chopping in, and shutting out, he'll gain a hundred pounds by the bargain. Nay, if he be to send out a warrant upon a man's request, to have any fetched in on suspicion of felony or the like, he will write the warrant himself, and you must put two shillings in his pocket as his clerk's fee, (when, God knows, he keeps but two or three Hinds,) for his better maintenance." (*D'Ewes's Journal*, 661.)

The justice who "misuses the king's press so damnably," will remind the reader of the scene in Henry IV. where "Robert Shallow, a poor esquire of the county, and one of the king's justices of the peace," allows Sir John Falstaff to traffic in a similar manner.

*Fal.* Come, Sir, which men shall I have?

*Shal.* Four, of which you please.

*Bard.* Sir, a word with you,—I have three pounds to free Mouldy and Bullcalf.

*Fal.* Go to, well.

*Shal.* Come, Sir John, which four will you have?

*Fal.* Do you choose for me.

*Shal.* Marry, then, Mouldy, Bullcalf, Feeble, and Shadow.

*Fal.* Mouldy and Bullcalf!—For you, Mouldy, stay at home still, you are past service,—and for your part, Bullcalf,—grow till you come unto it, I will none of you.”

In the earlier periods of our history, to provide for the due execution of the law, and to repress the corruption of its ministers, was a task which the legislature was frequently called upon to perform. Thus, in the year 1572, a proposal was made by Sir Nicholas Bacon, the Lord Keeper, for the appointment of a commission to enquire into the administration of justice.—“ I mean that the Queen’s Majesty should make choice, every second or third year, of certain expert and approved persons, to whom a commission should be granted to try out and examine, by all ways and means, the offences of all such as have not seen to the due execution of the laws, according to the offices and charges committed to them by the Prince ; and the offences so found and certified, to be sharply punished, without remission or redemption. Of effect much like this, and to the like end, was the visitation of the church first devised ; whereof, in the beginning of it, came great good doubtless ; and reason I see none, but the like good ought to follow upon like visitation made

upon temporal affairs. And the old commission of *Oyer* tended somewhat to this end. I doubt certainly, if the laws and statutes of this realm, should not indifferently, uprightly, and diligently, be put in execution, (as my trust is they shall,) especially in the great and open courts of this realm, then my burthen, I confess, is equal with the greatest, yet, for my part, I would gladly, every year, hear of and yield to such a comptroller." (*D' Ewes's Journal*, p. 194.)

At the present day we have a much surer guard against the peculation and corruption of the officers of justice, than any legislative enactments could bestow,—the force of public opinion, and the power of a free press. Were it even possible that a suitor could be found bold enough to proffer a bribe to any of our judges, the universal disgrace and odium which would attach to the receiver of it, is a sufficient safeguard against such a practice, without considering the moral character and integrity of the individuals who now preside over our courts of justice.

SIR JOHN DAVIES, AND DAME ELEANOR, HIS  
WIFE.

This eminent lawyer was Attorney General in Ireland, in the reign of King James I. He was also celebrated as a poet (*See Ante*, p. 49.) and a political writer. At the beginning of the year

1588, he removed from Oxford to the Middle Temple, and applied himself to the study of the law ; but was more distinguished by his abilities than by the regularity of his manners. " He interrupted the quiet of the Inn by his misdemeanours, for which he was fined, and by disorders, for which he was removed from Commons." (*Life, prefixed to his Historical Tracts, p. 2.*) Anthony Wood says, " That he, being a high-spirited young man, did, upon some little provocation or punctilio, bastinado Richard Martin, afterwards Recorder of London, in the Common Hall of the Middle Temple, while he was at dinner. For which act being forthwith expelled, he retired for a time in private, lived in Oxon in the condition of a sojourner, and followed his studies, though he wore a cloak." Davies and Martin were, it seems, both poets, and the facetiousness of the latter, which used to set the Temple table in a roar, and is said to have charmed King James, probably drew upon him the indignation of his brother wit.

The reputation of Davies, as a poet, is principally founded on his work, intitled *Nosce Teipsum*, a Poem on the Immortality of the Soul, first published in 1599, in quarto. It is a performance of very considerable merit, and has passed through several editions. In a note to the edition printed with Sir John's other poetical works, in 1773, it

is said, that this poem is, "without dispute, the best that was written in Queen Elizabeth's, or even in King James the First's time, except Spenser's *Faery Queen*." (*See Remarks ante, p. 49.*) On the death of Queen Elizabeth, Davies accompanied Lord Hunsdon into Scotland, to congratulate King James on his accession to the throne of England. Being introduced into his Majesty's presence, the King enquired of Lord Hunsdon the names of the gentlemen who were with him; and his Lordship naming among them John Davies, who stood behind, the King immediately asked, whether he was *Nosce Teipsum?* Lord Hunsdon informed him that he was the same; upon which the King, as Wood informs us, "graciously embraced him, and thenceforward had so great favour for him, that soon after he made him his Solicitor and then his Attorney General in Ireland." In these offices he discharged his duties with great diligence and ability.

He was a member of the Irish Parliament, and, on his return to England, was returned for Newcastle-under-Line. When about to be placed in a station of high dignity, he was carried off by an apoplexy, in the night of the 7th December, 1626, in the fifty-seventh year of his age. He had supped that night with the Lord Keeper Coventry, having been previously appointed Lord Chief Justice of England, in the room of Sir Randolph

Crew. He was buried in the church of St. Martin in the Fields, where a monument was fixed on a pillar near his grave, with an inscription on it, giving him the following character :

“ Vir ingenio compto, rarâ facundiâ, oratione cum solutâ, tum numeris astrictâ, felicissimus : Juridicam severitatem morum elegantiâ, et amœniore eruditione, mitigavit : Patronus fidus, Judex incorruptus, ingenuæ pietatis amore, et anxix superstitionis contemptu, juxta insignis.”

Sir John Davies was a very able and learned lawyer ; and the pieces written by him, concerning Ireland, are extremely valuable. He was the author of an Abridgment of Sir Edward Coke's Reports, in Law French, which was translated into English after his decease, and published in 1651. His own Reports, which were first published in Law French, in folio, were also afterwards translated into English, and reduced to an octavo size.

Sir John's lady was a very singular character, and dealt much in prophecies. An account of her predictions was published in 1649, in 4to. under the title of “ Strange and Wonderful Prophecies.” She was reported to have foretold the death of her husband. Anthony Wood, speaking of the time of Sir John Davies's death, says, “ It was then commonly rumoured, that his prophetic lady had



foretold his death in some manner, on the Sunday going before. For, while she sat at dinner by him, she suddenly burst out into tears; whereupon he asking her what the matter was, she answered, ' Husband, these are your funeral tears ;' to which he made reply, ' Pray, therefore, spare your tears now, and I will be content that you shall laugh when I am dead.' "

Lady Davies also foretold the death of Archbishop Laud ; but appears to have been mistaken as to the time. " She had before spoken something unluckily of the Duke of Buckingham, importing that he should not live till the end of August, which raised her to the reputation of a cunning woman amongst the ignorant people ; and now she prophesied of the new Archbishop, that he should live but few days after the fifth of November ; for which, and other prophesies of a more mischievous nature, she was brought into the Court of High Commission ; the woman being grown so mad, that she fancied the spirit of the Prophet Daniel to have been infused into her body. And this she grounded on an anagram which she made of her name, *viz.* ELEANOR DAVIES : REVEAL O DANIEL : and though the anagram had too much by an L, and too little by an S ; yet she found *Daniel* and *Reveal* in it, and that served her turn. Much pains was taken by the court to dispossess her of this spirit ; but all would not

do, till Lamb, then Dean of the Arches, shot her through and through, with an arrow borrowed from her own quiver; for whilst the Bishops and Divines were reasoning the point with her out of Holy Scripture, he took a pen into his hand, and at last hit upon this excellent anagram, *viz.* DAME ELEANOR DAVIES: NEVER SO MAD A LADIE: which having proved to be true by the rules of art, 'Madam,' said he, 'I see you build much on anagrams, and I have found one which I hope will fit you.' This said, and reading it aloud, he put it into her hands in writing, which happy fancy brought that grave court into such a laughter, and the poor woman thereupon into such a confusion, that afterwards she either grew wiser, or was less regarded."

This was certainly the most sensible way of animadverting on the poor lady's infirmities; but to this course unfortunately her judges did not confine themselves. "She was prosecuted in the High Commission Court, particularly for what was called 'an enthusiastical petition to King Charles;' and was treated with great rigour and cruelty. She was fined three thousand pounds, and closely imprisoned three years in the Gatehouse, Westminster. She is also said to have been confined several years in Bethlem Hospital, and in the Tower of London; and she complained that, during part of her imprisonment, she was not

allowed the use of a Bible, nor permitted to have the attendance of a female servant." (*Biogr. Brit. vol. iv.*)

#### IDENTIFICATION OF STOLEN GOODS.

Webs of cloth and wearing apparel are articles, the identity of which it is often difficult to establish. A remarkable instance of this occurred some years ago, in a trial of one Webster, on the north circuit, for house-breaking and theft. The girl, whose chest had been broken open, and whose clothes had been carried off, swore to the only article found in the prisoner's possession, and produced, viz. a white gown, as being her property. She had previously described the colour, quality, and fashion of the gown, and they all seemed to correspond with the article produced. The house-breaking being clearly proved, and the goods, as it was thought, distinctly traced, the proof was about to be closed for the prosecutor, when it occurred to one of the jury to cause the girl to put on the gown. This appeared rather a whimsical proposal, but it was agreed to by the Court, when, to the surprise of every one present, it turned out, that the gown which the girl had sworn was hers, which corresponded with her description, and which she said she had used only a short time before, would not fit her person. She then examined it more minutely, and at length

said it was not her gown, though almost in every respect resembling it. The prisoner was of course acquitted; and it turned out afterwards, that the gown produced belonged to another woman, whose house had been broken into about the same period, by the same person, but of which no evidence had at that time been obtained. (*State Trials, vol. xix. p. 494.*)

THE OPINION OF A FRENCH LAWYER ON AN  
ENGLISH CASE.

The opulent commercial family of Courten, about the middle of the 17th century, were ruined in consequence of the piratical seizure of their vessels by the Dutch. (*Biogr. Britt. vol. iv.*) Letters of Reprisals were in consequence granted by the English Government, in 1665, to George Carew, Administrator of the goods and chattels of Sir William Courten, &c. which were afterwards annulled by an express article in the Treaty of Breda, in 1667. The Chancellor Hyde, and Finch, afterwards Earl of Nottingham, decided that this revocation was good in law; and it was accordingly decreed in the Court of Chancery that the letters were void, that they ought to be resigned, and the record of them erased. This order of the Court was made absolute, February 27, 1682, when tipstaves and messengers being sent from day to day, to apprehend Carew, dead

or alive, his personal liberty became insecure ; he therefore fled, with the letters in his possession, to France, and took up his residence at Paris, “ until the people of England came to their right wits and senses again.” To convince the English Courts of their error, he here, it appears, submitted his case to a French counsellor, who did not scruple to advise upon it, and who pronounced the following very curious

*Opinion.*

J'ay reçu la vôtre, avec copie du procez de *scire facias*, au nom du Roy, et la réponse à icelle, tous deux en Latin, et l'ordre de la Chancellerie ensuivie, datée le 26 de May, 1682, et aye auprès de moy la copie des Lettres Patentes pour Représailles contre les Hollandois, pour 151, 612 livres sterlins, translaté en François. J'ay consulté cette affaire avec les premiers conseillers du Parlement de Paris, lesquels sont d'avis *qu'il est contre la justice naturelle et la constitution du Gouvernement d' Angleterre, que la même Cour de Judicature d'où les Lettres Patentes sont issues, les pourroit abroger et annuller, sans premièrement faire satisfaction aux personnes injuriées ou endommagées, et ils tiennent pour fort deshonorabile à aucun Prince, ou sujets, de chercher relief contre leur propres actes, lesquels sont en leur propre pouvoir d'accomplir ;* LE ROY de FRANCE ven-

*droit son lit de dessous soy, plutôt que de courir le deshonneur et reproche d'une telle action, si réfléchant contre tous Princes Souverains.*

FRANCOIS PERENOTT.

*Paris, 16 Dec. 1682.*

A CROSS-EXAMINATION.

On the celebrated trial of Elizabeth Canning, Mr. Willes, afterwards Solicitor-General in 1766, made a Judge of the King's Bench in 1767, and ultimately raised to the dignity of Chief Justice, thus cross-examined one of the witnesses for the prisoner.

“What time did she (Elizabeth Canning) come?—About twelve o'clock at noon.

Did anybody come with her that day?—No, nobody.

Was she in perfect health?—I never saw her better, as I know of.

What had you for dinner?—Some of a cold shoulder of mutton and potatoes, which was dressed the Sunday before.

Did she eat a hearty dinner?—She eat as hearty as she could; she seemed to eat as hearty as I did.

This being new year's day, what did you give her to drink?—She drank some ten-shilling beer, which I had in the house. I was at work in the afternoon.

Does your wife drink tea in the afternoon?—

She generally does, whether she has company or not.

Have you seen your niece drink tea?—I have.

Do you think your wife and she had tea that afternoon?—I do really believe they had.

Does your wife generally have bread and butter, or toast with her tea, or not?—She generally chuses toast and butter.

What time did you return home from work?—About seven in the evening.

What had you for supper?—We had some of a sirloin of beef roasted.

Did your niece eat of that?—She eat a small quantity of that, but could not eat much.

What did she drink after that?—She drank a small quantity of ten-shilling beer.”

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This cross-examination was ridiculed by Foote in a farce, in the performance of which he exercised his talent of mimicry by a very successful exhibition of Mr. Willes's peculiarity of voice and manner.

In vindication of Willes, Mr. Malone has observed, (in his Inquiry into the authenticity of the Papers, &c. which, in 1795, were published as the writings of Shakspeare, Queen Elizabeth, and the Earl of Southampton,) “Persons who are not conversant with legal subjects, or the true object

of lawyers in their examination of evidence, are frequently surprised at minute questions put to witnesses, which they think either vexatious or impertinent; and on such occasions, the well-known question which a late admired comic actor introduced into one of his pieces, and which he rendered still more ridiculous by imitating the thin and stridulous voice of an eminent barrister, who was afterwards raised to the Bench, 'Pray, now let me ask you, was,—the—toast buttered on *both* sides?' is often mentioned with much satisfaction and applause by those who have attended more to the humour of the theatre, than the investigation of truth.—But the judicious lawyer, when he asks, not precisely such questions as the English Aristophanes has invented for him, but, in the case (we will suppose) of a disputed will,—whether the testator, when he made and published it, was sitting up in his bed, or in an arm chair;—what was the size or form of the room,—how many persons were present,—who lighted the candles, or furnished the wax with which it was sealed? &c. perfectly understands what he is about; and, in cases of fiction or fraud, the event often proves the propriety of such an examination; for by the answers given to these questions, compared with the testimony of others, and the real fact, the instrument set up is quickly overthrown." (*State Trials*, vol. xix. p. 475.)



## LORD CHIEF JUSTICE WILLES.

“ Chief Justice Willes,” says Miss Hawkins, in her *Memoirs*, (*vol. ii. p. 254*), “ was a man of so little personal decorum, that he was perpetually offending against the respect due to his office. He would play cards at the public rooms at watering places ; and one night, when so engaged, he was extremely annoyed by a young barrister, who feigning himself intoxicated, stood by the table, looked over his cards, and was so troublesome, that at length Willes spoke sharply to him. ‘ Sir,’ said he, pretending to stagger, ‘ I—beg pardon ; but I wanted to improve in playing whist ; so, so I came to look over—you ; for if—if I, I, I am not mistaken, Sir,—you are *a judge.*’ ” To this anecdote we may subjoin the account of his Lordship given by Horace Walpole, in his “ *Memoirs.* ”

“ Lord Chief Justice Willes was designed for Chancellor. He had been raised by Sir Robert Walpole, though always browbeaten by haughty Yorke, and hated by the Pelhams, for that very attachment to their own patron ; as Willes’s nature was more open, he returned their aversion with little reserve. He was not wont to disguise any of his passions.—That for gaming was notorious ; for women, unbounded. There was a remarkable story current, of a grave person coming

to reprove the scandal he gave, and to tell him, that the world talked of one of his maid-servants being with child.—Willes said, ‘What is that to me?’ The monitor answered, ‘Oh, but they say, it is by your Lordship.’ ‘And what is that to you?’ He had great quickness of wit, and a merit that would atone for many foibles; his severity to, and discouragement of that pest of society, attornies; hence his court was deserted by them, and all the business they could transport carried into the Chancery, where Yorke’s filial piety would not refuse an asylum to his father’s profession.” (*Memoirs, vol. i. p. 78.*)

## LORD COWPER AND RICHARD CROMWELL.

“Charles Yorke told this fact. His father, Lord Hardwicke, was in the Court of Chancery when Lord Cowper was hearing a cause, in which Richard Cromwell had some concern. The counsel made very free and unhandsome use of his name, which offending the good feeling of the Chancellor, who knew that Cromwell must be in court, and at that time a very old man, he looked round, and said, ‘Is Mr. Cromwell in court?’ On his being pointed out to him in the crowd, he very benignly said, ‘Mr. Cromwell, I fear you are very incommoiously placed where you are: pray come and take a seat on the bench by me.’ Of course no more hard speeches were uttered

against him. Bulstrode Whitelock, then at the bar, said to Mr. Yorke, ' This day so many years ago, I saw my father carry the great seal before that man through Westminster Hall.' " Such is the version of this story given by Miss Hawkins. (*Memoirs*, vol. ii. p. 254.) It is thus given in the *Biographia Britannica*: " In 1705, he (Richard) lost his only son, Oliver, who died on the 11th May, having never married. By this event, Richard became entitled to a life-estate in the manor of Hursley, which, having been part of his wife's jointure, had devolved to Oliver, in right of his mother. In consequence of his son's decease, the old gentleman sent his youngest daughter to take possession of the estate, which she accordingly did; but not, it seems, with a view of surrendering it to her father. She and her sisters, it is said, forgetting their duty, and even the dictates of humanity, refused to give it up to him, alleging that he was superannuated, and proposing to allow him a small yearly sum. This conduct was the more criminal, as he had ever been very fond of his children, and had treated them with the greatest tenderness and affection. The advanced age of Richard did not prevent him from behaving on this occasion with becoming spirit. He scorned to submit to the award of his daughters, and a process at law was the consequence. As he was obliged to appear in person in court, his sister,

Lady Fauconberg, sent her coach and equipage to conduct him thither. When he came, the judge, remembering his former elevation, conducted him into an apartment, where refreshments were provided for him; and, on his being brought into court, ordered that he should be accommodated with a chair, and that he should sit covered. One of the counsel on the other side seeming disposed to object to this indulgence, the liberal-minded magistrate immediately replied, 'I will allow of no reflections to be made; but that you go to the merits of the cause.' In conclusion, a decree was given in favour of Richard, accompanied with some severe strictures on the shameful treatment he had received from his daughters. It is understood, that the judge was commended by Queen Anne for the proper attention he had shewn to a man who had once been a sovereign." (*Biographia Britannica*, vol. iv.)

It is added in a note, that, according to the Earl of Egmont and Mr. Hewling Luson, the judge before whom the cause was tried was Lord Cowper; but that Mr. Granger says, it was Lord Chief Justice Holt.

MR. JUSTICE BURNET.

Thomas Burnet, afterwards Sir Thomas Burnet, and one of the Justices of the Court of Common Pleas, was the third son of the celebrated

Bishop of Salisbury. Having received an academical education at Oxford, he spent some time on the Continent, and on his return, entered his name on the books of the Temple as a student at Law. Like Sir John Davies, of whose youthful life we have given some account, he became remarkable for the wildness and irregularity of his conduct, to which frequent allusions are made in the satirical publications of the day. Thus in Arbuthnot's witty *Notes and Memorandums of the six days preceding the death of a Right Reverend Divine*, we have the following allusion to Mr. Justice Burnet. "Order the family to come up stairs at seven.—Resolved to preach before them extempore, \* \* \*. Family comes up.—Survey them with delight.—The damsel Jane has a wicked eye. Robin seems to meet her glances: unsanctified vessels! children of wrath! \* \* \*. Look again at Jane.—A tear of penitence in her eye. Sweet drops! Grace triumphs! Sin lies dead! *Wish Tom were present.* He might be reformed. Consider how many sermons it is probable Tom hears in one year. Afraid not one. Alas the Temple! alas the Temple! The law eats up divinity; it corrupts manners, rains contentions amongst the faithful, feeds upon poor vicarages, and devours widows' houses without making long prayers. Alas the Temple! never liked that place since it harboured Sacheverell, &c." It was even suspected.

that our young student was one of the Mohocks, of whom so frequent mention is made in the *Spectator*, and whose achievements excited so much terror. "Young Davenant was telling us," says Swift in his *Journal to Stella*, "how he was set upon by the Mohocks, and how they ran his man through with a sword. It is not safe being in the streets at night. The Bishop of Salisbury's son is said to be of the gang. They are all Whigs. A great Lady sent to me to speak to her father and to Lord Treasurer to have a care of them, and to be careful likewise of myself, for she heard they had malicious intentions against the ministers and their friends. I know not whether there be anything in this, though others are of the same opinion." Notwithstanding his dissipation, Mr. Burnet found time to become a very frequent political writer, and in 1712 and 1713, produced no less than seven pamphlets, in defence of the principles and conduct of the Whigs. As he grew older, Mr. Burnet abandoned his youthful extravagances. His father, the Bishop, observing him one day uncommonly grave, enquired the subject of his meditations. "A greater work," replied the son, "than your Lordship's *History of the Reformation*." "What is it, Tom?" "My own *reformation*, my Lord." "I shall be heartily glad to see it," said the Bishop, "but I almost despair of it." Upon the accession of the Brans-

wick family, he addressed a letter to the Earl of Halifax, *On the necessity of impeaching the late ministry*, which he followed up with a humorous satire upon Harley, entitled, *A second Tale of a Tub, or The History of Robert Powell the Puppet-show-man*. His next work was a *Character of the Right Reverend Father in God, Gilbert, Lord Bishop of Sarum*, and in the same year he wrote, in conjunction with Duckit, a Travestie of the first book of Homer, under the title of *Homerides*, a performance which secured them a joint place in the Dunciad :

“ Behold yon pair, in strict embraces join'd ;  
 How like in manners, and how like in mind ;  
 Equal in wit, and equally polite,  
 Shall this a Pasquin, that a Grumbler write ;  
 Like are their merits, like rewards they share ;  
 That shines a Consul, this, Commissioner.”

*Book iii. v. 179.*

Having obtained the appointment of Consul at Lisbon, he resided at that place several years, and during his stay, had a serious dispute with Lord Tyrawley the Ambassador : Mr. Burnet's mode of mortifying his Lordship was ingenious and singular. Employing the same tailor, he learned what suit Lord Tyrawley intended to wear on the birthday, and provided the same as liveries for his servants, appearing himself in a plain suit. On

his return to England, he resumed the profession of the law, and in the year 1723, published the first volume of his father's History of his Own Times. In 1736, he was called to the degree of Sergeant, and in 1741, on Fortescue Aland being appointed Master of the Rolls, succeeded him as one of the puisne Judges of the Common Pleas, in which Court he continued till his death in 1753. "He left behind him the character of an able and upright Judge, a sincere friend, a sensible and agreeable companion, and a munificent benefactor to the poor." (*See the Notes to the Life of Bishop Burnet, in the Biogr. Brit.*)

## CHARACTER OF A PETTIFOGGER.

"He promotes quarrels, and in a long vacation his sport is to go a fishing with the penal statutes. He is a vestryman in his parish, and easily sets his neighbours at variance with the vicar, when his wicked counsel on both sides is like weapons put into men's hands by a fencer, by which they get blows, he money. His honesty and learning procure him the office of Under-Sheriff; which having thrice obtained, he does not fear the Lieutenant of the Shire; nay more, he fears not God. His pen is the plough, and his parchment the soil, whence he reaps both corn and curses. He is an earthquake that willingly will let no ground lie in quiet. Broken titles make him whole:—to have



half the country break their bonds were the only liberty of conscience. He would wish that no neighbour of his should pay his tithes duly, if such suits held continual plea at Westminster. He cannot away with the reverend service in our church, because it ends with *the Peace of God.*" (*Overbury's Characters.*)

COKE'S ADDRESS ON BEING ELECTED SPEAKER  
OF THE HOUSE OF COMMONS.

"Your Majestie's most loving subjects, the Knights, citizens, and burgesses of the House of Commons, have nominated me, Your Grace's poor subject and servant, to be their Speaker. This their nomination hath hitherto proceeded that they present me to speak, before your Majesty; yet this their nomination is only as yet a nomination and no election, until your Majesty giveth allowance and approbation. For as in the heavens a star is but *opacum corpus* until it have received light from the sun, so stand I *corpus opacum*, a mute body, until your Highness's bright shining wisdom hath looked upon me and allowed me. How great a change this is, to be the mouth of such a body as your whole Commons represent, to utter what is spoken, *Grandia Regni*, my small experience, being a poor professor of the law, can tell. But how unable I am to do this office, my present speech doth tell, that of a number in this House I am most unfit. For amongst them are

many grave, many learned, many deep wise men, and those of ripe judgments : but I am untimely fruit, not yet ripe, but a bud, scarcely blossomed : so, as I fear your majesty will say, *Neglectâ frugi eliguntur folia* : amongst so many fair fruit ye have plucked a shaking leaf. If I may be so bold as to remember a speech, which I cannot forget, used the last Parliament in your Majesty's own mouth, many come hither ad consulendum, qui nesciunt quid sit consulendum, a just reprehension to many as to myself also, an untimely fruit, my years and judgment ill befitting the gravity of this place. But, howsoever I know myself the meanest, and inferior unto all that ever were before me in this place, yet in faithfulness of service and dutifulness of love, I think not myself inferior to any that were ever before me. And amidst my many imperfections, yet this is my comfort, I never knew any in this place, but if your majesty gave them favour, God, who called them to the place, gave them also the blessing to discharge it."

The Lord Keeper, having received instructions from the Queen, answered him.

"Mr. Solicitor, Her Grace's most Excellent Majesty hath willed me to signify unto you, that she hath ever well conceived of you since she first heard of you, which will appear, when her Highness elected you from others to serve her-

self. But by this your modest, wise, and well-composed speech, you give her Majesty further occasion to conceive of you; by endeavouring to deject and abase yourself and your desert, you have discovered and made known your worthiness and sufficiency to discharge the place you are called to. And whereas you account yourself *corpus opacum*, her Majesty, by the influence of her virtue and wisdom, doth enlighten you, but much thanketh the Lower House, and commendeth their discretion in making so good a choice, and electing so fit a man. Wherefore now, Mr. Speaker, proceed in your office, and go forward to your commendation as you have begun. (*D'Ewes's Journal*, 459.)

#### LORD MANSFIELD'S CONDUCT DURING THE RIOTS.

The following account of the riots of 1780, and the conduct of Lord Mansfield on that occasion, is given by Miss Hawkins, *ex relatione H. Hawkins*.

“ On the day when the riots began, I was in Westminster Hall, and the tumult was so great, that Mr. Dunning, who was then speaking in the Court of King's Bench, was unable to go on; and as the Hall was then filling with an immense crowd, who were making their way to block up all the avenues to the House of Lords, the Court adjourned. I afterwards saw the mob in irregular

procession marching up Charing Cross, and driving back every nobleman's carriage that was on its way to the House. Some noblemen, who were thought to be friendly to the opinions of the mob, were treated more gently than the rest; Lord Fortescue, if I mistake not, was taken out of his carriage by them, and kissed by the old women who had mixed with the throng. The Lord Chancellor only met with sarcastic pity; the mob crying out not to touch his head, in a way that showed that they would insinuate that that was his weakest part. The next morning, Mr. Justice Willes, in his charge to the grand jury, mentioned that he had been attacked in his way to the Hall. From this time all was confusion and uproar, and the subsequent events have now become part of the history of the period; but it should be remembered, that the prosecutions of the offenders, which took place as soon as peace and social order were in any degree restored, were conducted with so much candour and liberality, as to produce the applause of all descriptions of persons; the management of these was chiefly, if not entirely, confided to Mr. Howarth, of whom mention has been already made. Of this gentleman the catastrophe was melancholy; he was fond of going on the water, and in spite of all the dictates of prudence, he would venture in a boat, which he knew at that time was not 'sea-worthy.' The event

may be anticipated; in one of his excursions the boat filled with water, and he perished!

“We still had no idea of further danger, and should have gone out, had not the coachman come in to say, that a lady, who lived very near us, had been stopped in her carriage by the mob at Charing Cross, and compelled to huzza for Lord George, and cry out, ‘No Popery,’ on pain of being dragged out.

“The next day we heard that the guards were preparing for duty; but all reliance in them was destroyed, by its being said that they were heard to declare, that if ordered to fire, it should be over the heads of the mob that they would discharge their pieces.

“The Westminster Justices now began an attendance in rotation at Guildhall, and our anxiety had its intermissions, till a day when my father could not leave his station, even for dinner. His servant went to and fro between him and us, and our hearts sunk, when after waiting till late in the evening, in the most painful suspense, we learnt that we must not expect him till the following morning.

“The cause of his detention was a message from Lord Mansfield, requesting him to come immediately to him in Bloomsbury Square, as he had reason to apprehend that his house would be

attacked.\* My father went thither directly on foot attended by constables, and found his Lordship in the most tumultuous state of feelings, and utterly at a loss to know what to do. The mob had given notice of their intention to visit him, and a great concourse of people was assembling as spectators of the impending mischief. Sir J. was cool and firm : he advised sending for a military force ; and while this was carrying into effect, Lord Mansfield asked him to go to the Archbishop of York, who lived in the adjoining house, and was under the same terror. The Archbishop, however, was more himself.

“ The guards came ; and there is little doubt that the attack would soon have been repelled, but Lord Mansfield insisted on their not remaining on the spot, but being ready when summoned.

“ My father remonstrated ; he represented the inconsistency of such a plan, and the impossibility there would be of making any armed force of use, when not immediately at hand ; but fear is very deaf, and his Lordship was, I may say, obstinate. He insisted that the guards should be stationed at the vestry of St. George’s church, and though

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\* It should, however, be remembered, that Lord Mansfield did not really stand in need of my father’s assistance, as the Lord Chief Justice of the King’s Bench is a magistrate in any county in which he is present.

this placed them considerably beyond the diagonal line of Bloomsbury Square, Lord M. saw no inconvenience. He *would* be obeyed, even though the commanding officer protested against a proceeding so absurd.

“ He was obeyed ; and the result is well known to those who had the misfortune to witness the scenes of this time. The mob kept their promise, and, in a space of time inconceivably short, his house had only its walls standing. One of the young ladies of the family staid long enough to see her grand piano-forte thrown into a bonfire, made of the furniture ; and such was the *noble spirit* of these *Protestant heroes*, that a large silver tankard was thrown into the blaze with a considerable quantity of guineas in it. A cry was then set up, from the tone and temper of which it was conjectured, that *all* the mob were not of the same description ; the audible words were, ‘ If there be any *females* in the house, send them away :’ having given time for the execution of this charitable order, and consequently the evacuation of the house, they proceeded with the work of demolition.” (*Miss Hawkins’s Memoirs.*)

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“ A lady walking with Mr. Bacon in Gray’s Inn Walks, asked him, whose that piece of ground lying next under the walls was ? He answered,

‘ theirs.’ Then she asked him, If those fields beyond the walls were theirs too? He answered, ‘ Yes, Madam, those are ours, as you are ours, to look on, and no more.’” (*Bacon's Apothegms.*)

## THE LAWYER.

“ The law my calling is,  
 My robe, my tongue, my pen,  
 Wealth and opinion gaine,  
 And make me judge of men.  
 The knowne dishonest cause  
 I never did defend,  
 Nor spunne out sutes in length,  
 But wisht and sought an end,  
 Nor counsaile did bewray,  
 Nor of both parties take,  
 Nor ever tooke I fee:  
 For which I never spake.”

(*Maynard's XII Wonders of the World, 1611.*)

## CHARACTER OF A REVEREND JUDGE.

“ He desires to have his greatness measured only by his goodness. His care is, to appear such to the people as he would have them to be, and to be himself such as he appears: for virtue cannot seem one thing and be another. He knows that the hill of greatness yields a most delightful prospect; but also that it is most subject to lightning and thunder; and that the people, as in



ancient tragedies, sit and censure the actions of those in authority ; he shapes his own, therefore, that they may be far above their pity. He wishes there were fewer laws, so they were better observed. Neither hope nor despair of preferment can draw him to wrong any man. He thinks himself most honourably seated, when he gives mercy the upper-hand. If his sovereign call him to a higher place, he then delivers his mind plainly and freely, knowing there is no place where dissembling ought to predominate less than in a prince's counsel. Thus honour keeps pace with him to the grave." (*Sir Thomas Overbury's Characters.*)

LORD KEEPER NORTH AND THE RHINOCEROS.

“ To shew that his Lordship's court enemies, the Earl of Sunderland in particular, were hard put to it to find, or invent, something to report, tending to the diminution of his character, I shall give an account of the most impudent buffoon lie raised upon him, and with brazen affirmations of truth to it, dispersed from the court one morning, that ever came into fools' heads ; and Satan himself would not have owned it for his legitimate issue. It fell out thus : a merchant of Sir Dudley North's acquaintance had brought over an enormous rhinoceros, to be sold to shew-men for profit. It is a noble beast, wonderfully armed by nature for

offence, but more for defence, being covered with impenetrable shields, which no weapon would make any impression upon ; and a rarity so great, that few men in our country have, in their whole lives, opportunity to see so singular an animal. This merchant told Sir Dudley North, that if he, with a friend or two, had a mind to see it, they might take the opportunity at his house, before it was sold. Hereupon Sir Dudley North proposed to his brother, the Lord Keeper, to go with him upon this expedition ; which he did, and came away exceedingly satisfied with the curiosity he had seen. But whether he was dogged to find out where he and his brother housed in the city, or flying fame carried an account of the voyage to court, I know not ; but it is certain, that the very next morning a bruit went from thence all over the town, and (as factious reports used to run,) in a very short time, *viz.* that his Lordship rode upon the rhinoceros ; than which a more infantine exploit could not have been fastened upon him. And most people were struck with amazement at it, and divers ran here and there to find out whether it was true or no. And, soon after dinner, some lords and others, came to his Lordship to know the truth from himself ; for the setters of the lie affirmed it positively, as of their own knowledge. That did not give his Lordship much disturbance, for he expected no better from his

adversaries. But that his friends, intelligent persons, who must know him to be far from guilty of any childish levity, should believe it, was what roiled him extremely ; and much more, when they had the face to come to him to know if it were true. I never saw him in such a rage, and to lay about him with affronts, (which he keenly bestowed upon the minor courtiers that came on that errand,) as then ; for he sent them away with fleas in their ears ; and he was seriously angry with his own brother, Sir Dudley North, because he did not contradict the lie in sudden and direct terms ; but laughed, as taking the question put to him for a banter, till, by iterations, he was brought to it. For some lords came, and because they seemed to attribute somewhat to the avowed positiveness of the reporters, he rather chose to send for his brother to attest, than to impose his bare denial : and so it passed. And the noble Earl with Jeffries and others of that crew, made merry, and never blushed at the lie of their own making ; but valued themselves upon it, as a very good jest." (*Life of North, vol. ii. p. 239.*)

TRIAL AND EXECUTION OF LAWRENCE,  
EARL FERRERS.

This unfortunate nobleman was tried by his peers in Westminster Hall, in full Parliament, on the 16th April, 1760, and two following days, for the

murder of John Johnson. Robert, Lord Henley, Lord Keeper of the Great Seal, presided as Lord High Steward, and the Attorney General, Charles Pratt, Esq. afterwards Lord Camden, conducted the prosecution.

The facts were shortly as follow :—Lord Ferrers had been separated from his lady, and Johnson had been appointed receiver of his Lordship's estates. The causes assigned for his enmity to the deceased were very inadequate ; he charged Johnson with colluding secretly with his adversaries, and being in the interest of certain fancied enemies. Labouring under these delusions, he desired Johnson to come to his house at Stanton, in Leicestershire, on Friday the 18th January, 1760. On his arrival, his Lordship ordered him into the parlour, where they both entered together, and the door was immediately locked on the inside. After the best part of an hour, a maid-servant at the kitchen-door, heard his Lordship say, “ Down upon your knees ; your time is come ; you must die ; ” and presently after, heard a pistol go off. In a short time, Lord Ferrers came out of the room, and ordered his servants to assist Mr. Johnson to bed. He then sent for a surgeon, and had the patient properly attended to ; and, during his stay in the house, enquired anxiously as to the progress of the symptoms ; but declared, that he

was not sorry for it, and that it was a premeditated act. He said, he was astonished the bullet should remain in the body, for he had made a trial with the pistol, and it pierced through a board an inch and a half thick. He would afterwards, in the presence of several persons, have dragged Mr. Johnson, wounded as he was, out of bed, had he not confessed himself a villain, to pacify his Lordship's rage. The surgeon procured six or seven armed men, and removed the patient, without his Lordship's knowledge, and soon after the sufferer died.

The next measure was to secure his Lordship, which was no easy exploit. His house was surrounded on the Saturday morning by a number of armed men, and he stood a siege of four or five hours, parleying at times from the garret-windows. He was here told by one of the besiegers, that Johnson was dead, to which he replied, "You are a lying scoundrel, God damn you!" He continued in the house, till he thought he had an opportunity of escaping through the garden; but there he was discovered by one Cutler, a collier, who was a bold man, and determined to take him: he marched up to him, and though his Lordship was armed with a blunderbuss, two or three pistols, and a dagger, he submitted to the intrepid collier without the least resistance.

In his defence, the prisoner pleaded insanity,

and examined a great number of witnesses, who deposed, that they had always considered him to be a madman. It was also in evidence, that his uncle, the preceding Lord Ferrers, and several of his relations, had been confined as lunatics. Hardly a doubt, indeed, can be entertained, that this unfortunate peer laboured under the same malady ; but he urged this plea with so much ability and self-possession on his trial, that those very qualities, though certainly not inconsistent with madness, seem to have overthrown, or weakened his defence. The Solicitor General, the Honourable Charles Yorke, replied for the Crown, and their Lordships unanimously found Earl Ferrers guilty of the murder.

His conduct at his execution deserves to be mentioned for its singular firmness and composure. He was dressed in a suit of light clothes, embroidered with silver, and observed to Mr. Sheriff Vaillant, who accompanied him, " You may, perhaps, Sir, think it strange to see me in this dress, but I have my particular reasons for it."\* The procession from the Tower to Tyburn occupied nearly three hours ; during the whole of which time he appeared quite easy, and his deportment greatly affected the spectators. He had begged to suffer where his ancestor, the Earl of Essex,

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\* It is supposed to have been his marriage suit.

had suffered; but this request was denied. On being asked, if he had any thing to say on the subject of religion, he replied, That he did not think himself at all accountable to the world for his sentiments on religion; but that he had always believed in, and adored one God, the Creator of all things; that whatever his notions were, he had never propagated them, or endeavoured to gain persons to his persuasion; that all countries and nations had a form of religion, by which the people were governed, and that whoever disturbed them in it, he looked upon him as an enemy to society; that he could never believe that faith alone will save mankind, so that if a man, just before he dies, should say only, "I believe," that that alone will save him.

The landau being now advanced to the place of execution, his Lordship alighted from it, and ascended the scaffold, which was covered with black baize, with the same composure and fortitude of mind he had enjoyed from the time he left the Tower; where, after a short stay, Mr. Humphries asked his Lordship if he chose to say prayers? which he declined; but upon his asking him, if he did not choose to join with him in the Lord's Prayer? he readily answered, He would, for he always thought it a very fine prayer; upon which they knelt down together upon two cushions covered with black baize, and his Lordship, with

an audible voice, very devoutly repeated the Lord's Prayer, and afterwards, with great energy, the following ejaculation, "O God, forgive me all my errors,—pardon all my sins."

His Lordship then rising, took his leave of the Sheriffs and the Chaplain; and after thanking them for their many civilities, he presented his watch to Mr. Sheriff Vaillant, which he desired his acceptance of; and signified his desire, that his body might be buried at Breden or Stanton, in Leicestershire.

His Lordship then called for the executioner, who immediately came to him, and asked him forgiveness; upon which his Lordship said, "I freely forgive you, as I do all mankind, and hope myself to be forgiven." He then intended to give the executioner five guineas, but by mistake, giving it into the hands of the executioner's assistant, an unseasonable dispute ensued between those unthinking wretches, which Mr. Sheriff Vaillant instantly silenced.

The executioner then proceeded to do his duty, to which his Lordship with great resignation submitted.—His neckcloth being taken off, a white cap, which his Lordship had brought with him in his pocket, being put upon his head, his arms secured by a black sash from incommoding himself, and the cord put round his neck, he advanced by three steps, upon an elevation in the



middle of the scaffold, where part of the floor had been raised about eighteen inches higher than the rest, and, standing under the cross-beam which went over it, covered with black baize, he asked the executioner, "Am I right?"—Then the cap was drawn over his face; and then, upon a signal given by the Sheriff, (for his Lordship, upon being asked before, declined giving one himself,) that part upon which he stood instantly sunk down from beneath his feet, and left him entirely suspended; but not having sunk so low as was intended, it was immediately pressed down, and levelled with the rest of the floor.

For a few seconds his Lordship made some struggles against the attacks of death, but was soon eased of all pain by the pressure of the executioner.

From the time of his Lordship's ascending upon the scaffold, until his execution, was about eight minutes; during which, his countenance did not change, nor his tongue falter:—the prospect of death did not at all shake the composure of his mind.

Whatever were his Lordship's failings, his behaviour in these his last moments, which created a most awful and respectful silence amidst the numberless spectators, cannot but make a sensible impression upon every human breast.

The accustomed time of one hour being past, the coffin was raised up, with the greater decency

to receive the body, and being deposited in the hearse, was conveyed by the sberiffs, with the same procession, to Surgeons' Hall, to undergo the remainder of the sentence, (viz. dissection.) Which being done, the body was on Thursday evening, the 8th of May, delivered to his friends for interment.

He was privately interred at St. Pancras, near London, in a grave dug 12 or 14 feet deep, under the belfry.—(*State Trials, vol. xix. p. 886.*)

#### SCRIBLERUS'S REPORTS.

The following admirable *jeu d'esprit* is, perhaps, too well known to require its republication; but its humour and wit will not allow us to omit it. It is probably the sole composition of Mr. Fortescue Aland, the friend of Pope, afterwards one of the Puisne Judges of the Common Pleas and Master of the Rolls.

#### A SPECIMEN OF SCRIBLERUS'S REPORTS.

##### *Stradling versus Stiles.*

Le report del case argue en le commen banke devant tous les Justices de mesme, en le banke en le quart an du raygne de Roy Jacques, entre Matthew Stradling, Plant. et Peter Stiles, Def. en un action propter certos equos coloratos, anglicé, pied horses port. per le dit Matthew vers le dit Peter.

*Le recitel del Case.*

“ Sir John Swale, of Swale Hall, in Swale Dale fast by the river Swale, Kt. made his last Will and Testament. In which, among other bequests, was this, viz. Out of the kind love and respect that I bear unto my much honoured and good friend, Mr. Matthew Stradling, gent. I do bequeath unto the said Matthew Stradling, gent. all my black and white horses.

“ The testator had six black horses, six white horses, and six pied horses.

*Le Point.*

“ The debate, therefore, was, whether or no the said Matthew Stradling should have the said pied horses by virtue of the said bequest.

*Pour le Pl.*

“ Atkins aprentice pour le pl. Moy semble que le pl. recouvrera. And first of all it seemeth expedient to consider what is the nature of horses, and also what is the nature of colours, and so the argument will consequently divide itself in a two-fold way, that is to say, the formal part, and substantial part. Horses are the substantial part, or thing bequeathed : black and white the formal or descriptive part.

“ Horse, in a physical sense, doth import a cer-

tain quadruped or four-footed animal, which, by the apt and regular disposition of certain proper and convenient parts, is adapted, fitted, and constituted for the use and need of man. Yea, so necessary and conducive was this animal conceived to be to the behoof of the Commonweal, that sundry and divers acts of Parliament have from time to time been made in favour of horses. First Edw. VI. makes the transporting of horses out of the kingdom, no less a penalty than the forfeiture of 40*l.*; 2nd and 3rd of Edward VI. takes from horse-stealers the benefit of their clergy.

“ And the Statutes of the 27th and 32nd of Hen. VIII. condescend so far as to take care of their very breed. These our wise ancestors prudently foreseeing, that they could no better take care of their own posterity, than by also taking care of that of their horses.

“ And of so great esteem are horses in the eye of the common law, that when any Knight of the Bath committeth any great and enormous crime, his punishment is to have his spurs chopt off with a cleaver, being, as Master Bracton well observeth, unworthy to ride on a horse. Littleton, Sect. 315, saith, ‘ If tenants in common make a lease reserving for rent a horse, they shall have but one Assize, because, saith the book, the law will not suffer a horse to be severed.’ Another argument

of what high estimation the law maketh of a horse.

“But as the great difference seemeth not to be so much touching the substantial part, horses, let us proceed to the formal or descriptive part, viz. what horses they are that come within this bequest.

“Colours are commonly of various kinds, and different sorts; of which white and black are the two extremes, and consequently comprehend within them all other colours whatsoever.

“By a bequest therefore, of black and white horses, grey or pied horses may well pass, for when two extremes, or remotest ends, of any thing are devised, the law by common intendment will intend whatsoever is contained between them to be devised so.

“But the present case is still stronger, coming not only within the intendment, but also the very letter of the words. By the word black, all the horses that are black are devised; by the word white, are devised those that are white, and by the same word, with the conjunction copulative, *and*, between them, the horses that are black and white, that is to say, pied, are devised also. Whatever is black and white is pied; *ergo*, black and white is pied, and, *vice versâ*, pied is black and white.

“If, therefore, black and white horses are devised, pied horses shall pass by such devise, but

black and white horses are devised ; *ergo*, the pl. shall have the pied horses.

*Pour le Defend.*

“ Catlyne Sergeant. Moy semble al contrary, the plaintiff shall not have the pied horses by intendment ; for if by the devise of black and white horses, not only black and white horses, but horses of any colour between these two extremes may pass, then not only pied and grey horses, but also red or bay horses would pass likewise ; which would be absurd, and against reason. And this is another strong argument in law, *Nihil, quod est contra rationem, est licitum* ; for *nemo nascitur artifex*, and legal reason *est summa ratio* ; and therefore if all the reason that is dispersed into so many different heads, were united into one, he could not make such a law as the law of England ; because by many successions of ages it has been fixed and refixed by grave and learned men ; so that the whole rule may be verified in it, *Neminem oportet esse legibus sapientiozem*.

“ As therefore, pied horses do not come within the intendment of the bequest, so neither do they within the letter of the words.

“ A pied horse is not a white horse, neither is a pied a black horse ; how, then, can pied horses come under the words of black and white horses ?

“ Besides, where custom hath adapted a certain

determinate name to any one thing, in all devises, feofments, and grants, that certain name shall be made use of, and no uncertain circumlocutory descriptions shall be allowed, for certainty is the father of right, and the mother of justice.

*“ Le rest del argument jeo ne pouvois oyer, car jeo fui disturb en mon place.*

“ Le Court fuit longement en doubt de cest matter et apres grand deliberation eu, judgment fuit donne pour le pl. nisi causa. Motion in arrest of judgment. That the pied horses were mares ; and thereupon an inspection was prayed : Et sur ceo le court advisare vult.”

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“ A notorious rogue being brought to the Bar, and knowing his case to be desperate, instead of pleading, he took to himself the liberty of jesting, and thus said, ‘ I charge you in the King’s name, to seize and take away that man (meaning the Judge) in the red gown, for I go in danger of my life, because of him.’” (*Bacon’s Apothegms.*)

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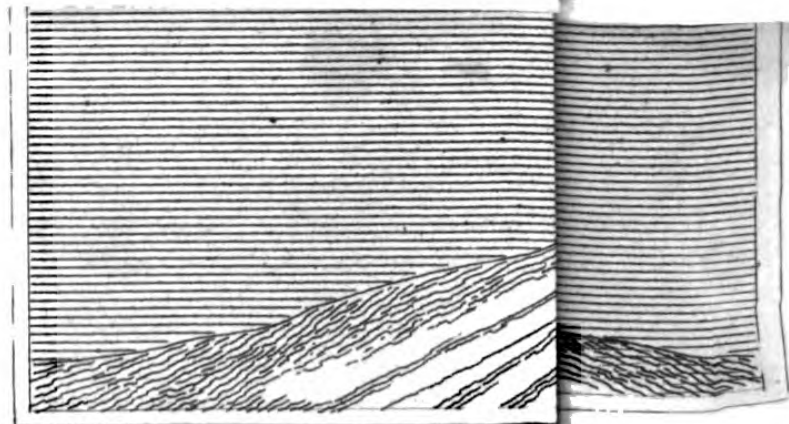


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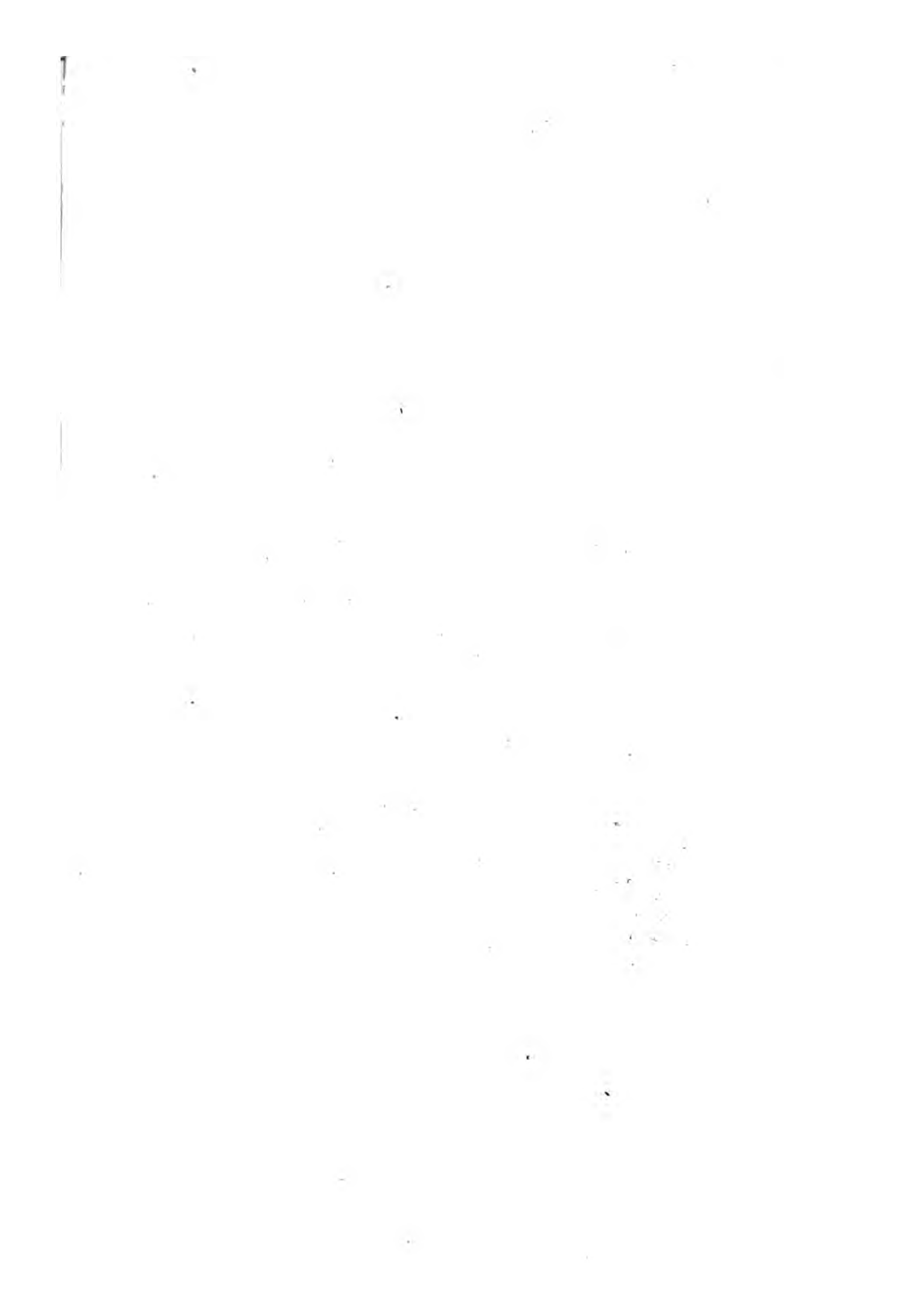
OF THE BAR, BENCH, AND WOOLSACK.

VOL. II.



*Court of Chancery. L. I*

LONDON:  
JOHN KNIGHT & HENRY LACEY,  
PATERNOSTER ROW.  
MDCCCXXV.



# CONTENTS

OF

VOL. II.

---

	PAGE.
THE Student at Law of former days ... ..	1
Sir John Markham, Lord Chief Justice of the King's Bench ... ..	12
Sir Nicholas Bacon ... ..	16
Punishment of the Pillory ... ..	17
Sir W. Noy, Attorney-General to King Charles I.	22
Curious Customs of Manors ... ..	23
The Good Advocate ... ..	34
Sir Edward Coke .. ...	37
Sir Thomas More .. ...	ib.
Burnet's recommendation of the Law ... ..	ib.
An Extraordinary Ejectment ... ..	39
The Bicaud, or two-tailed Gabbler ... ..	40
Sir Thomas More ... ..	44
Remarkable Case of the Perrys ... ..	45
Lord Chief Justice Holt ... ..	48
The Common Barreter ... ..	50
Striking in the King's Palace ... ..	52
Fees of Physicians ... ..	55

VOL. II.

*b*

	PAGE.
Case of the Duke of Marlborough and William Bar-	
nard ... ..	58
Horne Tooke and the Law ... ..	80
A Frolic of Lord Thurlow's ... ..	97
Mr. Justice Twisden's Fall ... ..	ib.
Dunning and Wallace ... ..	100
Lord Mansfield's retirement from the Bench ...	101
The Sligo Cats ... ..	103
Lord Camden ... ..	105
Mr. Hargrave and Cicero ... ..	106
Thurlow and Wedderburne ... ..	108
Sir Nicholas Bacon ... ..	109
Erasmus's Character of Sir Thomas More ...	110
Lord Chancellor Bathurst ... ..	111
Sir Robert Wiseman and Mr. Hickeringill ...	112
Character of Dunning. ... ..	113
Sir Geoffrey Palmer ... ..	115
Sir Thomas More's Question to the Foreign Doctors	118
Character of Lord Thurlow, by Sir Nathaniel Wraxall	120
Lord Eldon ... ..	125
Lord Keeper Williams's Notion of the Fleet ...	126
Points of Gentoo Law ... ..	127
Sergeant Bettesworth and Dean Swift ... ..	135
Satisfactory Bail ... ..	137
Sir William Jones's Law Manuscripts ... ..	138

CONTENTS.

iii

	PAGE.
Lord Somers .. .. .	139
Lord Keeper Williams and James I. . . . .	146
Character of Lord Mansfield, by the Bishop of Worcester .. .. .	150
State of the Law in America .. .. .	152
Trial of Elizabeth Canning for Perjury .. .. .	160
Special Pleading .. .. .	168
The last days of Lord Keeper Williams .. .. .	169
Sir William Jones's Character of Dunning .. .. .	171
On the Use of Torture in Judicial Proceedings (continued) .. .. .	177
Lord Thurlow and Sir Thomas Davenport .. .. .	179
Remarkable Case of the Murder of Jane Norkott .. .. .	180
Sir James Whitelocke .. .. .	185
Projects to reform the Law .. .. .	187
Sir Thomas More and Erasmus .. .. .	192
Sonnet to G. Hardyng, Esq. .. .. .	194
Sir William Jones's professional Life .. .. .	195
The Scotch Judge .. .. .	204
Three Judicial Portraits .. .. .	205
Locke's Advice on the Study of the Law .. .. .	207
Dean Swift and Sergeant Bettesworth (from Scott's Life of Swift) .. .. .	209
Sir George Jefferies .. .. .	212
Judicial Corruption (continued) .. .. .	215

	PAGE.
Reports of Masters in Chancery .. .. .	218
Extracts from the Will of an Earl of Pembroke	ib.
Lord Avonmore and Curran .. .. .	219
Sir Thomas Plumer .. .. .	221
Lord Ellenborough .. .. .	ib.
On the Legal Character .. .. .	ib.
Poetical Wills .. .. .	237
The Dumb Day .. .. .	240
A New Jury .. .. .	243
Judicial Anticipation .. .. .	ib.
Epigram .. .. .	248
Vagabonds in the reign of Elizabeth .. .. .	249
Sir Edward Coke and Dr. Cowell .. .. .	254
Lord Chancellor Northington .. .. .	257
The last days of Judge Jefferies .. .. .	259
Nelson's Lutwych .. .. .	261
A London Jury ; hang half, and save half .. .. .	263
Legal Recollections of London (continued) .. .. .	266
Jennings's Case—Circumstantial Evidence .. .. .	272
Did Shakspeare ever Study the Law ? .. .. .	278
Singular Entries .. .. .	282
A dignified Grand Jury .. .. .	283
A special Pleader .. .. .	284
A Justice of the Peace .. .. .	286
Mr. Garrow .. .. .	287
Mr. Graham .. .. .	288

## LAW AND LAWYERS.

### THE STUDENT AT LAW OF FORMER DAYS.

WHEN we read in Fortescue, that in his time (the reign of Henry VI.) there were nearly two thousand students at the Inns of Court and Chancery, we are apt to imagine that the profession must have been, at that period, most grievously *overstocked*. But this is a mistake. The Inns of Court at that time were in fact an university, to which the sons of our nobility and gentry were sent to finish their education, from Oxford or from Cambridge; our ancestors conceiving that an acquaintance with the laws of their country, was a necessary accomplishment for their sons. Thus we are expressly told by Fortescue, that “for the endowment of virtue, and abandoning of vice, Knights and Barons, with other states and noblemen of the realm, place their children in these Inns, though they desire not to have them learned in the laws, nor to live by the practice thereof,



but only upon their father's allowance."—(*De laudibus, &c. c. 50.*) So Fuller, in his character of "The true Gentleman," and "The Degenerate Gentleman," (*Holy and Profane State, p. 151 and 411,*) makes a residence at the Inns of Court follow that at the university as an essential part of a young gentleman's education, although he do not adopt the law as his profession. Not only, therefore, have the manners and habits of the students at law varied with the changing manners and habits of society, but also with the change in the objects of their residence at the Inns of Court. Few young gentlemen now frequent those learned purlieus without the intention of becoming actively engaged in the profession, and making it the source of emolument, if not of subsistence. The student of the present day is, therefore, a very different creature from the student of the sixteenth or even the seventeenth century; and it will not be unentertaining to sketch the portrait of the latter, such as we may suppose him to have existed about the commencement of the seventeenth century.

The young gentleman, as early sometimes as the age of fourteen or fifteen,\* was sent by his friends to finish his education in the metropolis. If his connexions were noble or affluent, he was fur-

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\* See Sir Thomas Elyott's *Governor*, p. 45.

nished with an ample exhibition ;\* provided with a servant and a horse,† and suffered for the most part to pursue the course to which his fancy led him. Idle habits were soon contracted, and ennui frequently drove the young gentleman to seek relief at the gaming table,‡ or in other vicious pastimes. He became a most profane swearer,§ and enrolled himself in the ranks of the *roaring boys*, or roysters,|| and sometimes created a disgraceful

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\* *Fortescue de Laud. c. 50.* In Fortescue's time, "no student could be maintained for less expenses, by the year, than 20 marks," (13*l.* 6*s.* 8*d.*) Lord Keeper North had an exhibition of 60*l.* per annum.—*Life of North, v. i. p. 49.* Jefferies's allowance was only 40*l.* a year, and 10*l.* for clothing.—*Lives of the Chancellors, v. i. p. 179.* Sir T. More had so scanty an allowance, "ut nec ad reficiendos calceos, nisi a patre peteret, pecuniam haberet."—*Erasmi Epist.*

† Roger North's Discourse, p. 4.

‡ Elyott's Governor, p. 46.

§ "What formerly was counted the chief credit of an orator, these esteem the honour of a swearer, *pronunciation*, to mouth an oath with a graceless grace. These (as David saith) cloath themselves with curses as with a garment, and therefore desire to be in the latest fashion, both in their cloathes and curses."—*Fuller's Degenerate Gentleman. (The profane State, p. 412.)*

|| "Here he grows acquainted with the *roaring boys*, I am afraid so called by a woful *prolepsis* here for hereafter." (*Fuller, p. 412.*) These *roaring boys* or roysters, for they were distinguished by various cant names, were bands of

brawl, even within the hall of his own Inn.\* He was, in the phrase of the day, a swinge-buckler, and knew where the Bona-robas were; yea, had the best of them at his commandment,† and the feats that he did about Turnbull Street, in his youth, furnished a theme for his old age.‡ He was ever playing at cards in the Hall, Buttery, or Butler's Chamber;§ would make rude noises in the Hall at exercises, keep his hat on at readings or moots, and stand with his back to the fire.||

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disorderly persons, who paraded the streets of the metropolis at night, to the terror of the peaceable citizens. (See *Miss Aikin's James I. v. i. p. 230.*) In later times they were known by the name of *Mohocks*..—(See the *Spectator*.) Mr. Justice Burnet, when a student, is said to have been one of this disorderly gang.¶ (See *Ante, v. i. p. 261.*) “Mr. Hale, with some other students, being invited to be merry out of town, one of the company called for so much wine, that notwithstanding all that Mr. Hale could do to prevent it, he went on in his excess till he fell down as dead before them.”—*Life of Hale, p. 7.*

\* Sir John Davies, when a student, “interrupted the quiet of the Inn by misdemeanours, for which he was fined, and by disorders, for which he was removed from Commons.” He is said to have bastinadoed Richard Martin, afterwards recorder of London, while at dinner in the Middle Temple hall, for which he was expelled. See *Biog. Brit. vol. iv.*

+ *Second Part of Henry IV. Act 3. Scene 2.*

‡ *Ibid.* § *Dugdale, p. 286.*

|| See the Orders against these offences, *Dugdale, p. 291.*

In his dress he was always topping the mode ; wore his beard above three days' growth,\* and dressed himself in a white doublet and hose, though under pain of expulsion.† Nay, setting at nought the orders of his house, he would appear at church with a cloak, sword, and dagger.‡

He did not, like Socrates, account dancing among the serious disciplines ; for his especial delight was in Bargenettes, Turgions, rounds, and other base dances,§ little esteeming the solemn post-revels of his society.

Not knowing by his study so much as what an execution meant, till he learned it by his own dear experience, he wasted all his means in his dissolute living. Through the mediation of a scrivener in his Inn, he grew acquainted with some great Usurer, who, though long dormant, at last ramped for his money. To satisfy him, his last manor was sold ; and his death was as miserable as his life had been vicious. Within two generations his name was quite forgotten, except some Herald, in his visitation, passed by and chanced to spell his broken arms in a church-window. Such was the end of this "degenerous gentleman."||

But the young gentleman whose narrow income

\* *Dugdale*, p. 148.

† *Ibid*, p. 281.

‡ *Ibid*, 323.

§ *Sir T. Elyott's Governor*, p. 68.

|| *Fuller's profane State*, p. 415.

compelled him to apply himself diligently to study,\* lived a far different life. No expensive pastimes helped to wile away his time; the doors of the Globe and of the Red Bull were shut against him. In some obscure apartment, some moiety of a petit chamber,† which he seldom quitted, (being a great believer in the old adage, *Keep your shop and your shop will keep you,*)‡ he applied himself diligently to his laborious task. Being first admitted a member of one of the Inns of Chancery, he was a constant attendant on all the mootings, and having thus grown to ripeness,§ he was in due time admitted a member of one of the greater Inns of Court. He now pursued his studies with still greater application. His grand project was to master the Year-Books, of which he was sure to dispatch the greatest part;|| and

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\* "There be some also, which by their friends, be coerced to apply to the study of the law only, and for lack of plenteous exhibition, be let of their liberty, wherefore they cannot resort unto pastime." *Elyott's Governor*, p. 46.

† Jefferies "removed without the advantages of a classical education, to the Inner Temple, where he became a very assiduous student of the municipal laws of England, though in an obscure and mean apartment." *Lives of the Chancellors*, v. i. p. 179.

‡ *Life of North*, v. i. p. 15.

§ *Fortescue de Laudibus*, c. 50. *Life of North*, v. i. p. 31.

|| *Life of North*, v. i. p. 27.

to these he added the other old reporters, for he thought that a lawyer could not be well grounded without a knowledge of these sages of the law. With these he intermixed a portion of *institutionary* reading, and after a fulness of the reports in a morning, about noon would take a repast in Staunford, Crompton, or the Lord Coke's Pleas of the Crown and Jurisdiction of Courts, Manwood on the Forest Law, or Fitzherbert's *Natura Brevium*,\* or occasionally, by way of relaxation, he would turn over the pages of some antiquarian volume, as Britton or Bracton, Fleta or Fortescue, Hengham or the Old Tenures, the *Narrationes Novæ*, the Old *Natura Brevium*, or the *Diversity of Courts*.† He made a copious common-place book, to which he could easily turn for the name and place of a case, for he did not endeavour (like old Sergeant Waller, who was called *Index*) to carry both in his head.‡ Not conceiving that the Lord Coke had allowed a sufficient portion of the day for study,§ and persuaded that if he should follow the advice of Sir Heneage

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\* *Life of North v. i. p. 24.*

† *Ibid.*

‡ *Ibid, p. 22.*

§ *Sex horas somno, totidem des legibus æquis ;*

*Quatuor orabis, des epulisque duas ;*

*Quod superest ultro sacris largite camænis.*

*Co. Litt. 64. b.*

Finch, he should be ruined ;\* he commonly studied some sixteen hours a day.† Though, when the Courts were sitting, he attended them with regularity, and never failed to have his note-book and pen and ink ready ; and in the evening, he posted his gatherings into a fair book.‡ Lastly, he regularly read Littleton every Christmas.§

Though he well knew that " Lady Common Law must lie alone," yet he did not issue an interdiction against every kind of recreation. His amusements, however, were all of a grave and sober cast. He was much attached to music, more especially as he could enjoy it in his own chamber, and his great delight was to play upon his base, or lyra viol, which he used to touch lute-fashion upon his knees,|| or he would purchase an old virginal to play upon.\*\* By way of ensuring entertainment at home, he would, perhaps, keep a monkey or a parrot.†† Above all things he eschew-

\* " Sir Heneage Finch used to say, ' Study all morning and talk all afternoon.' " *North's Discourse on the Study of the Law*, p. 8.

† " He studied many years at the rate of sixteen hours a day." *Burnet's Life of Hale*, p. 6.

‡ *Life of North*, v. i. p. 31.

§ *Ibid.*

|| *Life of North*, v. i. p. 15.

\*\* *Ibid.*

†† Sir Thomas More " kept an ape, a fox, a ferret, a weasel, and other beasts more rare." *Preface to Roper's Life of More*, Singer's Edition, p. xi.

ed stage-plays ;\* instead of which, he would recreate himself after commons in an evening with a walk under the cloisters, in company with some discreet fellow-student, where he would put cases, for he thought no man could be a good lawyer who was not a good put-case.† Upon occasion he would mingle some lay-studies, *in eodem subjecto*, with the body of the common law, such as natural philosophy, or the mathematics.‡ He never went to public feasts, nor gave entertainments ;§ and even if his purse flowed sufficiently, a petit-supper and a bottle with a friend always pleased him best.|| Neither the dancing nor the fencing schools were frequented by him ;\*\* and his dress was never gay, and in the height of the mode, like other Inns of Court gentlemen,†† who indulged in airs of dressing ; but plain, sometimes even to negligence.‡‡

At length, after some eight years probation, (for he thought *prepropera praxis* a crying evil,)

\* “ He resolved, upon his coming to London, where he knew the opportunities of such sights would be more frequent and inviting, never to see a play again, to which he constantly adhered.” *Life of Hale*, p. 4.

† *Life of North*, vol. i. p. 19.

‡ *Roger North's Discourse*, p. 9. *Life of Hale* p. 13.

§ *Life of Hale*, p. 15. || *Life of North*, vol. i. p. 46.

\*\* *Ibid.* p. 16. †† *Ibid.* p. 44.

‡‡ *Life of Hale*, p. 10. *Ante.* vol. i. p. 125.



and having well performed all his exercises, he was called to the bar, *ex debito justitiæ*, and not *ex gratiâ*;\* nor did he seek, by any indirect means, to get a bar-gown on his back.† He did not obtrude himself upon attorneys; but diligently attended the court, and took notes, and if chance, or a friend, brought a motion, of course it was welcome.‡ He made not a Trojan-siege of a suit, but sought to bring it to a set-battle in a speedy trial,§ and he accounted the very pleading of a poor widow's honest cause sufficient fee, as conceiving himself then the King of Heaven's advocate, bound *ex officio* to prosecute it.|| In court he never shewed himself a brabbling and tumultuous lawyer; \*\* nor, on the other hand, was he to be daunted with threatenings.†† Knowing that the way to the heights of knowledge, is through humility's gate,‡‡ he avoided over-much boldness and confidence, following in his speaking the philosopher's rule, *sit oratio pressa, non audax*.§§

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\* "He was not called to the bar *ex gratiâ*, or for favour, as when the person is not of standing, or hath not performed his exercises." *Life of North*, v. vi. p. 48.

† Jefferies, "by some means or other, got a bar-gown on his back." *Lives of the Chancellors*, vol. i. p. 179.

‡ *Life of North*, v. i. p. 49. § *Fuller's Holy State*, p. 52.

|| *Fuller's Holy State*, p. 53. \*\* *Moor's Rep.* p. 827.

†† *Life of Hale*, p. 17. ‡‡ *Fulbeck's Preparative*.

§§ *Phillips's Directions*, p. 21.

At last he, perchance, reached the preferment of a puisne judge, and found God's blessing on him and his posterity.

The discreet and noble young gentleman, who designed at the Inns of Court to perfect himself in his accomplishments, thought it no shame to apply himself to learn the laws of the kingdom. He knew, that if he needed not the knowledge himself, he could give it away to the poor, and that, when made a justice in his county, his law would enable him to settle many petty differences between his neighbours, which would be easier ended in his own porch than in Westminster Hall.\* Nay, it would fit him to be an able parliament-man, which ought to be the top of an English gentleman's ambition.†

Nor did he neglect the lighter accomplishments befitting his gentle degree. He learned to sing, and to exercise himself in all kinds of harmony, and practised dancing and other noblemen's pastimes;‡ so that the ancients of his inn much praised the measures which he trod in the post revels. He thought that dancing might be an introduction unto the first moral virtue, called prudence, when mixed with study, as an honest and

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\* *Fuller's Holy State*, p. 150, 151.

† *Burnet's Own Times*, vol. iv. p. 435.

‡ *Fortescue de laudibus*, c. 50.

moderate disport, to recomfort and quicken the vital spirits, lest by long travailing, and by being much occupied in contemplation or remembrance of things grave and serious, they might happen to be fatigate, or perchance oppressed.\* His other recreations were chiefly shooting, leaping, bowling, and the like, which stir up a good strong motion, but do not over-fatigue the body; † but he thought the most honourable exercise, and that which beseemed the estate of every noble person, was to ride surely and clean on a great horse and a rough, ‡ and thus, although he could not, with the Hevenninghams, of Suffolk, count five-and-twenty knights of his family, or with the Nauntons, shew that his ancestors had seven hundred pounds a year before the Conquest, yet, in birth, breeding, and behaviour, he shewed himself “The true Gentleman.”

SIR JOHN MARKHAM, LORD CHIEF JUSTICE OF  
THE KING'S BENCH.

“John Markham was born at Markham, in Nottinghamshire, descended of an ancient and worthy familie. He employed his youth in the studying of the municipal law of this realm, wherein he

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\* *Sir T. Elyott's Governor*, p. 70.

† *Phillips's Directions*, p. 198.

‡ *Sir T. Elyott's Governor*, p. 57.

attained to such eminence, that King Edward the Fourth knighted him, and made him Lord Chief Justice of the King's Bench, in the place of Sir John Fortescue, that learned and upright judge, who fled away with King Henrie the Sixth.

Yet Fortescue was not missed, because Markham succeeded him; and that losse, which otherwise could not be repaired, now could not be perceived. For though these two judges did severally lean to the sides of Lancaster and York, yet both sate upright in matters of judicature.

We will instance and insist on one memorable act of our judge, which, though single in itself, was plurall in the concernings thereof; and let the reader know that I have not been carelesse to search, though unhappy not to find, the originall record, perchance abolished on purpose, and silenced for telling tales to the disgrace of great ones. We must now be contented to write this story out of the English Chronicles; and let him die of drought without pity, who will not quench his thirst at the river, because he cannot come at the fountain.

King Edward the Fourth, having married into the family of the Woodvilles, (gentlemen of more antiquity than wealth, and of higher spirits than fortunes,) thought it fit for his own honour to bestow honour upon them. But he could not so easily provide them of wealth as titles.—For ho-

nour he could derive from himself; like light from a candle, without any diminishing of his own lustre; whereas, wealth flowing from him, as water from a fountain, made the spring the shallower. Wherefore, he resolved to cut down some prime subjects, and to engraft the Queen's kindred into their estates, which otherwise, like suckers, must feed on the stock of his own exchequer.

There was at this time one Sir Thomas Cook, late Lord Maior of London, and Knight of the Bath, one who had well licked his fingers under Queen Margaret, (whose wardroper he was, and customer of Hampton,) a man of great estate. It was agreed that he should be accused of high treason, and a commission of Oyer and Terminer granted forth to the Lord Maior, the Duke of Clarence, the Earl of Warwick, the Lord Rivers, Sir John Markham, Sir John Fogg, &c. to try him in Guild Hall: and the King, by private instructions to the Judge, appeared so farre, that Cook, though he was not, must be found guilty, and if the Law were too short, the Judge must stretch it to the purpose.

The fault laid to his charge was, for lending moneys to Queen Margaret, wife of King Henrie the Sixth; the proof was the confession of one Hawkins, who, being racked in the Tower, had confessed so much. The counsell for the King, hanging as much weight on the smallest wier as

it would hold, aggravated each particular, and by their rhetorical flashes blew the fault up to a great height. Sir Thomas Cook pleaded for himself, that Hawkins, indeed, upon a season came to him, and requested him to lend one thousand marks, upon good security. But he desired first to know for whom the money should be : and understanding it was for Queen Margaret, denied to lend any money, though at last Hawkins descended so low as to require but one hundred pounds, and departed without a penny lent him.

Judge Markham, in a grave speech, did recapitulate, select, and collate the material points on either side, shewing that the proof reached not the charge of high treason, and misprision of treason was the highest it could amount to, and intimated to the jurie, to be tender in matter of life, and discharge good consciences.

The jurie, being wise men, (whose apprehensions could make up an whole sentence of every nod of the judge,) saw it behoved them to draw up treason into as narrow a compasse as might be, lest it became their own case ; for they lived in a troublesome world, wherein the cards were so shuffled, that two kings were turned up trump at once, which amazed men how to play their games. Whereupon they acquitted the prisoner of high treason, and found him guilty, as the judge directed.

Yet it cost Sir Thomas Cook, before he could get his libertie, eight hundred pounds to the queen, and eight thousand pounds to the king : a summe, in that age, more sounding like the ransom of a prince, than the fine of a subject. Besides, the lord Rivers (the queen's father) had, during his imprisonment, despoyled his houses, one in the city, another in the countrey, of plate and furniture, for which he never received a penie recompence. Yet God righted him of the wrongs men did him, by blessing the remnant of his estate to him, and his posterity, which still flourish at Giddy-Hall, in Essex.

As for Sir John Markham, the king's displeasure fell so heavy on him, that he was outed of his place, and Sir Thomas Billing put in his room, though the one lost that office with more honour than the other got it, and gloried in this, that though the king could make him no judge, he could not make him no upright judge. He lived privately the rest of his days, having (besides the estate got by his practice) fair lands by Margaret, his wife, daughter and coheir to Sir Simon Leak, of Cotham, in Nottingham, whose mother, Joan, was daughter and heir of Sir John Talbot, of Swannington, in Leicestershire. (*Fuller's Holy State*, p. 274.)

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“ Sir Nicholas Bacon, who was keeper of the

great seal of England, when queen Elizabeth, in her progress, came to his house at Gorbambury, and said to him, 'My lord, what a little house you have gotten!' answered her, 'Madam, my house is well, but it is you that have made me too great for my house.'" (*Bacon's Apothegms.*)

## PUNISHMENT OF THE PILLORY.

PILLORY is said to be a French word, and to be derived of the French word *pilastre*, a pillar, *columna*. Et est lignea columna in quâ collum insertum premitur; and thereupon in law it is called *collistrigium*, quia in eo collum hominum constringitur. This punishment is very ancient, for the Saxons called it *healtraux*, so called for straining the neck. (*Coke's 3 Inst.* 219.) This mode of correction has been very wisely abolished in all cases, except on convictions for perjury, and it is very questionable whether it might not be advisable to abandon it altogether. Some shocking instances are recorded of the fatal consequences of exposing criminals in this way to the unrestrained rage of the populace.

"Both the *trebuchetum* and the *collistrigium*," observes Mr. Barrington, (*Observations on Assisa Panis et Cerevisæ*) "were intended 'magis ad ludibrium, et infamiam, quam ad pœnam,' say the Glossaries. It may, therefore, well deserve the consideration of a judge, who inflicts the punish-



ment of the pillory, (as it becomes at present the great occasion of mobs and riots) whether it can be reconciled to the original intention of the law, in this mode of punishment; as also if this riotous scene ends in the death of the criminal, whether he is not in some measure accessory both to the riot and the murder." In what follows there is something bordering on the ludicrous: "The chief intention of setting a criminal in the pillory is, that he should become infamous and known for such afterwards by the spectators. Can an offender, whose face is covered with rotten eggs and dirt, be distinguished, so as to prevent his gaining a new credit with those who have occasion afterwards to deal with him?" Emlyn, in the preface to his edition of the State Trials, observes, upon the practicability, and upon the obligations on the officers of the law to protect persons in the pillory from injurious treatment, and inveighs against the neglect of affording such protection. Mr. Barrington has collected some curious particulars respecting the *pillorium*, or *collistrigium* and the *trebuchetum*. (*State Trials*, vol. vii. p. 1207.)

By Holt, Chief Justice, to stand *in* the pillory, or *on* the pillory, is the same thing in judgment, and both signify to stand *in* the pillory: 2 *Mod. Rep.* 885. The judgment now is, that the offender shall "be set *in* and *upon* the pillory;" and

therefore, if the under-sheriff remit part of the judgment, by only setting him *upon* the pillory, an attachment lies.

In the case of *The King v. Beardmore*, (*Burrow's Rep. vol. ii. p. 792*,) an attachment was moved for against Beardmore, the under-sheriff, for a contempt of Court, in remitting part of the sentence pronounced upon John Shebbeare, viz. "That he be set *IN* and *upon* the Pillory." Affidavits were filed for the prosecution, stating "that the defendant only stood *upon the* platform of the pillory, unconfined and at his ease, attended by *a servant in livery*, (which servant and livery were hired for this occasion only,) holding an umbrella over his head all the time : but his *head, hands, neck, and arms*, were not at all confined, or put *into* the holes of the pillory ; only that he sometimes put his hands *upon* the holes of the pillory, in order to rest himself."

Mr. Beardmore, in reply, swore "that he meant that the sentence should be executed in the *usual* manner ; that he stood at a shop opposite the pillory, during the whole time, without almost ever taking his eyes off it during the whole time, in order to see the sentence properly executed ; and" that he would have obliged him to stand in what he took to be the proper manner, if Shebbeare had offered to withdraw himself from such position." And he proved, by numerous affidavits,

that the manner in which Shebbeare actually stood, was *with his hands in and THROUGH the small holes*, and his *head and face FULLY EXPOSED* through (some of the affidavits said *in and through*) the *LARGE* hole; and that he stood so during the whole time. It was sworn by several persons that standing without *confining the head* was the *usual ordinary* manner, and had been so, for 30 or 40 years, in Middlesex; and that it had been usual in that county, for a great many years backward, and ever since one or two persons, who were locked down in the pillory, had been killed. But Mr. Beardmore and his counsel admitted that his arms were not put through the small holes, and that the pillory was *NOT shut down* upon Shebbeare, nor his *HEAD absolutely THRUST THROUGH IT*; which the sheriff's officers swore they did not apprehend to be necessary, unless the culprit was *refractory*. Neither was it pretended that the *upper board* of this pillory was at all *let down* over his neck.

The whole Court were of opinion that the under-sheriff had neglected his duty, and commended Mr. Attorney-General for bringing this complaint before them; as the honour and dignity of the Court, and the end and very essence of justice, were materially concerned in the due and regular execution of their sentences. He was sentenced to pay a fine of 50*l.* and to be committed to the

custody of the Marshal for two months, and till the fine was paid.

In April, 1732, Edward Dalton and Richard Griffiths were tried at the Old Bailey for the murder of John Waller, in the pillory, by pelting him with *cauliflower stalks*, &c. and found guilty, and both executed at Tyburn.

Stephen M<sup>c</sup> Daniel, John Berry, James Egan, and James Salmon, were convicted of a wicked conspiracy to procure two youths to commit a robbery on Salmon, in order to obtain for themselves the rewards for the apprehending of highwaymen. They were sentenced to be imprisoned seven years in Newgate, and to be pilloried twice. On Friday, the 5th of March, 1756, M<sup>c</sup> Daniel and Berry stood in the pillory, near Hatton Garden, and were so severely handled by the populace, that it was with the utmost difficulty that one of the sheriffs and the keeper of Newgate, who stood in a balcony just by, prevented their being utterly destroyed; and so great was the mob, that the peace-officers found it impossible to protect the prisoners from their fury. On Monday, the 8th, Egan and Salmon stood in Smithfield. They were instantly assaulted with showers of oyster-shells, stones, &c. and had not stood above half an hour, before Egan *was struck dead*, and Salmon so dangerously wounded in the head, that it was thought impossible he could re-

cover. Whatever punishment they might deserve from the law, it is certain they ought not to be killed through the rage of the populace. (*Howell's State Trials*, vol. xix. p. 809.)

ANECDOTE OF SIR W. NOY, ATTORNEY GENERAL  
TO KING CHARLES THE FIRST.

Three graziers at a fair left their money with their hostess, while they went to transact their business. A short time after one of them returned, and under pretence that they had occasion for the whole money, received it from the hostess, and made his escape with it. The other two sued the woman for delivering that which she had received *from the three*, before the *three* came and demanded it. The cause was tried, and a verdict found against the woman; when Mr. Noy, then making his first appearance at the bar, desired to be feed by her, because he could not plead without it. He then moved in arrest of judgment, that he was retained by the defendant, and that the case was this:—the defendant hath received the money of the three together, and confesses that *she was not to deliver it until the same three demanded it*, and therefore the money is ready,—*let the three come, and it shall be paid*. This motion altered the whole course of proceeding, and first brought Mr. Noy into notice.

## CURIOUS CUSTOMS OF MANORS.

*Rochford,—County of Essex.*

On King's Hill, in Rochford, in the county of Essex, on every Wednesday morning, next after Michaelmas day, at cocks' crowing, there is, by ancient custom, a court held by the lord of the honour of Raleigh, which is vulgarly called, the Lawless Court. The steward and suitors whisper to each other, and have no candles, nor any pen and ink, but supply that office with a coal; and he that owes suit or service thereto, and appears not, forfeits to the lord double his rent, every hour he is absent. The Court is called Lawless, because held at an unlawful or lawless hour, or *quia dicta sine lege*. The title of it in the rolls runs thus :

*King's Hill, }  
in Rochford } § }*

Curia de Domino Rege,  
Dicta sine Lege,  
Tenenda est ibidem,  
Per ejusdem consuetudinem,  
Ante ortum solis  
Luceat nisi polus,  
Nil scribit nisi colis.  
Totius voluerit,

Gallus ut cantaverit ;  
 Per cujus solum sonitum  
 Curia est summonita.  
 Clamat clam pro Rege,  
 In Curia sine Lege,  
 Et nisi cito venerint  
 Citius pœnituerint ;  
 Et nisi clam accedant  
 Curia non attendant ;  
 Qui venerit cum lumine  
 Errat in regimine ;  
 Et dum sunt sine lumine  
 Capti sunt in crimine ;  
 Curia sine Cura,  
 Jurati de Injuria.

Tenta ibidem Die Mercurii (ante Diem) proximi (r. proxime or proximo) post Festum Sancti Michaelis Archangeli, Anno Regni Regis, &c.

This Lawless Court is imperfectly mentioned by Camden in his description of Essex ; who says, "this servile attendance was imposed on the tenants of that manor, for conspiring, at the like unseasonable time, to raise a commotion."

*Kidlington,—County of Oxford.*

At Kidlington, in Oxfordshire, the custom is, that on Monday after Whitsun week, there is a fat live lamb provided, and the maids of the town, having their thumbs tied behind them, run after

it, and she that with her mouth takes and holds the lamb, is declared lady of the lamb; which being dressed, with the skin hanging on, is carried on a long pole before the lady and her companions, to the green, attended with music, and a morisco dance of men, and another of women, where the rest of the day is spent in dancing, mirth, and merry glee. The next day the lamb is part baked, boiled, and roast, for the lady's feast, where she sits majestically, at the upper end of the table, and her companions with her, with music and other attendants, which ends the solemnity.

*Montgomery,—The town of.*

Whereas, through scolds and whores, many evils arise in the town, viz. strifes, fightings, defamations, &c. and many other disturbances by their shoutings and bawling, our practice concerning them is, that when they are taken, they are adjudged to the goging stode,\* and there to stand with their feet naked, and their hair hanging and dishevelled, for such time as they may be seen by all persons passing that way, according to the will of our chief bailiffs.

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\* The same as cucking stool, which is a punishment invented for the punishment of scolds, by ducking them in the water. *Lamb. Eiren. b. i. chap. 12.*



*Coleshill,—County of Warwick.*

They have an ancient custom at Coleshill, in the county of Warwick, that if the young men of that town can catch a hare, and bring it to the parson of the parish, before ten of the clock on Easter Monday, the parson is bound to give them a calf's head, and a hundred of eggs for their breakfast, and a groat in money.

*Warham,—County of Dorset.*

By the custom of Warham, in the county of Dorset, both males and females have a right, equally, in the partition of lands and tenements : *Tenementa in Warham sunt partabilia inter Masculos et Fœminas*, says the record. And it is so unusual a custom, that perhaps it may be hard to find the like elsewhere in England.

*Dunmow,—County of Essex.*

Robert Fitzwalter, living long beloved of King Henry, son of King John, as also of all the realme, betook himself, in his latter dayes, to prayer and deeds of charity, gave great and bountifull alms to the poor, kept great hospitality, and re-edified the decayed prison (priory) of Dunmow, which one Juga, (Baynard,) a most devout and religious woman, being in her kind his ancestor, had builded ; in which prison (priory) arose a

custome, begun and instituted, eyther by him, or some other of his successors, which is verified by a common proverbe, or saying, *viz.* That he which repents him not of his marriage, either sleeping or waking, in a year and a day, may lawfully go to Dunmow, and fetch a gammon of bacon. It is most assured that such a custom there then was, and that this bacon was delivered with such solemnity and triumphs, as they of the priory and townsmen could make. I have inquired of the manner of it, and can learn no more, but that it continued untill the dissolution of that house, as also the abbies. And that the party or pilgrim for bacon was to take his oath before prior and convent, and the whole town, humbly kneeling in the church-yard upon two hard pointed stones, which stones, some say, are there yet to be seen in the prior's church-yard; his oath was administered with such long process, and such solemn singing over him, that, doubtless, must make his pilgrimage (as I may term it,) painfull; after, he was taken up on men's shoulders, and carried, first, about the priory church-yard, and after, through the town, with all the fryers and brethren, and all the town's-folke, young and old, following him, with shouts and acclamations, with his bacon borne before him, and in such manner, (as I have heard,) was sent home with his bacon: of which I find, that some had a gammon, and others a

fleche, or a flich ; for proof whereof, I have, from the records of the house, found the names of three several persons that at several times had it.

Anno 23 Henry VI. (1445.) Memorandum, that one Richard Wright, of Badbury, near the City of Norwich, in the County of Norfolk, Labourer, (*plebeius*,) came to Dunmow, and required the bacon, to wit, on the 27 of April, in the 23d year of the reign of King Henry VI. and according to the form of the charter, was sworn before John Cannon, Prior of the place and the convent, and very many other neighbours, and there was delivered to him, the said Richard, a side, or flich of bacon.

Anno 7 of Edward IV. (1467.) Memorandum, that one Stephen Samuel, of Ayston-Parva, in the County of Essex, Husbandman, on the day of the Blessed Virgin, in Lent, (25 March,) in the 7th year of King Edward IV. came to the Priory of Dunmow, and required a gammon of bacon, and he was sworn before Roger Bulcott, then Prior of the place and the convent, and also before a multitude of other neighbours, and there was delivered to him a gammon of bacon.

Anno 2 Henry VIII. Memorandum, that in the year of our Lord 1510, Thomas le Fullar, of Cogshall, in the County of Essex, came to the Priory of Dunmow, and on the 8th day of September, being Sunday, in the second year of King

Henry VIII. according to the form of the charter, was sworn before John Tils, the Prior of the house and the convent, and also before a multitude of neighbours, and there was delivered to him, the said Thomas, a gammon of bacon.

Hereby it appeareth, that it was according to a charta, or donation, given by some conceited benefactor to the house; and it is not to be doubted, but that at such a time, the bordering towns and villages resorted, and were partakers of their pastimes, and laught to scorn the poor man's paynes.

*The Form of the Oath taken by those at Dunmow,  
who are to have the Bacon.*

You shall swear by custom of confession,  
 If ever you made nuptial transgression;  
 Be you either married man or wife,  
 If you have brawls or contentious strife;  
 Or otherwise at bed or at board  
 Offended each other in deed or word:  
 Or since the parish clerk said Amen,  
 You wished yourselves unmarried agen;  
 Or in a twelve month and a day,  
 Repented not in thought any way;  
 But continued true in thought and desire,  
 As when you joined hands in the quire.  
 If to these conditions, without all feare,  
 Of your own accord you will freely sweare,

A whole gammon of bacon you shall receive  
 And bear it hence with love and good leave :  
 For this is our custom at Dunmow well knowne,  
 Though the pleasure be ours, the bacon's your  
 own.

*Chester,—City and County.*

Randall Blundeville, Earl of Chester, towards the latter end of the reign of King Richard I. being suddenly besieged by the Welsh, in the castle of Ruthelent, in Flintshire, sent to his constable of Cheshire, one Roger Lacy, (for his fierceness named Hell,) to hasten with what force he could to his relief.

It happened to be on Midsummer-day, and a great fair then held at Chester; whereupon, Roger immediately got together a great lawless mob of fiddlers, players, cobblers, and the like, and marched instantly towards the Earl; and the Welsh, perceiving a great multitude approaching, raised the siege and fled.

The earl being thus freed, comes back with his constable to Chester; and in memory of this service, by a charter grants to Roger Lacy, and his heirs, power over all the fiddlers, letchers, whores, and cobblers, in Chester.

About the latter end of the reign of King John, or beginning of King Henry III. Roger Lacy being dead, his son, John Lacy, by the following deed,

granted to one Hugh Dutton, his steward, and to his heirs, the rule and authority over all the letchers and whores in that county, *viz.*

“ Know all men present and to come, that I, John Lacy, Constable of Chester, have given and granted, and by this, my present charta, have confirmed to Hugh de Dutton, and his heirs, the government of all the letchers and whores of all Cheshire, as freely as I hold that government of the Earl, saving my right to my heirs.”

Though the original grant makes no mention of giving rule over fiddlers and minstrels, yet ancient custom has now reduced it only to the minstrelsey; for, probably, the rout, which the constable brought to the rescue of the earl, were debauched persons, drinking with their sweethearts at the fair, the fiddlers that attended them, and such loose persons as he could get.

In the 14th Henry VII. a *quo warranto* was brought against Lawrence Dutton, of Dutton, Esquire, to shew why he claimed all the minstrels of Cheshire and the City of Chester to appear before him, or his steward, at Chester, yearly, on the Feast of St. John Baptist, and to give him at the said Feast, four flaggons of wine and a lance; and also every minstrel then to pay him fourpence-halfpenny; and why he claimed from every whore in Cheshire and the City of Chester, exercising her

trade, fourpence, to be paid yearly, at the Feast aforesaid. To which he pleaded prescription.

In the statutes of the 14th Eliz. cap. 5, and the 39th Eliz. cap. 4, the first entitled, "An Act for the Punishment of Vagabonds, and for the Relieve of the Poor and Impotent;" and the latter, entitled, "An Act for Punishment of Rogues, Vagabonds, and Sturdy Beggars;" both now repealed, is inserted the following proviso, *viz.*

"Provided always, that this Act, or any thing therein contained, or any authority thereby given, shall not in any wise extend to disinherit, prejudice, or hinder, John Dutton, of Dutton, in the County of Chester, Esquire, his heirs, or assigns, for, touching, or concerning, any liberty, pre-eminence, authority, jurisdiction, or inheritance, which the said John Dutton now lawfully useth, or hath, or lawfully may, or ought to use, within the County Palatine of Chester, and the County of the City of Chester, or either of them, by reason of any ancient chartas of any Kings of this land, or by reason of any prescription, usage, or title whatsoever."

In the 43d Eliz. cap. 9, which continued the said Act of the 39th Eliz. the above clause was continued only for one year, except the said John Dutton, or his heirs, should procure the Lords

Chief Justices and Lord Chief Baron, or two of them, on hearing his allegations and proofs, to make certificate into the Chancery, to be there enrolled, that the said John Dutton, or his heirs, ought lawfully, (if no statute against rogues and beggars had been made,) by charta, tenure, or prescription, to have such liberty of licensing of minstrels, as he claimed and used.

In the statute of the 1st Jac. I. cap. 25, the same clause was continued, without limitation: so that it is probable such proof had then been made as is above mentioned.

And in the Act of the 13th Geo. II. cap. 5, commonly called the Vagrant Act, a like proviso is inserted in favour of the heirs or assigns of John Dutton, of Dutton, Esq. So that the right has now been established, by Act of Parliament, (ever since the year 1572,) above 200 years.

The heirs of the said Hugh Dutton enjoy the same power and authority over the minstrelsy of Cheshire, even to this day, and keep a court every year upon the Feast of St. John Baptist, at Chester, being the fair day, where all the minstrels of the county and city do attend and play before the Lord of Dutton upon their instruments: he or his deputy then riding through the city, thus attended, to the church of St. John Baptist, many gentlemen of the county accompanying him, and one walking before him in a surcoat of his arms, de-



picted upon taffeta ; and, after divine service is ended, holds his court in the city, where he or his steward renews the old licenses granted to the minstrels, and gives such new ones as he thinks fit, under the hand and seal of himself or his steward, not presuming to exercise that faculty there without it. But now this dominion or privilege is, by a daughter and heir of Thomas Dutton, devolved to the Lord Gerard, of Gerard Bromly, in Staffordshire.

#### THE GOOD ADVOCATE.

He is one that will not plead that cause wherein his tongue must be confuted by his conscience. It is the praise of the Spanish souldier, that, (whilst all other nations are mercenary, and for money will serve on any side,) he will never fight against his own king : nor will our advocate against the sovereigne truth plainly appearing to his conscience.

1. *He not only hears, but examines his client, and pincheth the cause where he fears it is foundered.* For many clients in telling their case, rather plead than relate it, so that the advocate hears not the true state of it till opened by the adverse party. Surely the lawyer that fills himself with instructions, will travel longest in the cause without tiring. Others, that are so quick in searching, seldome search to the quick ; and

those miraculous apprehensions who understand more than all, before the client hath told half, runne without their errand, and will return without their answer.

2. *If the matter be doubtfull, he will onely warrant his own diligence.* Yet some keep an assurance-office in their chamber, and will warrant any cause brought unto them, as knowing that if they fail, they lose nothing but what long since was lost,—their credit.

3. *He makes not a Trojan-siege of a suit, but seeks to bring it to a set battel in a speedy trial.* Yet sometimes suits are continued by their difficulty, the potencie and stomach of the parties, without any default of the lawyer. Thus have there depended suits in Gloucestershire, betwixt the heirs of the Lord Berkley and Sir Thomas Talbot, Viscount Lisle, ever since the reigne of King Edward the Fourth, untill now lately they were finally compounded.

4. *He is faithfull to the side that first retains him.* Not like Demosthenes, who secretly wrote one oration for Phormio, and another in the same matter for Apoliodorus, his adversary.

5. *In pleading, he shoots fairly at the head of the cause, and having fastened, no frowns nor favours shall make him let go his hold.* Not snatching aside here and there, to no purpose, speaking little in much, as it was said of Anaxi-

menes, *That he had a flood of words, and a drop of reason.* His boldness riseth or falleth as he apprehends the goodnesse or badnesse of his cause.

6. *He joys not to be retained in such a cause, where all the right in question is but a drop blown up with malice to be a bubble.* Wherefore, in such triviall matters he perswades his client to sound a retreat, and make a composition.

7. *When his name is up, his industry is not down, thinking to plead not by his study, but his credit.* Commonly physicians, like beer, are best when they are old, and lawyers, like bread, when they are young and new. But our advocate grows not lazie; and if a leading case be out of the road of his practice, he will take pains to trace it thorow his books, and prick the footsteps thereof wheresoever he finds it.

8. *He is more carefull to deserve, than greedy to take fees.* He accounts the very pleading of a poore widow's honest cause sufficient fees, as conceiving himself then the King of Heaven's advocate, bound *ex officio* to prosecute it. And, although some may say, that such a lawyer may even go live in Cornwall, where it is observed that few of that profession hitherto have grown to any livelihood, yet shall he (besides those two felicities of common lawyers, that they seldome

die either without heirs or making a will,) find God's blessing on his provisions and posterity.

We will respite him a while till he becomes a judge, and then we will give an example of both together." (*Fuller's Holy State*, p. 51.)

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"Sir Edward Coke was wont to say, when a great man came to dinner with him, and gave him no knowledge of his coming, 'Sir, since you sent me no word of your coming, you must dine with me; but if I had known of it in due time, I would have dined with you.'—(*Bacon's Apothegms.*)

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"Sir Thomas More had only daughters at the first, and his wife did ever pray for a boy. At last she had a boy, which being come to man's estate proved but simple. Sir Thomas said to his wife, "Thou prayedst so long for a boy that he will be a boy as long as he lives."—(*Bacon's Apothegms.*)

#### BURNET'S RECOMMENDATION OF THE LAW.

In the concluding part of the History of his Own Times, in which he notices the prevailing errors in education, Burnet strongly advises the young gentlemen of his day to acquire some

knowledge of the law, which, as he asserts, will make them very useful in their country. "A competent measure of the knowledge of the law is a good foundation for distinguishing a gentleman; but I am in doubt whether his being some time in the Inns of Court will contribute much to this, if he is not a studious person. Those who think they are there only to pass away so many of their years, commonly run together and live both idly and viciously.\* I should imagine it a much better way, though it is not much practised, to get a learned young lawyer, who has not got into much business, to come and pass away a long vacation or two with a gentleman, to carry him through such an introduction to the study of the law, as may give him a full view of it, and good directions how to prosecute his study in it. A competent skill in this makes a man very useful in his country, both in conducting his own affairs and in giving good advice to those about him. It will enable him to be a good justice of peace, and to settle matters by arbitration, so as to prevent law suits; and, which ought to be the top of an

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\* The Bishop spoke feelingly upon this subject. His son, Thomas Burnet, afterwards Mr. Justice Burnet, during his residence at the Temple, lived a very dissipated life. Some account of him will be found in another part of these volumes.

English gentleman's ambition, to be an able Parliament man, to which no gentleman ought to pretend unless he has a true zeal for his country, with an inflexible integrity and resolution to pursue what appears to him just and right, and for the good of the public. The Parliament is the fountain of law, and the fence of liberty, and no sort of instruction is so necessary for a gentleman as that which may qualify him to appear there with figure and reputation."—(*Burnet, v. iv. p. 434.*)

## AN EXTRAORDINARY EJECTION.

Every creature has its element, and finds its pleasure and subsistence in situations which to others would be destructive. To some men the prison, with its cell and its bars, has its own peculiar charm. It happened lately that a person of the name of Braybrook, was committed to the Fleet prison for debt, but his creditor, from motives of humanity towards the defendant's large family, did not declare against him, and he became in consequence supersedable. Instead of availing himself of this clemency and returning to his family, who were forced to go to the work-house, he obtained from time to time fictitious actions, and remained his own prisoner. He derived his support from the rent of his room, and the precarious bounty of *green-horn* prisoners. Several spirited collegians at length represented the mat-

ter to the Warden, and stated the hardship that a volunteer prisoner should, by occupying one of his rooms, deprive more deserving and necessitous persons of their privilege; in consequence of which, the Warden applied to the attorney in the actions and procured the necessary discharges, after which the prisoner was *expelled* by his brother collegians as an unworthy *fellow*, and the Governor *gave strict orders to the turnkeys never to admit him again!* Driven from his Eden, the unhappy debtor wandered forth :

“ Then, looking back, all the Eastern side beheld  
Of Paradise, so late his happy seat,  
Waved over by that flaming brand ; the gate  
With dreadful faces throng'd, and fiery arms :  
Some natural tears he dropp'd, but wiped them  
soon :

The world was all before him.”—

THE BICAUD, OR TWO-TAILED GABBLER.

The following amusing *jeu d'esprit* may be found in the second volume of the Indicator.

“ The preternatural history of the most degenerate animals of the human race.

No. 1. *The Bicaud, or Two-Tailed Gabbler.*

“ O' Νομικος, in Greek.

Jurisconsultus, jurisperitus, in Latin.

L'Avvocato, in Italian.

L'Avocat, in French.

The Advocate, Counsellor, or Barrister, in English.

Latin summary. *Jurisconsultus* sive *bicaudis garrulus*, animal omnino singulare; vultu pallido, calloso, tristi, attamen procaci; tergore nigro, fluxo, anguino, quod exuit sponte suâ; mirabiliore autem cæsarie, albâ, pulverulentâ, intortâ quasi calamistro, bicaudi, quam simul expeditiusque deponit. Ingreditur, potiusve sedet, gregatim; et incidens in folia quædam papyri pertenuia, anglicè dicta *bank notes* sive *fees*, celat in perula iustanter; exultatque in pedes posteriores, garritque gesticulaturque modo simiæ caudatæ.

“ This is a very singular animal, chiefly remarkable for its having two tails at the back of its head, and for its being moved by the touch of certain thin leaves of the papyrus, or paper-tree, to get up on its hind legs, and utter a long discordant gabble. Its skin is black, hangs loosely about it, and can be cast by the animal at pleasure like that of a snake. What is still more extraordinary, it has this faculty also with regard to its two tails, and the pallid hairy kind of rug to which they are attached. The rug resembles the natural peruke of certain monkeys, or rather the curled rug which is left on the hind quarters of a dog. When it casts its outer skin, it generally appears in a closer one of the same colour; and some of the older *bicauds*, when they cast their



rug and two tails, produce another from beneath like a pig's. But this latter species is going out. The face is generally pale; and, like some of the larger tribe of monkeys, thoughtful and melancholy. A pert character is, nevertheless, usually observable in it, and even a hardness and want of feeling; though when young, and before its two tails are grown, or occasionally some time afterwards, it is often a sprightly creature. We have known some, who have little resemblance, however, to the rest of the species, exhibit a lively emotion at hearing music and poetry, and even at the sight of sculpture; and these will also roam about the fields with a mixed gravity and vivacity, like colts come to years of discretion.

“The *bicaud* farther resembles the monkey in being gregarious. Young and old assemble in different places every morning, before two or three aged ones, whose skins are bordered with ermine, and whose tails have grown to a size like those of African sheep, and hang forward on each side of their faces. The whole sight is very ridiculous, and resembles the well-known phenomenon of a council of crows. Some unfortunate animals, when they have been caught trespassing on their premises, are brought in, as if to be judged; and one *two-tailed gabbler* gets up at a time on his hind legs, and appears to reason on

the subject, making strange grins and gesticulations. Sometimes he seems to laugh ; sometimes he raises his eye-brows, as if in astonishment ; sometimes tosses his skin and two tails about in all the heat and flutter of an angry fine lady ; and every now and then he turns over certain thicker leaves of the papyrus, of which there is always great plenty on the spot. All this looks as if something really were meant ; but it has been well ascertained, by innumerable and anxious experiments, that the *bicaud* who gets up to gabble, is influenced, not by any interest in behalf of the culprit or of reason, but by his having secretly touched some of those thin leaves previously mentioned, which he immediately conveys into a pouch on his right side, and the possession of which puts him into a sort of transport. All the rest, who have not been so lucky, remain sitting as gravely as possible, except when nothing appears to be going forward : at which time they are as noisy and apparently as mischievous as a forest of monkeys, or a school in the master's absence, chattering, and mowing at each other the whole time, the younger especially.

“ It is to be observed of this cunning and melancholy animal that there is none which it is so difficult to get beyond the usual instinct, or what may be called habit and precedent of its species. It is also bolder and more like a man, when it

casts its outer skin, but the moment the latter is resumed, relapses into its characteristic timidity, especially in presence of the old ones, at whose slightest muttering, it suspends its gabble, ducking and bowing, and drawing the air through its teeth, with an infinite gravity of deference. It seems to attach itself naturally to the rich and great; and, like most creatures of the anthropomorphite race, will sit at table, eat heartily, and drink more so, particularly wine, of which it is very fond. It is also extremely amorous, though after a coarse fashion; and we have known it dangerous for women to go near some of the very oldest. The latter, when observed, put on aspects so prodigiously grave and devout, that the one whose skin in advanced age is marked with certain golden stripes, has been facetiously called, *Keeper of the King's Conscience*.—(Leigh Hunt.)

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“The former Sir Thomas More had sent him, by a suitor in Chancery, two silver flagons. When they were presented by the gentleman's servant, he said to one of his men, ‘Have you to the cellar, and let him have of my best wine;’ and, turning to the servant, said, ‘Tell thy master, if he like it, let him not spare it.’” (Bacon's *Apothegms*.) Some similar anecdotes of Sir Thomas More will

be found in these volumes under the title of "Judicial Corruption."

REMARKABLE CASE OF THE PERRYS.

William Harrison, steward to lady Campden, at Campden, in Gloucestershire, about seventy years of age, went, August 16, 1660, to receive my lady's rents, which he did, and not returning home that night, gave cause to suspect he was murdered. After some time, John Perry, his servant, gave information before a justice of peace, that his brother Richard had robbed and murdered him, that his mother stood by whilst it was done, and that Richard had once before broke open his master's house, and robbed him. At the following Assizes, Joan, John, and Richard Perry, had two indictments preferred against them, one for breaking open the house of Mr. Harrison, and robbing him of 140*l.* in the year 1659, and the other for robbing and murdering him August 16, 1660. Upon the last indictment, the then Judge of Assize, Sir Christopher Turner, Knt. would not try them, because the body was not found: on the former indictment for the robbery, they pleaded "not guilty;" but on people's persuading them, they retracted their plea, and pleaded guilty; begging the benefit of his Majesty's most gracious pardon and act of oblivion, which was granted them: and though they pleaded guilty to this indictment, being prompted thereto, yet they all a

their deaths denied it. Yet at this assize, John Perry persisted in his story, that his mother and brother had murdered his master, and that they had attempted to poison him in gaol for his discovering it, so that he durst not eat or drink with them. And, at the next Assizes following, Joan, John, and Richard Perry, were, by the Judge of Assize, Sir Robert Hyde, Knt. tried upon the indictment of murder, and pleaded, not guilty; when John's confession before the justice was proved *vivâ voce*, by several witnesses who heard the same. He then told the Court, he was mad, and did not know what he had said. The other two, Richard and Joan Perry, declared they were wholly innocent of what they were accused, that they knew nothing of Mr. Harrison's death, nor what was become of him, and Richard said, his brother had accused others as well as him to have murdered his master, which the Judge bidding him prove, he said, that most of them that had given evidence against him, knew it; but naming nobody, nor any body speaking to it, the Jury found them all guilty.

Some days after, being brought to the place of execution, which was on Broadway Hill, within sight of Campden, the mother being reputed a witch, and to have so bewitched her sons, they could confess nothing while she lived, was first executed, (strange ignorance and superstition!) af-

ter which, Richard being on the ladder, professed as he had done all along, that he was wholly innocent of the fact for which he was to die, and that he knew nothing of Mr. Harrison's death, nor what was become of him, and did with great earnestness, beg and beseech his brother (for the satisfaction of the world and his own conscience) to declare what he knew concerning it. But he, with a dogged and surly carriage, told the people he was not obliged to confess to them; yet immediately before his death, said, He knew nothing of his master's death, nor what was become of him, but they might hereafter possibly hear.

It is strange that a Judge would order the execution of three persons for the supposed murder of a man, whose body was not found, or heard of at the time of trial, upon the confession of a madman or an enthusiast.—However, Mr. Harrison, some years after, appeared alive; and in a letter to Sir Thomas Overbury, of Burton, in Gloucestershire, gave an account how that very night, August 16th, returning home, after receiving the rents, he was set upon, and forced by several stages to the sea side, put on board a ship, and carried into Turkey, where he was sold for a slave to a physician, and continued with him for about a year and three quarters, when his master died; then he made the best of his way to a sea-port, and with great difficulty got on board a Hamburg

ship bound for, and arrived safe at, Lisbon ; from whence, by the means of an English merchant, he got on board an English vessel, and arrived safe at Dover, and from thence to his own home, to the surprise of all the country. This account was sent with the following letter from Sir Thomas Overbury to Dr. Shirley, who published it :

SIR,

I herewith send you a short narrative of that no less strange than unhappy business, which some years since happened in my neighbourhood : the truth particular whereof I am able to attest : and I think it may very well be reckoned among the most remarkable occurrences of this age. You may dispose of it as you please, and in whatever I can serve you, you may freely command me, as

Your most affectionate Kinsman,

and humble Servant,

THOMAS OVERBURY.

LORD CHIEF JUSTICE HOLT.

In the reign of Queen Anne, 1704, several freemen of the Borough of Aylesbury, who proved their qualifications, were refused the liberty of voting at the election of a member of parliament. The law in such cases imposes a fine on the returning officer of 100l. for every such offence. On this principle, they applied to Lord Chief Justice Holt, who ordered the officer to be arrested.

The House of Commons, alarmed at this step, made an order of the House to make it penal for either judge, counsel, or attorney, to assist at the trial; however, the Lord Chief Justice and several lawyers were hardy enough to oppose this order, and brought it on in the Court of King's Bench. The House, highly irritated at this contempt of their order, sent a Sergeant at Arms for the judge to appear before them; but that resolute defender of the laws, bade him, with a voice of authority, "be gone;" on which they sent a second message by their Speaker, attended by as many members as espoused the measure. After the Speaker had delivered his message, his lordship replied to him in the following remarkable words: "Go back to your chair, Mr. Speaker, within this five minutes, or, you may depend on it, I will send you to Newgate. You speak of *your* authority; but I will tell you I sit here as an interpreter of the laws, and a distributor of justice, and were the whole House of Commons in your belly, I would not stir one foot!" The Speaker was prudent enough to retire, and the House were equally prudent in letting the affair drop.

The same judge had sent, by his warrant, one of the French prophets, a foolish sect that started up in his time, to prison; upon which Mr. Lacy, one of their followers, came to my Lord's house, and desired to speak to him. The servants told



him their lord was not well, and saw no company that day. "But tell him," said Lacy, "that I must see him, for I come to him from the Lord God." Which being told the Chief Justice, he ordered Lacy to come in, and asked him his business. "I come," said he, "from the Lord, who has sent me to thee, and would have thee grant a *nolle prosequi* for John Atkins, his servant, whom thou hast sent to prison." "Thou art a false prophet, and a lying knave," answered the judge. "If the Lord had sent thee, it would have been to the Attorney General, for the Lord knows it is not in my power to grant a *nolle prosequi*; but I can grant a warrant to commit thee to bear him company, which I certainly will."

#### THE COMMON BARRETER.

"A Barreter is a horse-leach, that onely sucks the corrupted blood of the law. He trades onely in tricks and quirks: his highway is in by-paths, and he loveth a cavill better than an argument; an evasion, than an answer. There be two kinds of them: either such as fight themselves, or are trumpeters in a battel, to set on others. The former is a profest dueller in the law, that will challenge any, and in all suit-combats be either principall or second.

"*References and compositions he hates as bad as*

*an hangman hates a pardon.* Had he been a scholar, he would have maintained all paradoxes ; if a chirurgeon, he would never have cured a wound, but always kept it raw ; if a souldier, he would have been excellent at a siege ; nothing but *ejectio firmæ* would out him.

“ *He is half-starved in the lent of a long vacation, for want of employment ; save onely that then he brews work to broach in term-time.* I find one so much delighted in law-sport, that when Lewis, the King of France, offered to ease him of a number of suits, he earnestly besought his Highness to leave him some twenty or thirty behind, wherewith he might merrily passe away the time.

“ *He hath this property of an honest man, that his word is as good as his bond ; for he will pick the lock of the strongest conveyance, or creep out at the lattice of a word.* Wherefore he counts to enter common with others as good as his own severall ; for he will so vex his partners, that they had rather foregoe their right, than undergoe a suit with him.—As for the trumpeter Barreter ;

“ *He falls in with all his neighbours that fall out, and spurres them on to go to law.* A gentleman, who in a duell was rather scratcht than wounded, sent for a chirurgeon, who, having opened the wound, charged his man with all speed

to fetch such a salve from such a place in his study. ‘*Why, (said the gentleman,) is the hurt so dangerous?*’ ‘*Oh, yes, (answered the chirurgeon,) if he returns not in post-haste, the wound will cure itself, and so I shall lose my fee.*’ Thus the Barretour posts to the houses of his neighbours, lest the sparks of their small discords should go out before he brings them fuell, and so he be broken by their making up. Surely, he loves not to have the bells rung in a peal; but he likes it rather when they are jangled backwards, himself having kindled the fire of dissension amongst his neighbours.

“*He lives till his clothes have as many rents as himself hath made dissensions.* I wonder any should be of this trade, when none ever thrived on’t, paying dear rates for their counsells: for bringing many cracked titles, they are fain to fill up their gaping chinks with the more gold.

“But I have done with this wrangling companion, half afraid to meddle with him any longer, lest he should commence a suit against me for describing him. (*Fuller’s Profane State, 408.*)

#### STRIKING IN THE KING’S PALACE.

Contempts against the King’s Palace, or Courts of Justice, have always been looked upon as high

misprisions: and, by the ancient law before the Conquest, fighting in the King's Palace, or before the King's Judges, was punished with death. At present, by statute 33 Hen. VIII. c. 12, A. D. 1541, malicious striking in the King's Palace, wherein his royal person resides, whereby blood is drawn, is punished by perpetual imprisonment, and fine at the King's pleasure, and also with loss of the offender's right hand; the solemn execution of which sentence is prescribed in the statute at length. A few months after this act had passed, Sir Edmond Knevet was prosecuted for this offence: the solemnities of the punishment required by the act are therein stated.

“ This tenth of June, 1541, Sir Edmond Knevet, Knight, of Norfolke, was arraigned before the King's Justices, (sitting in the great Hall at Greenwich, Master Gage, Comptroller of the King's Household, Master Suthwell, Sir Anthony Brown, Sir Anthony Wingfield, Master Wrisley, and Edmond Peckham, Cofferer of the King's Household,) for striking of one Master Clere, of Norfolke, servant with the Earle of Surrey, within the King's House, in the Tennis-Court. There was first chose to go upon the said Edmond, a quest of gentlemen and a quest of yeomen, to enquire of the said stripe; by which inquests he was found guilty, and had judgement to loose his right

and ; whereupon was called to do the execution, first the Sergeant Chirurgeon, with his instrument appertaining to his office ; the Sergeant of the Wood-yard, with the mallet and a block, whereupon the hand should lie ; the Master Cooke for the King, with the knife ; the Sergeant of the Larder, to set the knife right on the joynte ; the Sergeant Farrier, with his searing yrons, to seare the veines ; the Sergeant of the Poultry, with a cock, which cock should have his head smitten off upon the same block, and with the same knife ; the Yeoman of the Chandry, with seare clothes ; the Yeoman of the Scullery, with a pan of fire, to heate the yrons, a chafer of water to coole the end of the yrons, and two fourmes, for all officers to set their stuff on ; the Sergeant of the Seller, with wine, ale, and beere ; the Yeoman of the Ewry, in the Sergeant's stead, who was absent, with bason, ewre, and towels. Thus, every man in his office ready to do the execution, there was called forth Sir William Pickering, Knight Marshall, to bring in the said Edmond Knevet, and when he was brought to the barre, the Chief Justice declared to him his trespass, and the said Knevet confessing, humbly submitted him to the King's mercy : for this offence, he was not only judged to loose his hand, but also his body to remaine in prison, and his lands and goods at the

King's pleasure. Then the sayd Sir Edmond Knevet desired that his benigne grace would pardon him of his right hand, and take the left: 'For, (quoth he,) if my right hand be spared, I may hereafter do such good service to his grace, as shall please him to appoint.' Of this submission and request the Justice forthwith informed the King, who, of his goodness, considering the gentle heart of the said Sir Edmond, and the good report of lords and ladies, granted him pardon, that he should lose neither hand, land, nor goods, but should go free and at liberty.'" (*Stowe's Annals, How's Edition, 581.*)

## FEES OF PHYSICIANS.

"The plaintiff, Dr. Chorley, who was a physician living at Doncaster, brought an action to recover his fees from Bolcat, the defendant, who was the executor of a man whom the Doctor had attended a considerable time, and who lived at some little distance from the town: the evidence was, that at Doncaster and its neighbourhood, there was no certain rule about fees, but the general practice was, for a physician to receive two guineas a week for his attendance. The plaintiff obtained a verdict at the last assizes at York.

"Wood, on the behalf of Bolcat, the executor,

moved the court to set aside the verdict, on the ground that no action lay for a physician's fees any more than for a barrister's.

“Cockell, (Sergeant,) and Chambre; in support of the verdict, argued, that though this point had been ruled several times at nisi prius, against such a claim, yet it had never been solemnly decided, nor was there any authority in the books for putting the claim of a physician's fee upon the same footing as that of a barrister. In the latter case, it might originally have been proper, that no temptation should be held out to countenance injustice; but in the former, it would be equally impolitic, that those who are frequently put to expense in attending patients at a distance, and who are liable to make reparations to those who may suffer from their want of skill, should not be certain of a just and honourable reward. The regulation with regard to barristers, is founded on the grounds of public policy, as appears in the passage by Tacitus, to which Mr. Justice Blackstone refers; but they are totally inapplicable to the case of physicians, and in that very passage in Tacitus, it is taken for granted, that the latter were entitled to a remuneration, because their situation was dissimilar to advocates. Besides, in this case there is an additional reason why the plaintiff should recover, as there is understood to

be a general stipulated acknowledgment for a physician's attendance at the place where this transaction arose.

“ Lord Kenyon, Chief Justice. ‘ I remember a learned controversy, some years ago, as to what description of persons were intended by the Medici at Rome : and it seemed to be clearly established by Dr. Mead, that by those were not meant physicians, but an inferior degree amongst the professors of that art, such as answer rather to the description of surgeons amongst us. But at all events, it has been understood in this country, that the fees of a physician are honorary, and not demandable of right. And it is much more for the credit and rank of that honourable body, and, perhaps, for their benefit also, that it should be so considered. It never was yet heard of, that it was necessary to take a receipt upon such an occasion. And I much doubt whether they themselves would not altogether disclaim such a right as would place them upon a less respectable footing in society than that which they at present hold.’ The judgment was therefore arrested, and Dr. Chorley gained nothing by his verdict.” (4 *Durnford and East's Reports*, 317. 30 June, 1791.)



CASE OF THE DUKE OF MARLBOROUGH AND  
WILLIAM BARNARD.

On the statute of 9 Geo. I. William Barnard was tried for sending a letter, in a fictitious name, to Charles, Duke of Marlborough, demanding a genteel support for life. The charge was opened by Sergeant Davy. On the 29th of November, 1758, the following letter was found under the door of the Ordnance-Office, directed to his Grace the Duke of Marlborough :

*“ November 28.*

*“ MY LORD,*

*“ As ceremony is an idle thing upon most occasions, more especially to persons in my state of mind, I shall proceed immediately to acquaint you with the motive and end of addressing this epistle to you, which is equally interesting to us both. You are to know, then, that my present situation in life is such, that I should prefer annihilation to a continuance in it: desperate diseases require desperate remedies; and you are the man I have pitched upon, either to make me, or to unmake yourself. As I never had the honour to live among the great, the tenor of my proposals will not be very courtly; but let that be an argument to enforce the belief of what I am now going to write. It has employed my invention, for some time, to find out a method to destroy another, without ex-*

posing my own life ; that I have accomplished, and defy the law. Now for the application of it. I am desperate, and must be provided for : you have it in your power, it is my business to make it your inclination, to serve me ; which you must determine to comply with, by procuring me a genteel support for my life ; or your own will be at a period before this sessions of parliament is over. I have more motives than one for singling you out first, upon this occasion ; and I give you this fair warning, because the means I shall make use of are too fatal to be eluded by the power of physic. If you think this of any consequence, you will not fail to meet the author, on Sunday next, at ten in the morning, or on Monday, (if the weather should be rainy on Sunday) near the first tree beyond the stile in Hyde-Park, in the foot-walk to Kensington : secrecy and compliance may preserve you from a double danger of this sort ; as there is a certain part of the world, where your death has more than been wished for, upon other motives. I know the world too well to trust this secret in any breast but my own. A few days determine me your friend or enemy.

“ FELTON.

“ You will apprehend that I mean you should be alone ; and depend upon it, that a discovery of any artifice in this affair will be fatal to you :

my safety is insured by my silence ; for confession only can condemn me."

Felton was the name of the assassin that stabbed the Duke of Buckingham, at Portsmouth. The Duke, not intimidated by the letter, though greatly surprised at it, and willing to find out the author, was not afraid to endeavour to apprehend him ; he went alone to the spot, and at the time appointed ; however, there was some attendant on his Grace at a distance, in order to observe what passed on the occasion. The Duke had been there some time on horseback, and as much undressed as a man of his quality is. He had pistols before him ; he had been there some time, and saw nobody at all at that particular place. After waiting some considerable time, he was returning, and observed a person come to the particular spot, just by the tree beyond the stile in Hyde-Park, by the foot-walk to Kensington ; that person held a handkerchief to his mouth, in a seeming disconsolate manner, looking into the water, and stood still a very considerable while. Upon his Grace seeing this, that the man was not pursuing any way, he had no doubt in his own mind, but that this man (be he who he would) must be the person who had sent him this letter. The man sauntering just at the place, the Duke rode up to the spot, expecting the person would speak to him : his Grace asked the

man, "Whether he wanted to speak to him?" He said, "No."—"Sir," said the Duke, "do you know me? I am the Duke of Marlborough; telling you that, perhaps you have something to say to me."—"No, my Lord."—No notice being taken, the Duke came away. A few days after, in the same week, the Duke received a second letter. This also was put under the door of the Office of Ordnance, and was also wrote in imitation of a print-hand: but the directions of both the letters were not. The second letter is in these words:

*"To his Grace the Duke of Marlborough.*

"MY LORD,

"You receive this as an acknowledgment of your punctuality as to the time and place of meeting on Sunday last, though it was owing to you that it answered no purpose. The pageantry of being armed, and the ensign of your order, were useless, and too conspicuous: you needed no attendant; the place was not calculated for mischief, nor was any intended. If you walk in the west aisle of Westminster Abbey, towards eleven o'clock on Sunday next, your sagacity will point out the person, whom you will address by asking his company to take a turn or two with you. You will not fail, on inquiry, to be acquainted with the name and place of abode, according to which di-

rections you will please to send two or three hundred pound bank notes the next day by the penny-post. Exert not your curiosity too early: it is in your power to make me grateful on certain terms. I have friends who are faithful; but they do not bark before they bite.

I am, &c. &c.

“F.”

The Duke accordingly went to Westminster-Abbey, to the west aisle. His Grace went to the westernmost part of the Abbey, and observed nobody lurking or standing in suspicious circumstances: after a little time, his Grace was surprised to see that the same person, whom he had seen the Sunday before exactly at the spot in Hyde Park, appeared just in this place at the west end of Westminster Abbey: but he was surprised the more, that this person did not speak to him. Waiting some time for the person to speak to him, and finding he did not, his Grace asked him, “Sir, have you any thing to say to me?” “No, my Lord.”—“Have you any thing at all to say to me?” “No.”—“Have you nothing at all to say to me?” “No, he had nothing to say to him.” When this person came into the Abbey, another person came in with him, who seemed by his appearance to be a substantial tradesman. These two persons, after stopping and looking about at the monuments near the west gate of the Abbey,

the Duke being sure one of them was the same man he had seen before in Hyde Park, his Grace thought proper to go and stand by them, to see if that person would speak to him : seeing the Duke took no notice of him, they both went towards the choir : the stranger went into the choir, and the man that his Grace had seen in the Park, came back again (leaving his friend there) to the spot where the Duke was. The Duke then asked him, "Whether he had any thing to say to him?" "No, he had nothing at all to say to him. No, he had nothing at all to say." Then the Duke walked a little on the other side of the aisle, to see whether the man would follow him, or had a mind to speak to him at another spot. He observed the man looked eagerly at him : may be he expected the Duke's "sagacity would point out the man : " however, the Duke did not do what the letter required, that is, "Ask him to take a turn with him." At this second time, there was somebody that was with the Duke, near enough to take notice what passed, in order to apprehend the person, so as to put it beyond all doubt, that he was the author of those letters. The Duke, and this attendant of his, went out at the west door of the Abbey, in order to go to his coach. As soon as the Duke went out of the Abbey, that man, whom the Duke had seen at both these places, watched the Duke out of the Abbey, and

as soon as his Grace had passed the door of the Abbey, he went up, hid himself in a corner, concealed from a possibility of being seen by his Grace in case he had looked back, and so watched him into his coach.

A few days after this, came a third letter to the Duke, wrapped in a very small compass, and directed to his Grace the Duke of Marlborough, at his house. "My Lord, I am fully convinced you had a companion on Sunday. I interpret it as owing to the weakness of human nature; but such proceeding is far from being ingenuous, and may produce bad effects, whilst it is impossible to answer the end proposed. You will see me again soon, as it were by accident, and may easily find where I go to; in consequence of which, by being sent to, I shall wait on your Grace, but expect to be quite alone, and converse in whispers. You will likewise give your honour, upon meeting, that no part of the conversation shall transpire. These and the former terms complied with, insure your safety; my revenge, in case of non-compliance, (or any scheme to expose me,) will be slower, but not less sure, and strong suspicion the utmost that can possibly ensue upon it; while the chances will be tenfold against you. You will possibly be in doubt after the meeting, but it is quite necessary the outside should be a mask of the in. The family of the BLOODS is not extinct, though

they are not in my scheme." The word BLOODS is in capital letters. As Felton was the villain who assassinated the Duke of Buckingham, so this is the name of the fellow who seized the Duke of Ormond, and was going to carry him to Tyburn to execute him, and also who stole the crown out of the Tower of London.

The Duke waited, expecting to hear farther; but heard nothing more until the middle of April. About the 14th there came a letter to his Grace, wrote in a mean hand, but not in imitation of a print-hand, as the others were. These are the words of the fourth letter :

*" To his Grace the Duke of Marlborough.*

" MAY IT PLEASE YOUR GRACE,

" I have reason to believe, that the son of one Barnard, a surveyor in Abingdon-Buildings, Westminster, is acquainted with some secrets that nearly concern your safety; his father is now out of town, which will give you an opportunity of questioning him more privately. It would be useless to your Grace, as well as dangerous to me, to appear more publicly in this affair.

" Your sincere friend,

" ANONYMOUS.

" He frequently goes to Storey's-Gate Coffee-house."

The Duke sent for Mr. Barnard, the son of Mr.



Barnard, according to the directions in that letter. The Duke, when Mr. Barnard came, was sitting in his room ; and though the door of the outer room was at threescore yards distance from where the Duke was, yet, the moment Mr. Barnard entered the room, he was sure that was the man he had seen both in the Park and in the Abbey.

The Duke of Marlborough was sworn, and proved the receipt of the several letters as stated by Sergeant Davy, and the circumstances of his going to the Park, the Abbey, &c. His evidence respecting their meeting, in consequence of the message which the Duke sent him, was as follows :

“ When he came in (says the Duke) I knew, at first sight, it was the same person that I had seen in the Park and in the Abbey. I desired him to walk with me into a room, and immediately shut the door when we were in. I asked him as before ; he said, “ He had nothing to say to me ; ” then I told him of the last letter I received, that it mentioned his name, and that he knew something concerning my safety ; he said, “ he knew nothing of it. ” Then I recapitulated all the letters, beginning with the first, and remarked to him that it was strange to me, that a man that wrote so very correct, without false English in any shape, should be guilty of so low an action ; he said, “ A man may be very learned and very poor. ” I then took

notice of the second letter, and said, there must be something very odd in the man ; he said, " I imagine the man must be mad : " I said, he seems surprised that I should have pistols ; said he, " I was surprised to see your Grace with pistols, and your star on." I said, " Why was you surprised at that ? " His answer was, after stopping a moment, " It was so cold a day ; I wondered you had not a great coat on : " then I afterwards shewed him the letter again where his name was mentioned, and walked with him to the window ; and as I read it, when I came to that part where it said his father was out of town, he said, " It is very odd, my father was then out of town." I said nothing to him of that, though it struck me a good deal, as there was no date to the letter. I said, if you are innocent, it behoves you much more than me to find out the author of those letters, particularly the last ; for it was an attempt to blast his character behind his back ; he seemed to give me a smile, and away he went. I did not apprehend him then."

The Duke was cross-examined, as follows, by the prisoner's Counsel.

Q. In consequence of the first letter, your Grace went into the Park on horseback, and was there some time without seeing any body you suspected ; were there not people there

*D. of Marlb.* I saw several people on horse-back, and some few walking in a hurry on foot.

*Q.* Pray, my Lord Duke, after you had seen this person loitering, was there any thing going forward, such as hunting a duck, or the like?

*D. of Marlb.* No, nothing in the world as I saw; it was a very cold day.

*Q.* Your Lordship said there was another person at a distance, an attendant on your Grace; how far might that person be off when you was speaking to the prisoner?

*D. of Marlb.* I cannot tell exactly. I had spoke to him to keep a great way off.

*Q.* Was he in view of your Grace?

*D. of Marlb.* I dare say he was.

*Q.* Might not any person equally see that person as well as your Grace?

*D. of Marlb.* I suppose he might.

*Q.* Was your Grace there at the time?

*D. of Marlb.* I was there rather before the time, I believe.

*Q.* Did he in the least offer to follow your Grace?

*D. of Marlb.* No, he seemed to go the other way.

*Q.* With respect to the second letter, your Grace went according to appointment to Westminster Abbey, and saw the prisoner and another person come into the Abbey; before that other

person had left him, had your Grace been near him ?

*D. of Marl.* I had ; I stood by him in hopes he would speak to me, if he was the person that wrote the letters.

*Q.* Whether the circumstance was not such, that that other person might very well believe your Grace wanted to speak to the prisoner ?

*D. of Marl.* That I cannot tell. I stood very near the prisoner, wanting him to speak to me. It is possible he might think so.

*Q.* Whether there were not at that time several persons attending on your Grace ?

*D. of Marl.* There were two or three.

*Q.* Did your Grace speak to either of them in the Abbey ?

*D. of Marl.* No, I did not.

*Q.* Whether if there was any other in Westminster Abbey at that time, whether that third person might not have taken Mr. Barnard for your Grace's companion, as your Grace spoke to him ?

*D. of Marl.* Upon my word I cannot tell that.

*Q.* Could there be a person to whom that expression, in the third letter, might be applied, referring to your Grace's companion, besides Mr. Barnard ?

*D. of Marl.* Yes, it might be applied to a

gentleman that went away with me in the coach from the Abbey.

*Q.* Whether your Grace did not bow several times to the prisoner before you spoke?

*D. of Marl.* No, I don't think I did.

*Counsel.* With respect to the third letter, your Grace heard no more of that till the fourth came?

*D. of Marl.* I did not; and when the fourth came, I sent to Mr. Barnard.

*Q.* Did your Grace know Mr. Barnard before you received these letters?

*D. of Marl.* No. I did not at all.

*Q.* Does your Grace know now whether he was a person in such situation in life, as answered to the description in the letters?

*D. of Marl.* I don't know the least thing of him, either character or circumstances.

*Q.* Then, abstracted from these circumstances, should your Grace have entertained any suspicion of him more than of any other person?

*D. of Marl.* I did not know there was such a man in the world.

*Q.* When he came to your Grace's house, did he come in very readily?

*D. of Marl.* He did.

*Q.* Whether his answer was, I was surprised to see you armed too, or I was surprised to see you armed?

*D. of Marlb.* I cannot take upon me to say whether he laid such an emphasis on it or not.

*Q.* Then he made no secret of seeing your Grace in the Park ?

*D. of Marlb.* No.

*Q.* Nor in the Abbey ?

*D. of Marlb.* No.

*Q.* Your Grace mentioned, he said, It is very odd, my father was out of town then ! Could your Grace apply that, in the manner it was spoke, that his father was out of town when the message came to him ?

*D. of Marlb.* I really understood him, that he knew his father was out of town at the time of his writing the letter.

*Q.* Did your Grace mention the time you received it ?

*D. of Marlb.* No, I did not mention any time.

*Q.* Did he come punctually to his time ?

*D. of Marlb.* He did ; I think the messenger said he would wait on me about half an hour after ten.

*Q.* In what manner was he apprehended ?

*D. of Marlb.* I do not know ; I understand he was summoned.

*Q.* It has been said, he went away with a smile ; pray, my Lord Duke, might not that smile express the consciousness of his innocence as well as any thing else ?

*D. of Marlb.* I shall leave that to the Great Judge.

*Q.* He said, A man might be very learned, and very poor; does your Grace know whether this person at the bar is either learned or poor?

*D. of Marlb.* I do not know, indeed.

*Q.* May not that expression fall from any man whatever?

*D. of Marlb.* I cannot say as to that.

Further evidence was then called, which was to the following purpose, That when the prisoner received the message from the Duke, he expressed some surprise, but no fear; that he spoke of having seen the Duke in the Park and in the Abbey, but that he did not know the Duke in the Park until he told him who he was; and that in Westminster Abbey he thought the Duke had spoke to him, but he was mistaken; he also said that he had some thought that the Duke intended to give him a place.

The prisoner being called on for his defence, said, I am entirely innocent of this affair with which I am charged; I leave it to the Court and the Jury, with the evidence that will be produced. The prisoner's witnesses were called.

John Barnard, his father, proved that the prisoner was much employed in business, and in receiving great sums of money; that his accounts always stood right, that he is a sober man; that

he told him of the Duke of Marlborough's taking notice of him as a very extraordinary thing; that he perceived the duke was armed in the Park, and thought there might be a duel going forwards, that the prisoner often and without reserve talked of this as a very strange event—that he also mentioned his meeting him in the Abbey in the same terms—that on Sunday (the first meeting) he himself had sent his son to Kensington on business.

The prisoner's uncle and cousin proved circumstances of a similar nature. Various other evidence was called which is stated and commented on in Mr. Sergeant Davy's reply.

*My Lord, and Gentlemen of the Jury,*

I shall consider two general questions: the first is, Whether the several circumstances that have been given in evidence, on the part of the prosecution, independently, are in themselves sufficient to convince a reasonable understanding of the prisoner's guilt; I mean, your understandings as jurymen. The second question is, Whether the defence that has been set up, those circumstances are sufficient to repel the weight of the evidence; I mean, whether the defence is reconcilable to the suspicions of the prisoner's guilt; for if they are irreconcilable with the prisoner's guilt, (as I do not intend to impeach the credit of any one witness,) I am content, upon that supposition, he



may be acquitted: I do not mean, that any witness has laid a single circumstance before you that is not strictly true, but that they may be reconcilable with the suspicion of his guilt.

It will remain for your consideration, it is now the capital question, Whether these circumstances laid before you, consisting of five or six parts on the part of the prisoner, may be reconciled with the suspicion of his guilt? Because, if they may, it is no defence at all.

Gentlemen, the first is, the prisoner being sent by his father to Kensington on this Sunday on which he met the Duke in Hyde Park. I did not chuse by any means to ask the father any question; I should have disoblged my noble client if I had done it. As, why he was sent to Kensington? What conversation might have led to that matter? What happened at breakfast with his father was the sole occasion of his going there. The son, you see, is principally concerned in conducting his father's business; he might, or he might not, propose the expediency of such a journey. It is a little extraordinary, this business (not being urgent in its own nature) should be appointed by the father to be transacted on Sunday, when the father might as well have employed his time in going elsewhere: going to ask whether a sum of money had been paid on the account of gravel, to make it necessary to be sent just at church-time,

His father talked of his going ; he did go—What does that prove ? Does it prove he was not to go to Hyde Park any other way ? Whoever was the writer of these letters, certainly intended to have a meeting on both the Sundays, in the Park and in the Abbey, in a very public manner ; and that, agreeable to the tenor of the letter, he did provide himself with a defence in case of need. Now, be the author of these letters who he may, the author did contrive a subterfuge for himself afterwards, in order to reply to a charge of that nature.

Gentlemen, the next part of the defence is, that he at several times and to several people related the meetings he had had with the Duke, and the extraordinary occurrences. This indeed corresponds with the observations I made : the writer of these letters proposed to meet the Duke at a time that people were walking out on a Sunday, and in the Abbey, the most public places, and at the most public times : is that irreconcilable with the suspicion that the prisoner (if he was the author of these letters) might have been contriving with other persons, telling people of the several meetings he had had with the Duke, and the substance of those meetings ? But one observation will arise, perhaps not so much to his service ; and that is, when he told those people of his seeing the Duke, he spoke to his seeing an attendant,

which corresponds with the second letter. What does he say about it to the persons to whom he relates the meeting? He saw he was armed—He saw one likewise at a distance, and he thought there was a duel going forwards. Now, when he spoke to the Duke of the surprise he had entertained on seeing the Duke armed, does he assign that as a reason of apprehending a duel? No; it was because it was cold weather, and he wondered to see him without a great coat: so that the same man that speaks of it to his friends as a circumstance that might induce a surprise, speaks of it at another time as being surprised, without giving that as a reason for it.

The next circumstance is, Mr Greenwood's evidence of going with him to Westminster Abbey. There are two or three things a little particular: after breakfast, about nine o'clock, he solicits the prisoner to dress himself in order to go to the Park. The prisoner seemed unwilling to go there. He said, it was not an unusual thing, when they were to go together, for them to differ, and upon that occasion to part. Supposing the prisoner wanted to get rid of this companion of his, who had laid there and was not easily to be got rid of, why might not that account for his being unwilling to dress himself at nine in the morning, in order to get rid of him? For he had time enough to dress himself an hour after that, and

to meet the Duke in the Abbey at eleven. It is a little odd, that the prisoner wanted to go another way, and expressed a reluctance in going through the Abbey. It is clear he did not mean to be seen by Mr. Greenwood in the Abbey: but when he could not get rid of that, and he plucked him by the coat for that purpose, did they prosecute their design in going to the Park, and yet saunter a good while in the Abbey? (No reason why they did so.) First they went to General Hargrave's monument, then to Captain Cornwall's monument; there they staid some time, the Duke's behaviour being in Mr. Greenwood's evidence particular; from the Duke's bowing, he thought that the Duke wanted to speak to him in private. How is this reconcilable? There is not a circumstance in all that part of Mr. Greenwood's evidence, which suits so well as this of his guilt: first he wanted to get rid of Mr. Greenwood, and when he could not do that, then making no secret of having seen the Duke, and make that tally with his telling him he had met him.

The next circumstance is Mr. Ball's; and if that circumstance of his evidence strikes you as it did me, I wonder he was produced as a witness: for, you see, the prisoner was very forward: he was blamed for it by one of his witnesses; he thought he talked too much of having met the Duke; that was so singular, that it demanded

animadversions: yet, notwithstanding, when he had had a third interview with the Duke, and there appeared so very material a circumstance of the Duke's having charged him with a very extraordinary and wicked proceeding against him; when he had told him of all these letters; and one of them set forth his name, as a person that could inform his Grace of something which nearly related to his safety, and hinted to him the strangeness of these letters, and charged them upon him; and after having pretended a total ignorance of this matter, he afterwards conceals all this from Mr. Ball: and what is another circumstance, Mr. Ball says, he was rather more cheerful in relating what he did than usual. God knows he had no reason to be cheerful; for the Duke had charged him home with a capital offence; the Duke had admonished him, and told him, either he was the author of these letters, or he was used exceedingly ill by the person that did write them. Yet, you see, in mentioning these things to his friend Mr. Ball, Ball considers it as a fruit of the Duke's benevolence to him, and says, he will give you a post in the army. The prisoner replied, It must be a very good one, if I accept it.

These are all the circumstances that they have insisted upon as proofs of his innocence, except one, that is his character. They have called to

that many witnesses ; they say he is very expert in his business, a very diligent, sober, man ; nothing about him as marks of distress : no vices to which they find him inclined, which give him an occasion for a demand of this kind ; and that, upon the whole, he has passed as a very honest man.

Gentlemen, when you come to consider that, character goes but a very little, and indeed no way at all, towards proving his innocence.

In the first place, character can only be of service to a man, where his case hangs, as it were, in equal scales, and it is doubtful whether innocent or guilty ; there it is that a good character stands in some stead, and will balance the scale in his favour. But this is that sort of a case, that this particular character they have given of him will have no weight to repel those several suspicious circumstances that tally so exactly as to his guilt. Might it not happen, that a man betwixt twenty and thirty years of age, dependent in some measure on his father, might have a secret call for money, which he would wish his father, and those friends that are fond of lending him money, not to be acquainted with ? We know very well, there are certain circumstances, some in this capital city of London, where a man might be very hard driven for the want of money, which he would chuse to hide from his friends.

I know nothing of the prisoner's particular

character ; but it is enough for this purpose, that it possibly may be his case : if so, what then has the present character to do with it ? If the circumstances of the outlines are such, can any doubt about believing he is guilty or not ? Then all those other circumstances will have no weight at all to counterpoise the weight of the former.

As I said at first, if upon any circumstances offered on the part of the prisoner, if the weight of evidence on the part of the prosecution is sufficient to charge him, there is nothing in the defence that will lessen it at all.

Gentlemen, he is safe in your hands. I doubt not but that you will do your duty : if you think him guilty you will find him so ; if not, you will acquit him. With regard to the Duke, his Grace has discharged his duty which he owed to the public, which he will at all times do, and is perfectly indifferent about the issue of it.

The jury acquitted the prisoner. (*State Trials*, vol. xix. p. 815.)

#### HORNE TOOKE AND THE LAW.

No one ever made such strenuous but unsuccessful endeavours to become a lawyer as Horne Tooke. We have already given some account of the failure of his application to be called to the bar, (*see vol. i. p. 59*.) and we shall now give a slight sketch of his legal education. To the pro-

fession of the law his father had always expressed himself averse. However, at the age of twenty, and during his residence at the University, he became a member of the Society of the Inner Temple, and proceeded to qualify himself for the bar. This course, it is said, he was induced to take, at the persuasion of Mr. W. Tooke, who had made him most ample promises, all which he most faithfully intended to keep, but was deterred by his avarice. He became acquainted, at this period, with several men who afterwards acquired great celebrity, of whom the following account is given by his biographer. (*See Stephens's Life of Tooke, vol. i. p. 30.*)

“ Our young lawyer, for so he may now be termed, partook of commons regularly, during term time; or, in other words, sat down to his beef or mutton daily, in the hall of his inn of court, with a view of enabling him, in his own phrase, ‘ to eat his way to the bar.’ At this period, he got acquainted with two singular men, each famous in this profession, and with both of whom he was connected in future life: for the one became his defender, and the other his judge.

“ John Dunning, afterwards Lord Ashburton, a native of Devonshire, and the son of an obscure tradesman, was about four years older than himself. Being destitute of patrimony, he repaired to the metropolis, with a view of courting the smiles



of the fickle goddess ; and at length completely succeeded in his views. Notwithstanding his person was unpropitious, and there was a certain huskiness in his speech, yet he became the most successful practitioner of his day. He was the only barrister in the Court of King's Bench capable of arguing a constitutional question with the able and eloquent Chief Justice who then presided there ; and, on more than one occasion, the Earl of Mansfield himself was obliged to yield to the superior force of his arguments. This celebrated pleader was at length brought into parliament, under the auspices of Lord Shelburne ; and, after distinguishing himself in the House of Commons on many trying occasions, finally obtained a peerage, together with the Chancellorship of the Duchy of Lancaster.

“ Lord Kenyon was a native of Wales, who, after being brought up at the desk of an attorney, practised in Chancery with considerable reputation. It was late in life before he attained the dignities of his profession ; and he, who from habits and custom, and congeniality of studies, was enabled to become a most excellent Master of the Rolls, occasionally found his seat uneasy as Chief Justice of the King's Bench, in consequence of being unacquainted with the practice of the common law.

“ These three, while students, and little dream-

ing as yet of their future fortunes, were accustomed to spend much of their time together. Two of them, as has been hinted, afterwards attained patrician honours ; but, at the period now alluded to, the prospects of the third were to the full as promising as those of either of his fellow-students. He, indeed, must have been looked up to as a superior character : for, in addition to his natural talents, he had been educated at two public schools, and finished his studies at a celebrated university ; while they were brought up at little provincial seminaries, and could not boast of any classical attainments whatever.

“ It would appear, however, that none of the parties were very rich at this period, for they lived with a degree of frugality, that will be deemed rather singular, when contrasted with their fortune, wealth, and celebrity. I have been repeatedly assured, by Mr. Horne Tooke, that they were accustomed to dine together, during the vacation, at a little eating-house, in the neighbourhood of Chancery Lane, for the sum of seven-pence halfpenny each ! ‘ As to Dunning and myself,’ added he, ‘ we were generous, for we gave the girl who waited upon us, a penny apiece ; but Kenyon, who always knew the value of money, sometimes rewarded her with a halfpenny, and sometimes with a promise !’

“ It would appear, however, that the partiality of Mr. Horne for the bar was not to be gratified.

His family, who had never sanctioned this attachment, deemed the church far more eligible as a profession, and he was at length obliged to yield, notwithstanding his reluctance, to the admonitions, the entreaties, and the persuasions of his parents. It seems not at all improbable, that a friendly compromise took place on this occasion ; and that an assurance was given of some permanent provision, in case he consented to relinquish his legal pursuits.’

The aversion which his family evinced to the profession which he had chosen, induced young Horne to abandon it ; and accordingly, in the year 1760, he was ordained a priest of the Church of England, a character which he sustained for upwards of twelve years. The political controversies in which, during this period, he had become embroiled, awakened that love of a public life which the profession of the law is so well calculated to gratify ; and his father and mother being now dead, Mr. Horne resolved to resign his gown and resume his legal studies. His circumstances at this time being narrow, four of his friends, (of whom Mr. Sawbridge and Mr. Townsend were two,) generously secured him, by their bonds, the sum of four hundred a year, until he should be called to the bar, though he, in fact, never called for any portion of that money.

“ Horne, now at the age of thirty-seven, began,

in good earnest, to qualify himself for the law, and attained an intimate acquaintance with the labours of some of the greatest English lawyers, amongst whom, he most valued Lord Chief Justice Coke. He had already qualified himself for the bar, when the contest with the American Colonies involved him once more in politics; and, in consequence of his having signed his name to an advertisement issued by the Constitutional Society, in which it was stated, that the Americans had been murdered by the King's troops, Mr. Horne, who was then peaceably eating his commons in the Hall of the Inner Temple, and imagined that his misdeeds had by this time been forgotten, suddenly found himself within the iron grasp of the Attorney General.

“ This office was then occupied by a singular character, Edward, soon after ennobled by the title of Lord Thurlow. Although negligent of his studies during his youth, yet he was fortunate enough to acquire the reputation of considerable talents. Allured at length from indolence, by the siren voice of ambition, he suddenly attained professional and parliamentary eloquence, and his talents, proving fully commensurate with his station, soon justified all the hopes that had been formed of him.—Bold, stern, inflexible, his sombre countenance was generally clothed in terrors.—His look was calculated to appal the guilty, while

from his bushy eye-brows, he seemed to scowl dismay even on innocence.—Yet, underneath this forbidding guise, he is said to have occasionally entertained sentiments of compassion ; to have discerned and respected genius, and to have sometimes rescued obscure merit from the pressure of poverty and contempt. He was at this moment placed on a professional eminence, whence he already discerned the seals, the ermined robe of authority, and the future honours that awaited him.

“ Become at length Chancellor, he seemed to be clothed with powers rather than with dignity ; but in that character he is still remembered for the determined stand made in behalf of a King, while visited by the severest of all human afflictions ; and the spirited assertion of the merits of his own order, in opposition to the spurious pretences of an equivocal ancestry, half royal and half meretricious. (*See Ante, vol. i. p. 42.*)

“ Yet, on the other hand, he never distinguished himself, either as a great lawyer or a great statesman. In the former capacity, he has not left any professional work, by which his name will be known hereafter ; and, in respect to the latter, it can never be said of him, as of one of his predecessors, that he was the author of a bill, every line of which was worth a subsidy ; nor can it be affirmed, in the language applied to another, that he dispensed blessings by his life, and planned them for posterity.

“ The judge who presided at Mr. Horne’s trial, was William Murray, Earl of Mansfield. This nobleman was now in the decline of life, for more than sixty winters had shed their snows upon his head ; but the roses and lilies had not yet forsok his cheeks, and the lustre of his complexion was augmented by means of eyes that seemed to sparkle with genius. His person, if somewhat below the exact standard of beauty, was yet exquisitely formed ; his motions were graceful, his dress neat, becoming, and appropriate. He also possessed a voice replete with music in all its various modulations, and was environed with a certain appearance of dignity, that struck all beholders with awe and veneration.

“ Born in Scotland, and educated at Oxford, he was indebted to a variety of fortunate circumstances for his rise, and to the munificent friendship of an English nobleman,\* for the means of pursuing and adorning his profession.

“ Certain incidental circumstances, early in life, led to attachments of an equivocal and dangerous kind : an elder branch of the family† acted as the

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\* Lord Foley.

† Mr. Murray, of *Broughton*, the *titular* Lord Dunbar, whose talents are said to have been superior to those of the Earl of Mansfield. He is reported to have retained his estates, by making certain disclosures some time after the suppression of the rebellion.

confidential secretary of the grandson of James II. and he himself was accused, in full parliament, by a peer\* of the realm, of having drunk success to the Pretender on his bare knees.

“ Praised and flattered by one of the greatest poets of the age,† he was ushered into the world under the most auspicious circumstances ; while an alliance with a powerful family,‡ gave him all that remained wanting to complete his career,— influence, opportunity, and connexions. Accordingly, his rise was rapid, so that, having early in life attained the highest honours of his profession, he soon became the patron of those to whom he had been originally a client.

“ As a judge, his singular abilities, his almost unbounded knowledge, his sudden and seemingly intuitive anticipations, added a kind of prescience to his character, that astonished all beholders, rendered him conspicuously eminent, and distinguished him from every great magistrate of that day. On the other hand, those very qualities, which constituted his chief excellence, were not unaccompanied with others of a different kind ; and even seemed necessarily to arise out of them. His talent for discernment, occasionally rendered him too quick in his conclusions ; that genius, which at one time enabled him to unravel error

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\* Lord Ravensworth. † Pope.

‡ That of the Earl of Winchelsea.

and detect falsehood, at another made him rather hasty in his decisions ; while a certain peremptory manner, acquired by the ascendancy of his character, seemed to constitute him a dictator on that bench where he ought only to have exercised a limited and concurrent jurisdiction.

“ The Lord Chief Justice was accused of leaning towards those in authority. It was not a Horne and a Junius alone, who propagated these opinions :—Sir John Willes, who afterwards presided in the Court of Common Pleas, many years before, branded him as a Tory, a Jacobite, and a stickler for arbitrary power. Mr. Justice Yates, one of the ablest and most incorruptible men of that day, not only dissented from his notions of law, but voluntarily left the Court of King’s Bench on that very account.”

Mr. Horne was tried on the 4th of July, 1777, and, after a very able defence, the jury found a verdict of ‘ guilty.’ In November, the defendant offered various reasons in arrest of judgment, which were over-ruled, and he was sentenced to pay a fine of 200l. and be imprisoned for the space of twelve months.

In 1779, on applying to be called to the bar, he was rejected by the Benchers, in the manner before related. (*See vol. i. p. 59.*) This was a heavy disappointment, as several attorneys had voluntarily promised him briefs, and he was considered



by that branch of the profession to be eminently qualified to do justice to their clients. His prospects are said to have created a mean jealousy on the part of some practising lawyers ; but the chief opposition arose from another quarter.—His politics were hostile to those in power ; and Lord Mansfield, it is asserted, looked with great alarm upon his appearance in court in the character of a counsel. The objection taken to his eligibility was, that *he was still a clergyman.*

“ To comprehend Mr. Horne’s situation, it may be necessary to recur to an early portion of our history, and thus exhibit the question of *eligibility*, in its various bearings and relations. In former times the clergy engrossed nearly all the learning in the nation, and were accordingly far better qualified than the laity for both ecclesiastical and legal pursuits. The bishop, indeed, presided, in conjunction with the *comes*, or earl, in the county court, and thus, besides taking care of the interests of his own order, conferred additional dignity and skill on the decisions of that tribunal. The inferior clergy, at the same time, appear to have practised with great success in the municipal tribunals ; and as theology had sharpened their wits, and education enlarged their understandings, it is not at all surprising to find that clients should be eager to engage their services,

and flock to them in preference to men less qualified for forensic business.

“ The fortunate, or, perhaps, *unfortunate*, discovery of the Roman code, at Amalfi, in Italy, produced a great change in the institutions of almost every country in Europe. The dignified clergy of that day immediately perceived how advantageous the adoption of the regulations of Justinian would prove to them ; and the Popes, who then pretended to dispose of the thrones of the Cæsars, were eager to support the arbitrary edicts of emperors, who, like themselves, affected to think that both their persons and their rescripts were inviolable.

“ The neighbouring countries cheerfully submitted to the change, and thus engrafted slavery and the civil law on that even-handed gothic jurisprudence which had insured freedom to all the Northern nations.

“ But the sturdy spirit of the English Barons would not permit them to submit, and, during the reign of King Stephen, many severe, but salutary, statutes, were passed against these sinistrous innovations. On this, the reigning pontiff, perceiving that it would be a work of time to subdue the contumacy of a bold and haughty aristocracy, in order to throw discredit on their municipal institutions, inhibited the bishops from assisting in the county courts, and the clergy from practising any

where but before an ecclesiastical tribunal. The prelates obeyed ; but the inferior members of the priesthood could not be so easily induced to relinquish the advantages of a lucrative profession. They accordingly repaired to the common law courts in disguise ; for, to avoid giving scandal by their contumacy, they concealed the ecclesiastical tonsure which designated their order, by means of a black patch, or coif, which is still placed on the back of their wigs at the present day, by all who have attained the dignity of a sergeant. Thus, many of the clergy still continued for ages to practise as before ; and they have never been since prohibited by statute."

The refusal to admit him to his gown, terminated all Mr. Horne's prospects, and contributed to sour and embitter the remainder of his life. On a future occasion he alluded to the conduct of the Benchers of the Inner Temple, who, " having first enticed me to quit one profession," says he, " after many years of expectation, very handsomely supplied its place to me by the negation of the other."

In 1782 Mr. Horne assumed the additional surname of Tooke, at the request, as it was understood, of a gentleman of that name, whose property, it was generally supposed, would devolve upon him. At the commencement of the French Revolution, he took a very active part in the politics of the day, and attended the meetings of

the Constitutional Society. He became, in consequence, one of the chief objects of the prosecutions for high treason, in 1794. On Monday, the 17th of October, in that year, Mr. Tooke was put to the bar. During the whole of that long and singular trial, he conducted himself with exactly the same ease as if he had been employed as counsel for an indifferent person ; and both in the examination in chief and cross-examination, contrived his questions in so able and artful a manner, as to conceal their drift, not only from the witness, but even from the bench and the bar. During the whole trial, which continued by adjournment for the space of six days, neither his spirits nor his resolution forsook him for a moment. His usual good-humour discovered itself, by frequent sallies. One cold night, on retiring from the Old Bailey to Newgate, a lady advancing towards him, pulled up the collar of his coat, and at the same time put a silk-handkerchief round his neck ; while employed thus, he observed, " Pray, Madam, be careful, for I am rather ticklish at present about that particular place." After a consideration of only eight minutes, the jury returned a verdict of Not Guilty.

Mr. Beaufoy having asserted, " that he knew nothing of Mr. Tooke," the latter was extremely indignant, and contrived to mortify Mr. Beaufoy severely, by asking him, in the witness-box,—“ If

he had not complained to him, that Mr. Pitt, after all his services, would scarcely return his bow ?” This question was peculiarly offensive to Mr. Beaufoy, and was said to have occasioned his death, which happened soon after.

After the celebrated examination of Mr. Pitt, on the same occasion, it was observed by Mr. Tooke’s nephew, on their return from court, “that he had got Pitt down, and might have done more with him.” “Yes, I might, John,” was the reply, “but never in my life did I choose to trample on a fallen foe.”

We subjoin the opinions expressed by Mr. Horne on several points connected with the law. Imprisonment for debt, he observed, was first introduced in favour of the Barons, “to enable them to bring their stewards *to book*. Arrest on *mesne* process, or previously to trial, on the simple oath of the plaintiff, originated in a mere fiction of the law, and was an assumed power on the part of the courts of justice. The frequent acts of insolvency all tend to prove that this is an impolitic and injudicious contrivance; but it is no less strange than true, that all the great law lords, with one only exception, constantly “bristled up” whenever the Earl of Moira, with his usual goodness and humanity, proposed a general statute for the relief of Insolvents. As for the present system, it was culpably and flagitiously wrong, being

calculated to give a legal form to fraud ; and to confine the means of oppression to the rich, the profligate, and the unjust. In fine, it operated as an illusory satisfaction to the injured, contributed to the ruin of innocence, as well as the triumph of guilt, and was essentially beneficial to none but marshals, turnkeys, and attorneys."

Of "Blackstone's Commentaries," he was accustomed to say, "that it was a good gentleman's law book, clear, but not deep. He did not approve of Sir William's definitions, and observed, that his explanations of law, as 'a rule of conduct,' meant no more than if he had said, 'that law was law.' I well recollect his animadversions on the change of public opinion respecting the Vinerian Professor, whence he inferred something very like degeneracy on the part of the nation : for he observed, 'that when the Commentaries first made their appearance, they were esteemed so little friendly to freedom as to be quoted on the side of power ; but he had lived long enough to find them cited on the side of liberty !'"

On the name of Bacon being mentioned, Mr. Tooke advocated the cause of this celebrated chancellor. "His judgments in his own court," he observed, "were always dictated by equity, and never once complained of. The accusations against him were minute, frivolous, and vexatious ; while his sentence, 'to be rendered for ever incapable of

any place or employment, to be precluded from sitting in parliament, or coming within the verge of the court, to be fined forty thousand pounds, and remain a prisoner in the Tower during the King's pleasure,' was incommensurate with, and far exceeded his supposed offences. The sums stated to be received, not by him, but by his servants, were presents under the name of *fees*; and the judges and chancellor at this moment, took perquisites, under the name of fees also.

“ Formerly, indeed, they were on a different footing; justice is much more pure now between party and party than heretofore; for at Christmas and Easter, certain customary *compliments* were regularly paid. The same prevailed in the French courts of justice before the Revolution; for there the *rapporteur*, who drew up a summary of the cause, was *spiced*, and it was not uncouth to send a handsome woman with a nosegay, a thing become so common at length, that a name was affixed to it, which proved its frequency, such a lady being denominated a *solliciteuse*, or female solicitor. He believed the truth was, that all the judges in France considered themselves entitled to *épices* before judgment; whereas in England, sums were exacted by the officers of the chancellor, in his name, for seals, &c. after it.”  
(See *Ante*, vol. i. p. 239.)

He observed, “ that upon looking narrowly

into this business, you will find, that his sentence was never executed,—that he was afterwards summoned to parliament,—that he was chastened, as may be seen by his latter writings, by adversity, and that the whole charge must be allowed to have been of a very equivocal nature, for it originated in a court intrigue, during bad times.”

A FROLIC OF LORD THURLOW'S.

“ Returning, by way of frolic, very late at night, on horseback, to Wimbledon, from Addiscombe, the seat of Mr. Jenkinson, near Croydon, where the party had dined, Lord Thurlow, then Chancellor, Pitt, and Dundas, found the turnpike-gate, situate between Tooting and Streatham, thrown open. Being elevated above their usual prudence, and having no servant near them, they passed through the gate at a brisk pace, without stopping to pay the toll; regardless of the remonstrances or threats of the turnpike-man, who running after them, and believing them to belong to some highwaymen, who had recently committed some depredations on that road, discharged the contents of his blunderbuss at their backs. Happily he did no injury.” (*Wraxall's Memoirs of his Own Times*, vol. ii. p. 473.)

MR. JUSTICE TWISDEN'S FALL.

The following anecdote of this learned Judge,  
VOL. II. H



whose name is familiar to the diligent student of Saunders's Reports, is related by Roger North, in his *Examen*. North is speaking of the elevation of Lord Shaftesbury to the Woolsack.

“ His Lordship had an early fancy, or rather freak, the first day of term, (when all the officers of the law, King's Counsel, and Judges, used to wait upon the Great Seal to Westminster Hall,) to make this procession on horseback, as in old time the way was, when coaches were not so rife. And accordingly, the Judges, &c. were spoken to, to get horses, as they and all the rest did, by borrowing and hiring, and so equipped themselves with black foot-clothes in the best manner they could. And divers of the nobility, as usual in compliment and honour to the new Lord Chancellor, attended also in their equipments. Upon notice in town of this cavalcade, all the show company took their places at windows and balconies, with the foot-guard in the streets, to partake of the fine sight, and being once settled for the march, it moved, as the design was, stately along. But when they came to straights and interruptions, *for want of gravity in the beasts, and too much in the riders*, there happened some curvetting, which made no little disorder. Judge Twisden, to his great affright, and the consternation of his grave brethren, was laid along in the dirt. But all at length arrived safe, without the loss of life or

limb in the service. This accident was enough to divert the like frolic for the future, and the very next term after, they fell to their coaches, as before. I do not mention this as any way evil in itself, but only as a levity and an ill-judged action, for so it appeared to be, in respect to the perpetual flux of solemn customs and forms, that will happen in the succession of ages, not reducible back to antiquity, nor needing so to be, which makes usages that are most fitting in one time, appear ridiculous in another. As here the setting grave men, used only to coaches, upon the menage on horseback, only for the vanity of shew, to make men wonder, and children sport, with hazard to most, mischief to some, and terror to all, was very impertinent, and must end as it did, *en ridicule.*" (*Examen*, p. 59.)

Roger North proceeds to give an account of Lord Shaftesbury's judicial conduct, not very favourable to his Lordship's character. As a proof of "his little regard to decency and morality," he states, "that he did not concern himself to use a decent habit, as became a Judge of his station. For he sat upon the bench in an ash-coloured gown, silver laced, and full-ribbed pantaloons, displayed without any black at all in his garb, unless it were his hat, which now I cannot say positively, though I saw him, was so." (*Examen*, p. 60.) By other writers, Lord Shaftesbury's

judicial merits have been differently represented. "With what prudence, candour, honour, and integrity, he acquitted himself in that weighty employment, the transactions of the Court of Chancery, during his Chancellorship, will best testify." (*Rawleigh Redivivus*, p. 53.)

DUNNING AND WALLACE.

Both these celebrated lawyers died in the autumn of 1783. The following anecdote is related of them by Sir Nathaniel Wraxall: "I have been assured, that a short time before Lord Ashburton's decease, these two distinguished lawyers, finding themselves by accident in the same inn at Bagshot, the one on his way down into Devonshire, and the other returning from thence to London; both conscious that their recovery from the disorders under which they laboured was desperate, expressed a strong mutual wish to enjoy a last interview with each other. For that purpose they were carried into the same apartment, laid down on two sofas nearly opposite, and remained for a long time in conversation. They then parted, as men who could not hope to meet again in this world. By Wallace's decease, Lee became Attorney General, and Mansfield was replaced in his former situation of Solicitor General, which he had filled under Lord North's administration." (*Wraxall's Own Times*, vol. ii. p. 385.)

LORD MANSFIELD'S RETIREMENT FROM THE  
BENCH.

On his Lordship's resignation, the following letter was sent to him, signed by all the Counsel of the King's Bench bar, who had practised in that Court during his administration.

*“ To the Earl of Mansfield.*

“ MY LORD,

“ It was our wish to have waited personally on your Lordship in a body, to have taken our public leave of you on your retiring from the office of Chief Justice of England; but judging of your Lordship's feelings by our own, and considering, besides, that our numbers might be inconvenient, we desire in this manner affectionately to assure your Lordship, that we regret with a just sensibility, the loss of a magistrate whose conspicuous and exalted talents conferred dignity upon the profession, whose enlightened and regular administration of justice made its duties less difficult and laborious, and whose manners rendered him pleasant and respectable.

“ But while we lament our loss, we remember with peculiar satisfaction, that your Lordship is not cut off from us by the sudden stroke of painful distemper, or the more distressing ebb of those extraordinary faculties which have so long

distinguished you amongst men ; but that it has pleased God to allow to the evening of an useful and illustrious life the purest enjoyments which nature has ever allotted to it, the unclouded reflections of a superior and unclouded mind over its varied events, and the happy consciousness that it has been faithfully and eminently devoted to the highest duties of human society in the most distinguished nation upon earth.

“ May the season of this high satisfaction bear its proportion to the lengthened days of your activity and strength.”

(Signed.)

The letter, thus signed, was transmitted to Lord Mansfield by Mr. Erskine, at the desire of Mr. Bearcroft, the senior of the King's Bench bar, and the other subscribers, when his Lordship returned by the servant the following answer.

“ *To the Honourable T. Erskine, Sergeant's Inn.*

“ DEAR SIR,

“ I cannot but be extremely flattered by the letter which I this moment have the honour to receive.

“ If I have given satisfaction, it is owing to the learning and candour of the bar ; the liberality and integrity of their practice freed the judicial investigation of truth and justice from diffi-

culties. The memory of the assistance I have received from them, and the deep impression which the extraordinary mark they have now given me of their approbation and affection has made on my mind, will be a source of perpetual consolation in my decline of life, under the pressure of bodily infirmities, which made it my duty to retire.

I am, dear Sir, with gratitude to  
you and the other gentlemen,  
Your most affectionate  
and obliged humble Servant,

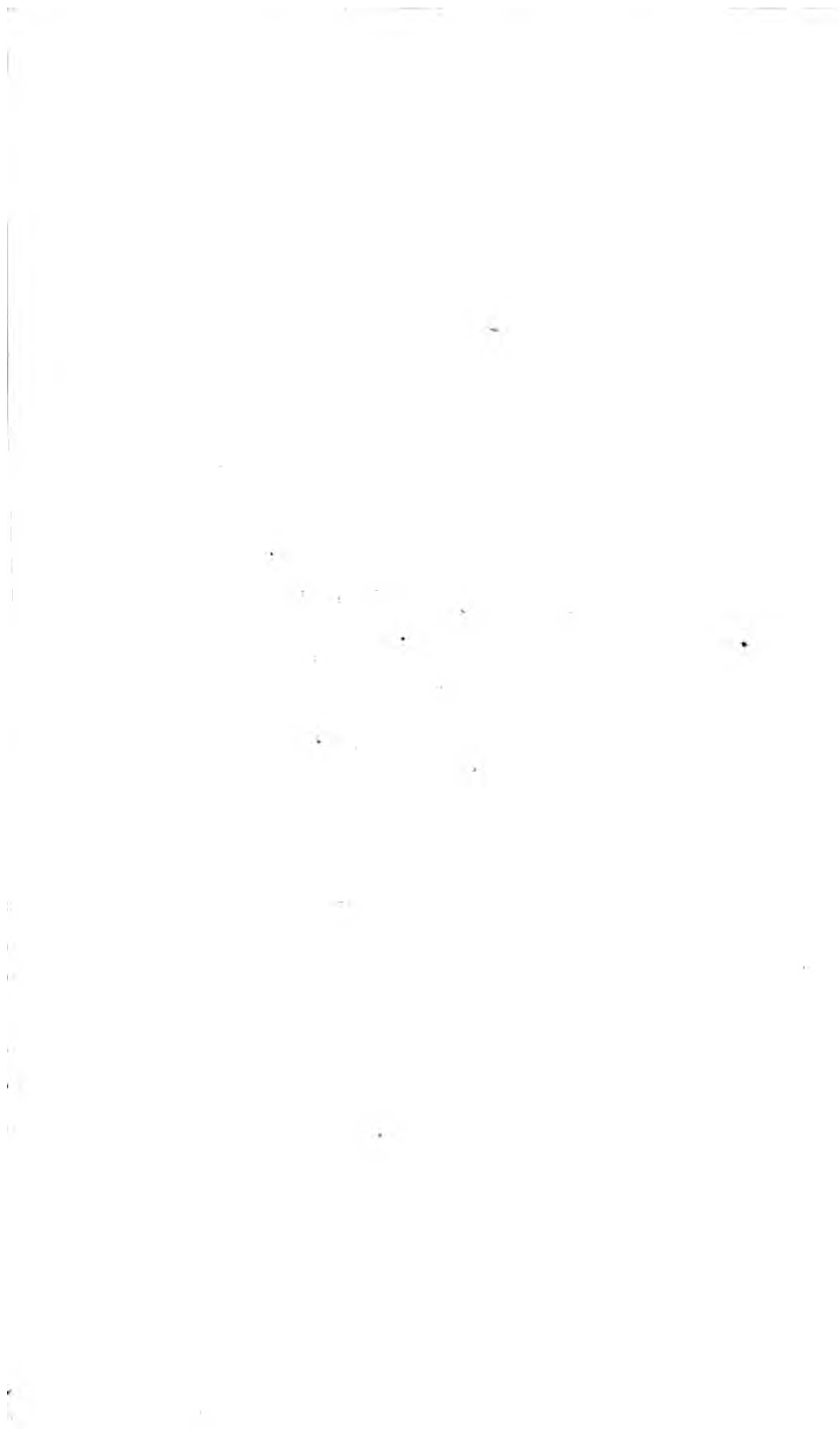
“ MANSFIELD.

“ *Caen-Wood, June 18, 1788.*”

THE SLIGO CATS.

“ When Mr. Curran was passing his first summer at Cheltenham, generally inattentive as he was to his dress, he was in a sort of disguise, and little notice being taken of him, he had resort to a story to draw himself into notice. With the straight forward credulous character of the English he was perfectly well acquainted; with which he often eked out a tale. The conversation of the table turning altogether on the stupid, savage, and disgusting amusement of cock-fighting, he was determined to put an end to it by the incredible story of the *Sligo cats*. He prefaced

it by saying, that in his country there prevailed a barbarous custom of fighting these animals in the same way as mastiffs are fought in England, or bulls in Spain. That being once in Sligo, a fishing-town in the north-west of Ireland, he was invited to see this grand spectacle. That the people of rank and condition, in that part of the country, had these cats regularly bred and trained for the purpose, and crowded into town and took lodgings for the week, whenever these games were to be celebrated. The Corinthian chariot races were never more highly the scenes of gaiety and mirth in Greece than these were at Sligo. At one of them, three matches were fought on the first day with the most furious courage, with all the intrepidity of valour and skill, all that brutal rage that feudal clans could furnish; and before the third of them was finished, (on which bets ran very high) dinner was announced in the inn where the battle was fought. The company agreed, though reluctantly, to return and to lock up the room, leaving the key in trust with Mr. Curran, who protested to God, that he never was so shocked, that his head hung heavy upon his shoulders, that his heart sunk within him, on entering with the company into the room, and finding that the cats had actually eaten each other up, save some little bits of tails which were scattered







LORD CAMDEN.

round the room.—(*O'Regan's Memoirs of Curran, p. 36.*)

## LORD CAMDEN.

The portrait of Lord Camden will ever occupy a most distinguished place in the gallery of English lawyers. In the course of his arduous professional life he supported, with one single exception, those great principles of constitutional freedom to which many of our lawyers have been the determined enemies. His argument in Murray's case (1752)—his judgment in that of Wilkes, and the general tenor of his conduct in parliament, especially on occasion of the American war, were all highly honourable to his judgment and his integrity. In the one instance to which an allusion is made above, the sound political principles which actuated him upon other occasions appear to have been forgotten. He defended the issuing of an illegal proclamation, on the dangerous ground of state expediency, and in the debate on this question the spectacle presented itself of Lord Camden arguing on the side of the prerogative, and Lord Mansfield on that of the constitution. It would, however, be most unjust to allow a single aberration from political rectitude to weigh against a life zealously devoted to patriotic services. The eloquence of Lord Camden

is said to have been distinguished by its captivating and graceful simplicity, and by appeals to the judgment rather than to the passions.\*

MR. HARGRAVE AND CICERO.

The splendid talents of Mr. Hargrave as a lawyer are universally acknowledged, and the debt of gratitude due to him from the profession has always been cheerfully paid. It must, however, be confessed, that in some instances he did not manifest that discretion which might have been expected from a man of his sound judgment and rare talents. He was essentially a lawyer, and whenever he stepped out of the pale of his profession, it was with the loss of some portion of that high reputation which waited upon his legal character. "Mr. Hargrave," says the ingenious author of the Pursuits of Literature, "is universally acknowledged to be one of the soundest and most learned lawyers in the Kingdom; but when he will step out of his way and turn rhetorician, and fancy he is writing like Cicero de Oratore, there is some difference be-

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\* He was born in 1713, and terminated his long and honourable life in 1794.

tween the English and the Roman Advocate." The passage which gave rise to this remark may be found in the preface to Sir Matthew Hale's "Jurisdiction of the Lords' House of Parliament," in which Mr. Hargrave has panegyriced the Rt. Hon. Charles Yorke in the following strain.

"He was a modern *constellation* of English Jurisprudence, whose *digressions from the exuberance of the best juridical knowledge were illuminations*, whose *energies* were oracles, whose *constancy of mind* was won into the *pinnacle* of our English Forum at an inauspicious moment; whose *exquisiteness of sensibility* at almost the next moment from the impressions of imputed error, *stormed the fort* of even his highly cultivated reason, and so made elevation and extinction contemporaneous,—and whose *prematureness of fate* has caused an almost *insuppliable interstice* in the science of English equity."\*

The preface to the law tracts likewise furnishes some instances of the very extraordinary style which the learned recorder of Liverpool occasionally assumed.

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\* The following are the lines in the "Pursuits of Literature" to which this passage is appended:

"With Hargrave to the Peers approach with awe,  
And sense and grammar sink in Yorke and law."

## THURLOW AND WEDDERBURNE.

“We all remember when Thurlow and Wedderburne (now the Lords Thurlow and Loughborough) were first called into Parliament, how soon they proved what manner of men they were. They separated the lawyer from the statesman. It was a proud day for the bar at that period ; for never before that day, were such irresistible overbearing powers and talents displayed by the *official* defenders of a minister :

Hos mirabantur Athenæ

Torrentes, pleni et moderantes fræna theatri.

“Lord North indeed, when he appointed Thurlow and Wedderburne (*his*) Attorney and Solicitor General, meant no more than to give spirit, eloquence, and argument, to his measures ; but in effect he hung a mill-stone on the necks of all their successors.” (*Prefatory Epistle, prefixed to the Translation of the Greek and Latin passages in the Pursuits of Literature, p. 26.*)

“Lord Loughborough, who owed to Lord North his recent elevation to the peerage, constituted one of his ablest advocates and most zealous supporters in that house. Wedderburne had risen through the gradations of the law, amidst the discussions of Parliament, side by side with Thurlow. More temperate, pliant, artful, and accommodating in his manners, than the chan-

cellor, he equalled that nobleman in eloquence, if he did not even surpass him. Churchill, in one of his satires, has thought proper to describe Wedderburne, as "Mute at the bar, but in the Senate loud." No man, however, in public life, possessed more versatility of talents, or abilities better adapted to every situation. He proved himself as refined a courtier at St. James's as he was an able lawyer at Westminster. His defence of Lord Clive, when under accusation before the House of Commons, augmented Wedderburne's legal as well as parliamentary reputation. It had been perpetually progressive since that time, and rendered him, whether a member of the lower or of the upper house, one of the most distinguished ornaments of the long robe." (*Wraxall's Own Times*, v. ii. p. 54.)

## SIR NICHOLAS BACON.

"I have come to the Lord Keeper," says Puttenham, "and found him sitting in his gallery alone, with the works of Quintilian before him. Indeed, he was a most eloquent man, of rare wisdom and learning, as ever I knew England to breed, and one that joyed as much in learned men and good wits; from whose lips I have seen to proceed more grave and natural eloquence than from all the orators of Oxford or Cambridge."

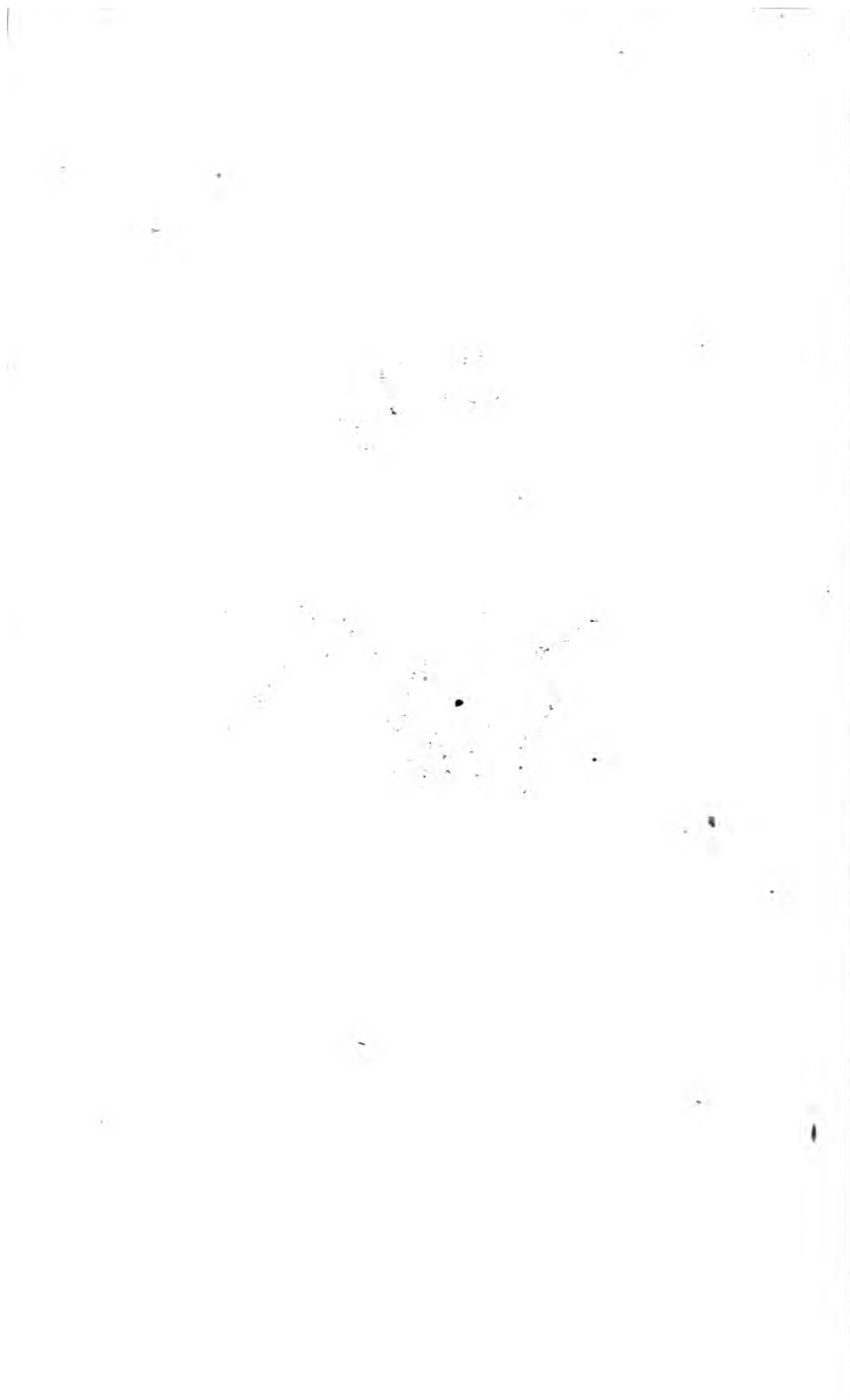
## ERASMUS'S CHARACTER OF SIR T. MORE.

“ More seems to be made and born for friendship, of which virtue he is a sincere follower and very strict observer. He is not afraid to be accused of having many friends, which, according to Hesiod, is no great praise. Every one may become More's friend ; he is not slow in chusing ; he is kind in cherishing, and constant in keeping them. If by accident he becomes the friend of one whose vices he cannot correct, he slackens the reins of friendship towards him, diverting it rather by a little and little, than by entirely dissolving it. Those persons whom he finds to be men of sincerity, and consonant to his own virtuous disposition, he is so charmed with, that he appears to place his chief worldly pleasure in their conversation and company. And although More is negligent in his temporal concerns, yet no one is more assiduous than himself in assisting the suits of his friends. Why should I say more ? If any person were desirous to have a perfect model of friendship, no one can afford him a better than More. In his conversation there is so much affability and sweetness of manner, that no man can be of so austere a disposition but that More's conversation must make him cheerful ; and no matter so unpleasing but that with his wit



**SIR THOMAS MORE.**





he can take away from it all disgust." (*Erasm. Epist. ad Ul. Haller.*)

## LORD CHANCELLOR BATHURST.

"His son (the Lord Chancellor Bathurst) may be considered the least able lawyer to whom the great seal of this country was confided, in the course of the eighteenth century. For Lord King, who became Chancellor under George I. though he survived his faculties and is said to have driven on the Bench, originally displayed eminent parts, which deservedly raised him from an obscure origin, his father having been a bookseller at Exeter, to that great legal dignity. Yet Lord Bathurst held his office during seven or eight years, and I have been assured that his decrees, while at the head of the Court of Chancery, are in general regarded by the bar as wise, just, and unexceptionable. He was of all the members of the cabinet the most advanced in age; nor could he, like his father, boast of exemption from the infirmities usually attendant on that period of life. A degree of caducity was visible in the frame, and even his mind did not appear to be wholly exempt from decay. In parliament his talents were rarely exerted; but his unsullied character and moral qualities entitled him to universal respect."— (*Wraxall's Own Times, v. i. p. 532.*)

## SIR ROBERT WISEMAN AND MR. HICKERINGILL.

Sir Robert Wiseman was Dean of the Arches in the reign of Charles II. Of Mr. Hickeringill, Rector of All Saints, in Colchester, and a staunch opponent of the Civilians, some account will probably be given in a subsequent part of the present work. He was cited before Sir Robert Wiseman to answer certain alleged irregularities in the performance of his clerical duties. The following is his own account of his appearance at Doctors' Commons.

“ When Mr. Hickeringill came into the Hall at Doctors' Commons, June 8, 1681, he went up to the Doctors, habited in their formalities, and with their caps on, and he also put on his hat ; which Sir Robert Wiseman no sooner espied, but he bade Mr. Hickeringill be uncovered. But Mr. Hickeringill replied to him in Greek, and to all Sir Robert's repartees ; and discoursed for a considerable time : Mr. Hickeringill discoursed still in Greek ; at length Sir Robert's patience being spent, (and none of the Doctors would find more Greek to answer Mr. Hickeringill than Sir Robert did,) it was ordered, that this appearance, and answer in Greek only, should be registered as a non-appearance. Wherefore, then Mr. Hickeringill did repeat in English that he had said in Greek ; telling Sir Robert that he first demanded to see or hear, their

commission or authority for citing him thus from his family and home, and out of the diocese where he dwells, contrary to 23 H. viii. c. 9; and that till it did appear to him, that this was his Majesty's Court Ecclesiastical, he would pay no respect to it, nor be uncovered before men that were all, (except Sir Robert,) his juniors at the University, and most of them very much his inferiors in many other respects, not suitable to his modesty there to particularize; degrees, (so easily purchased,) and empty titles, being admired by none but women and fools. Whereupon, instead of shewing a commission, Sir Robert again bade him be uncovered, which still he refused; then Sir Robert made signs to an old fellow, a kind of sumner, to come behind Mr. Hickeringill and snatch his hat off, which he did; but Mr. Hickeringill forthwith snatched his hat from the said fellow, and clapt it fast upon his head, and there kept it during his stay there; throwing amongst them a protestation, which was read to the Court." (*News from Doctors' Commons, p. 2.*)

## CHARACTER OF DUNNING.

"Never, perhaps, did nature enclose a more illuminated mind in a body of meaner and more abject appearance. It is difficult to do justice to the peculiar species of ugliness which characterized his person and figure, though he did not

labour under any absolute deformity of shape or limb. A degree of infirmity, and almost of debility or decay in his organs, augmented the effect of his other bodily misfortunes. Even his voice was so husky and choaked with phlegm, that it refused utterance to the sentiments which were dictated by his superior intelligence. In consequence of this physical impediment, he lay always under a necessity of involuntarily announcing his intention to address the House some time before he actually rose, by the repeated attempts which he made to clear his throat. But all these imperfections and defects of configuration were obliterated by the ability which he displayed. In spite of the monotony of his tones, and his total want of animation, as well as grace, yet so powerful was reason when flowing from his lips, that every murmur became hushed, and every ear attentive. It seemed, nevertheless, the acute sophistry of a lawyer, rather than the speech of a man of the world, or the eloquence of a man of letters and education. Every sentence, though admirable in itself, yet resembled more the pleading of the bar than the oratory of the senate. So difficult is it for the most enlightened intellect to throw off the habit of a profession. Dunning neither delighted nor entertained his hearers ; but he subdued them by his powers of argumentative ratiocination, which have rarely been exceeded. They soon after-

wards raised him to the peerage ; just in time to attain that elevation, as his constitution speedily sunk under accumulated disorders, which hurried him prematurely to the grave. This extraordinary man, who was not exempt from great infirmity of mind, felt, or perceived so little his corporeal deficiencies, as to consider his person with extraordinary predilection. Fond of viewing his face in the glass, he passed no time more to his satisfaction than in decorating himself for his appearance in the world. He and Barré, who were fellow-labourers in the same vineyard, represented likewise the same borough, Calne ; and belonged, or at least looked up, to the same political chief, Lord Shelburne. They consequently were animated by no common principle of union or of action with Fox and Burke, except one, that of overturning the administration. On all other points, a secret jealousy and rivalry subsisted between the adherents of the Shelburne and the Rockingham parties." (*Wraxall's Own Times*, vol. ii. p. 41.)

## SIR GEOFFREY PALMER.

“ After the happy Restoration of Charles II. Sir Geoffrey Palmer was the first Attorney General, and held the place to the time of his death. He was a man of great ability in the law, and in that profession was what a lawyer should be, that is,

master of, and not superior to, so as to despise, the learning of his own profession : but yet his wisdom and generosity were incomparable. During all the troubles of the times he lived quiet in the Temple, a professed and known cavalier ; and no temptation or fear ever shook his principles. He lived then in great business of conveyancing, and had no clerks but such as were strict cavaliers. One, I have heard, was so rigid, that he could never be brought to write Oliver with a great O. And, it was said, the Attorney chose to purchase the Manor of Charleton, because his master's name sounded in the style of it. Such amusements may be allowed to please and divert a zealous old gentleman that lived to see and enjoy all the fruits of his honest ambition. When he was first made Attorney General he had means, by the universal renewal of grants, and the floating of all manner of concerns of the Crown, which settling must pass by him, to have amassed vast wealth, as others have done and do. But he was mindful of his old friends, the cavaliers, and generally gave them their fees, and not only to such as he knew poor, for a sort of charity, but to others that had less need, out of generosity, and as a mark of his friendship and recognition of their merits. It was affirmed, that the patents granted to General Monk, passing his office, came to near 2500l. in fees, and for honour and gratitude he

took not a penny for himself. Such instances are rare, and no wonder, for in our days, the like would fail of due applause, and be despised as a foolish weakness. It was observed, that all those persons who were in his conversation or acquaintance, as well as employment, were not only loyal, but in all other respects very worthy men, and such as adhered to him to the last hour of his life, and after he was gone, kept their integrity and resolution to the end of their own, for very few, if any, of them are yet living. He was a great lover of his profession, and took a pleasure to encourage young students, and admitted divers of them, in his Society of the Middle Temple, to have access to him at evenings, and to converse familiarly with him, and he was not only affable, but condescended to put cases, as they term it, with them." (*North's Examen*, p. 510.)

The encouragement and patronage extended by Sir Jeffrey to the Lord Keeper North, in the earlier part of his life, are commemorated by Roger North, both in the Examen and the Memoirs of the Lord Keeper.

In the latter work, the author has given an account of Sir Jeffrey's success in converting his lady from Popery.

"He had married a lady who was a Roman Catholic, upon terms not to meddle with each other's religion; but each to enjoy their several



church professions, without any mention to the contrary, and both kept parole religiously; and yet, by dint of his egregious piety and integrity, without any other arguments or eloquence, he converted her to the Communion of the Church of England, and it fell out thus: On Sunday morning his lady would rise with him, which she had used not to do, and he told her she need not, for her church began later, and asked, *Why she should rise so soon?* She answered, *To go to church with him,*—and so she did, and continued so doing all the rest of her life. And to some of her family she declared, that she found his knowledge so great, and his course of life so truly pious and virtuous, that she concluded he must needs be in the right, and that she would submit her judgment to his, rather than to any other human authority upon earth." (*Life of North, p. 39. 4th Edition.*)

SIR THOMAS MORE'S QUESTION TO THE FOREIGN  
DOCTORS.

“When at Bruges, in Flanders, an arrogant fellow had set up a Thesis, that he would answer whatsoever question could be propounded to him, in any art whatsoever. Sir Thomas made this question to be put up, whether *averia capta in withernamia sunt irreplegiabilia?* adding, that there was one of the English Ambassador's reti-

nue that would dispute with him thereof. This braggadocio, not so much as understanding those terms of our common law, knew not what to answer to it, and so he was made a laughing-stock to the whole city." (*More's Life of More*, p. 60. *Jortin's Life of Erasmus*, vol. i. p. 175.)

A similar anecdote is told of Lord Keeper Williams. The Lord Keeper, it must be remembered, was a churchman, and was therefore supposed to be wanting in his knowledge of the common law. "The terms of the common law, as in all other professions and sciences, seem barbarous to the vulgar ear, and had need to be familiarized with pre-acquaintance; which being the primar of that rational learning, he had inured himself to it long before, and was nothing to seek in it. Yet one of the bar thought to put a trick upon his freshmanship, and trouled out a motion crammed like a Granada with obsolete words, coins of far-fetched antiquity, which had been long disused, worse than Sir Thomas More's *averia de withernam* among the masters of Paris. In these misty and recondite phrases, he thought to leave the new Judge feeling after him in the dark, and to make him blush that he could not give answer to such mystical terms as he had conjured up. But he dealt with a wit that was never entangled in a bramble bush; for, with a serious face, he answered him in a cluster of most crabbed notions,

picked up out of metaphysics and logic, as categorical and syncategorical, and a deal of such drumming stuff, that the motioner, being foiled at his own weapon, and well laughed at in court, went home, with this new lesson, That he that tempts a wise man in jest, shall make himself a fool in earnest." (*Hacket's Life of Williams, part i. p. 75.*)

The subtle theses of the schoolmen and logicians are admirably ridiculed in the Memoirs of Martinus Scriblerus, where a number are collected from the works of St. Thomas Aquinas, Saurez, and others. The following question would surely have puzzled the braggadocio of Bruges fully as much as that proposed by Sir Thomas More. *An præter esse reale actualis essentiæ, sit aliud esse necessarium quo res actualiter existat?* In English, Whether besides the real being of actual being, there be any other being necessary to cause a thing to be?

CHARACTER OF LORD THURLOW, BY SIR  
NATHANIEL WRAXALL.

Lord Thurlow, who at this time had held the Great Seal between two and three years, though, in point of age, the youngest member of the cabinet, enjoyed, in many respects, greater consideration than almost any other individual composing it. He had been indebted in his youth to the in-

defatigable exertions and importunities of the celebrated Duchess of Queensbury, the friend of Gay, Pope, and Swift, for first procuring him from Lord Bute a silk gown, to which distinction he long ineffectually aspired. His talents had subsequently excited admiration in both Houses of Parliament no less than at the bar, while he sat in the House of Commons, as Attorney General, during more than seven years, from 1771 to 1778.

Lord North derived the greatest assistance from his eloquence and ability. His removal to the House of Peers would even have left an awful blank on the Treasury Bench in the midst of the American war, if his place had not, during the two succeeding years, been ably, perhaps fully, supplied by Wedderburn. As Speaker of the Upper House, Lord Thurlow fulfilled all the expectations previously entertained of him. His very person, figure, voice, and manner, were formed to lend dignity to the Woolsack. Of a dark complexion, and harsh, but regular, features, with a severe and commanding demeanour, which might be sometimes denominated stern, he impressed his auditors with awe before he opened his lips. Energy, acuteness, and prodigious powers of argument, characterised him in debate. His comprehensive mind enabled him to embrace the question under discussion, whatever it might be, in all its bear-

ings and relations. Nor, if we except Lord Camden, who was already far advanced in life, did the Opposition possess any legal talents in the House of Peers that could justly be put in competition with those of Lord Thurlow.

These admirable parts were, nevertheless, by no means unaccompanied with corresponding defects. As Lord Chancellor, he was accused of procrastination, in suffering the causes brought before him in his Court to accumulate without end. Perhaps this charge, so frequently made against those who have held the Great Seal, was not more true, as applied to him, than of others who succeeded him in his office. But, even in Parliament, his temper, morose, sullen, and untractable, sometimes mastering his reason, prevented him from always exerting the faculties with which nature had endowed him, or at least, clouded and obscured their effect. In the Cabinet, these defects of character, which rendered him often impracticable, were not to be surmounted by any efforts or remonstrances. It can hardly be believed, that at ministerial dinners, where, after the cloth was removed, measures of state were often discussed or agitated, Lord Thurlow would frequently refuse to take any part. He has even, more than once, left his colleagues to deliberate, whilst he sullenly stretched himself along the chairs, and fell, or appeared to fall, fast asleep.

If I had not received this fact from an eye-witness, and a member of that Cabinet, I should not, indeed, venture to report so improbable a circumstance.

Notwithstanding the ruggedness and asperity which he displayed, qualities that procured him the nick-name of *the Tiger*, no man could at times appear more pleasing, affable, and communicative in conversation. I have once or twice seen him on such occasions, which were more highly valued, because they were rare or unexpected. During the period of his youth, he had led a dissolute life, and had given proofs of his devotion to pleasures, scarcely compatible, as it might have been thought, with the severe studies and profession of the law. To these irregularities the Duchess of Kingston imprudently ventured to allude, while on her trial at the bar of the House of Lords, when Thurlow was Attorney General. Like Henley, Earl of Northington, his predecessor in the high office of Chancellor, Thurlow mingled oaths and execrations with his common discourse. In the afternoon of life, conviviality, wine, and society, unbent his mind. It was with Mr. Rigby, Lord Gower, Lord Weymouth, Mr. Dundas, and a few other select friends, that he threw off his constitutional severity. At the Pay-Office in Whitehall, where Rigby then resided, Lord Thurlow forgot the double toils annexed to his situation as Head of

the Law and as Minister of State. Possessed of faculties so transcendent, however mingled with human weakness and infirmity, he must always be considered as one of the most eminent individuals who sat in the Councils of George the Third at any period of his reign. (*Wraxall's Own Times*, vol. i. p. 527.)

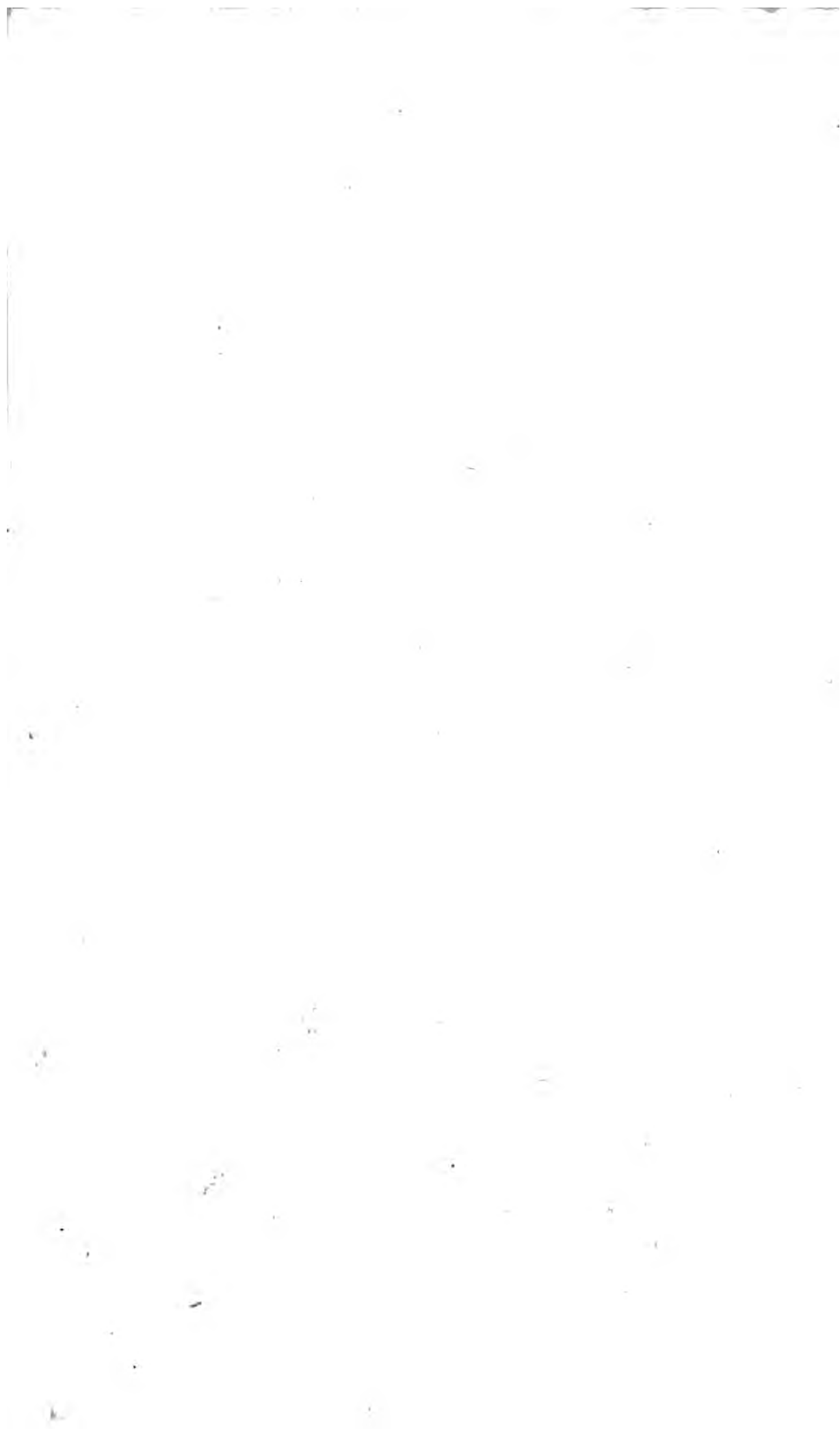
Cowper, the poet, seems to have entertained a more favourable opinion of Lord Thurlow's character, and, on his promotion to the Chancellorship, complimented him with the following verses :

Round Thurlow's head, in early youth,  
And in his sportive days,  
Fair Science pour'd the light of truth,  
And Genius shed his rays.

“ See ! ” with united wonder cried  
Th' experienced and the sage,  
“ Ambition in a boy supplied  
With all the skill of age !

Discernment, eloquence, and grace,  
Proclaim him born to sway  
The balance in the highest place,  
And bear the palm away.”

The praise bestow'd was just and wise ;  
He sprang impetuous forth,  
Secure of conquest, where the prize  
Attends superior worth.—







LORD ELDON.

So the best courser on the plain,  
Ere yet he starts, is known ;  
And does but at the goal obtain  
What all had deem'd his own.

## LORD ELDON.

The character of Lord Eldon is not yet become matter of history, and it is therefore difficult to appreciate it properly. It will, perhaps, on this account, be better to confine the present brief notice of this very eminent judge to an enumeration of the steps by which, from almost a humble situation in life, he attained the highest honours within the grasp of an English subject. He was admitted a student of the Middle Temple in 1772, and was called to the Bar in Hilary Term, 1776. For some time he practised almost exclusively as an Equity draughtsman, but finding so sedentary an occupation injurious to his health, he appeared in Court, and quickly rose into notice. In the year 1783, a patent of precedence was granted to him; and soon afterwards he was introduced into Parliament for the Borough of Webly, in Hereford. In 1788, Mr. Scott was knighted on being raised to the office of Solicitor-General, and in

1793, he was appointed Attorney-General. This office he held until the year 1799, when he was created a Peer, and made Chief Justice of the Common Pleas. Four years afterwards he was raised to the Woolsack, a seat which he has since continued to occupy, with the exception of the short period during which Lord Erskine held the Seals.

LORD KEEPER WILLIAMS'S NOTION OF THE FLEET.

“One Beeston, who had been committed from the power of the high Court of Chancery, loathing this captivity, besought this new officer (L. K. Williams) to be released and was denied; he cries out for mercy to the King, roars out that the parliament might hear him, follows the Lord Buckingham with his clamours, who advised the Lord Keeper to consider upon it. It is a maxim in old Columella, *lib. vi. c. 2, perversa contumacia plerumque sævientem fatigat, &c.*; boisterous impertunity thinks to fare better than modest innocency; but he gave the Lord Marquis this answer,

“MY NOBLE LORD,

“Decrees once made must be put in execution; else I will confess this Court to be the greatest

imposture and grievance in the Kingdom. The damned in hell do never cease repining at the justice of God; nor the prisoners in the Fleet at the decrees in Chancery. In the which hell of prisoners, this one for antiquity and obstinacy may pass for a Lucifer. I neither know him nor his cause, but as long as he stands in contempt, he is not like to have any more liberty." (*Hackett's Life of Williams, Part i. p. 71.*)

## POINTS OF GENTOO LAW.

The following extracts are made from a translation of the Gentoo code, executed from a Persian version of the original Shanscrit, by Mr. Nathaniel Brassey Halhed, during the government of Warren Hastings, and dedicated to him by the translator.

The venerable principle of legitimate government and paternal sway, we find, at the outset, enforced in a very emphatic manner. "Providence," says the ancient legislator, "created the magistrate for the guardianship of all. The magistrate must not be considered as a mere man; even in the case of the magistrate being a child, he must still be looked upon in the light of the *Dewtah*, or Deity; in truth, the magistrate is the *Dewtah* in a human form, born in this world. Providence created punishment for the preservation of the magistrate." It is only proper that so

sublime a personage as the magistrate should be properly accoutred, and he is accordingly enjoined to cause to be made for himself a round umbrella, of the feathers of the bird *lut*, or the peacock. When provided with this appendage, he is in a proper situation to consult with his councillors, "whereupon," says the law, "he shall chuse a retired place, on the top of the house, or on the top of a mountain, or in the desert, or some such secret recess, and shall hold his council there; and in places where there are parrots or other talkative birds, he shall not hold his council while they are present." To this provident caution against the loquaciousness of the feathered race, the law adds two injunctions, which are highly necessary to be observed in all legitimate governments. Hypocrisy and treachery are the virtues of this good old form of government; and therefore "the magistrate shall keep such a guard upon himself, that his foibles may never be discovered, and by sending his spies, he shall inform himself of the faults of others."

The methods prescribed for attaining that very desirable but often very difficult object, viz. the recovery of debts, are curious.—"If a creditor on the day appointed for payment, demands his money of the debtor, who refuses to discharge the debt," first he shall treat the matter with some delicacy, and trying what indirect influence will

do, "he shall speak to the friends and relations of the debtor, and procure them to demand payment." If this proves unsuccessful, his next step is a far more common one: "he shall go in person and importune for his money, and stay some time at the debtor's house, without eating or drinking." If these means fail, he shall next try the effect of taking the debtor to his own house: "he shall carry the debtor home with him, and having seated him before men of character and reputation, shall there detain him." It is not stated whether the debtor is, in this case, to eat and drink in the creditor's house; if so, the good fare, in company with "men of reputation," might have some efficacy. If even this method should not succeed, the law next allows a little roguery to be hazarded: "he shall endeavour, by feigned pretences, to get hold of some of his goods."—This is an old *ruse de guerre*, and is chiefly remarkable here as being enjoined by legal sanction. If all these circuitous proceedings prove unavailing, the creditor is then permitted to wage serious war; he "ramps for his money;" and by an operation in the nature of a *feri facias*, pounces, "with one fell swoop," on the wife and "all the little ones" of the defendant: "if he cannot by evasive means, distrain the debtor's goods, he shall then seize and confine the debtor's wife, children, cattle, buffaloes, horses, and such kind

of useful animals ; also his pots, clothes, mats, and furniture ; and seating himself at the debtor's door, shall there receive his money." If even these fierce extremes are unable to overcome the obstinacy or the poverty of the debtor, nothing remains to be tried but the *ultima ratio* of all plaintiffs, the last and plenary remedy of the *capias ad satisfaciendum*; "he shall seize and bind the debtor's person, and procure, by forcible means, a discharge of the debt."

That portion of the law which treats of the division of inheritable property, is laid down with the utmost precision, and with strict attention to the natural claims of the inheritor. A man is considered as only tenant for life of his own property, and cannot distribute his effects by will. In the course of these regulations, the legislator proceeds with great ease to the most complex relations, and threads the degrees of affinity with as much dexterity as one of his native jugglers shews in keeping up half a dozen balls at once. At last he arrives at the concluding specimen of his art, and breaks out in a perfect paroxysm of unintelligibility:—"If there be no grandfather's grandfather's father's brother's grandson, it goes to the grandfather's grandfather's grandfather's daughter's son : if there be but one grandfather's grandfather's grandfather's daughter's son, he shall obtain the whole ; if there are several grand-

father's grandfather's grandfather's daughter's sons, they shall all receive equal shares."

In the matter of arbitration, we find some rules laid down not unworthy of the notice of those gentlemen on whom duties of that nature devolve. The first rule is simple enough, and common to all countries.—“When an arbitrator of discernment hears any affair, he shall first demand of the plaintiff, ‘What is your claim?’ The plaintiff shall then relate his claim: afterwards he shall demand of the defendant, ‘What answer do you return in this case?’ The defendant also shall then repeat his answer.” The succeeding regulation is more astute:—“The arbitrator, at the time of examination, shall observe both the plaintiff and the defendant narrowly, and take notice if either, and which of them, when he is speaking, hath his voice falter in his throat, or his colour change, or his forehead sweat, or the hair of his body stand erect, or a trembling come over his limbs, or his eyes water, or if, during the trial, he cannot stand still in his place, or frequently licks and moistens his tongue, or hath his face grow dry, or in speaking to one point, wavers and shuffles off to another, or if any person puts a question to him, is unable to return an answer; from the circumstances of such commotions, he shall distinguish the guilty party.”

The mode of examining witnesses is as follows :



“ He who means to question a witness, having bathed himself, shall put his questions in the tenth *ghurrie* of the day; the witness also, having bathed himself, and turned himself towards the eastern or northern quarter, shall deliver his evidence: the examiner shall ask the witness, (if a *Bramin*) with civility and respect, saying, ‘ Explain to me what knowledge you have of this affair;’ and to a *Chehteree*, he shall say, ‘ What do you know of this affair? speak the truth!’ and to a *Bice*, he shall say, ‘ What do you know of this affair? if you give false evidence, whatever crime there is in stealing kine, or gold, or *paddee*, or wheat, or *gràm*, or barley, or mustard, and such kind of grain, shall be accounted to you;’ and to a *Sooder*, he shall say, ‘ What do you know of this affair? speak; if your evidence is false, whatever crime is the greatest in the world, that crime shall be accounted to you.’ ” Here we may observe, that the law only requires the *Bramin*, or fine gentleman, to be interrogated with civility and respect; the poor *Sooder* may be examined and cross-examined in the usual manner.

Against the utterance of “ Scandalous and bitter words,” the provisions of the law are very minute. “ If a man be deficient in a hand, or a foot, or an ear, or an eye, or a nose, or any other member, and a person of an equal cast, and of equal abilities with him, should say to him, in a reproachful

manner, ' You are deficient in a hand, or a foot, or an ear, or an eye, or a nose, or any other member,' or should say to him, ' Such limb of yours is very beautiful,' the magistrate shall fine him twelve *puns* of *cowries*." To prognosticate the death of great men has always been a dangerous undertaking, and we find this offence expressly prohibited: " If any man should say, that, ' The magistrate will die at such a particular time,' the magistrate shall fine that person eight hundred *puns* of *cowries*." A proper degree of humility and of respectful deference, on the part of the plebeian, towards the man of rank and fashion, is sharply insisted on: " If a man of inferior cast, proudly affecting an equality with a person of superior cast, *should speak at the same time with him*, the magistrate, in that case, shall fine him to the extent of his abilities."

The magistrate, we have seen, is a very sacred personage, and, it seems, can do no wrong. To punish him for the commission of a crime, is in itself a crime, which the worthy magistrate takes care to visit with a signal retaliation. " If a magistrate has committed a crime, and any person, upon the discovery of that crime, should beat and ill-use the magistrate, in that case, whatever be the crime of murdering one hundred *Bramins*, such crime shall be accounted to that person; and the magistrate shall *thrust an iron spit through*

*him, and roast him at the fire!*" A similar spirit of cruelty pervades all the criminal law. "Whoever, by breaking through walls, hath frequently stolen much wealth, the magistrate shall cause the booty to be returned to the owner, and shall cut off both the hands of such person, and crucify him." "If a man steals any small animal, exclusive of the cat and the weasel, the magistrate shall cut off half his foot." Mutilation and agonizing punishments are dealt unsparingly to the human species, but the inferior classes of life are carefully protected from injury. "If a man kills a fish, the magistrate shall fine him ten *puns* of *cowries*. If a man kills an insect, the magistrate shall fine him one *pun* of *cowries*." The same law that uses very little ceremony in impaling a man, anxiously guards against the demolition of a fly!

The chapter "*Of what concerns women,*" contains a string of very bitter libels upon the fair sex, in excuse for which, it is urged by the translator, that the Bramins, who compiled the code, were men far advanced in years, and that the old gentlemen had lost, with their youth, their gallantry and good manners. But it would rather seem, that the laws selected by them speak only the same language of contempt and censure held by all eastern nations alike on this topic. However, the ancient men utter, here and there, a season-

able word.—“A man, both day and night, must keep his wife so much in subjection that she by no means be mistress of her own actions ; if the wife have her own free will, she will behave amiss.”

—The law then proceeds to sum up the feminine character with great acrimony of satire : “ Women have six qualities ; the first, an inordinate desire for jewels and fine furniture, handsome clothes and nice victuals ; the second, immoderate lust ; the third, violent anger ; the fourth, deep resentment ; the fifth, another person’s good appears evil in their eyes ; the sixth, *they commit bad actions.*” The following provision, with which we shall conclude these extracts, refers to the well-known custom of the Hindoo widows. The sacrifice of their lives is not peremptorily enjoined : “ It is proper for a woman, after her husband’s death, to burn herself in the fire with his corpse ; every woman, who thus burns herself, shall remain in Paradise with her husband three *crore* and fifty *lacks* of years by destiny ; if she cannot burn, she must in that case preserve an inviolable chastity ; if she remains always chaste, she goes to Paradise ; and if she does not preserve her chastity, she goes to hell !”

SERGEANT BETTESWORTH AND DEAN SWIFT.

The following lines on Sergeant Bettesworth, which Swift inserted in one of his poems, gave

rise to a violent resentment on the part of the barrister :

—“ So at the bar the booby Bettsworth,  
Though half a crown o'er pays his sweat's worth,  
Who knows in law, nor text, nor margent,  
Calls Singleton *his brother Sergeant.*”

The poem was sent to Bettsworth at a time when he was surrounded with his friends in a convivial party ; he read it aloud till he had finished the lines relative to himself. He then flung it down with great violence,—trembled and turned pale,—and after some pause, his rage for a while depriving him of utterance, he took out his pen-knife, and opening it, vehemently swore, “ With this very penknife, by G—, I will cut off his ears.”—He then went to the Dean's house, and not finding him at home, followed him to the house of a friend ; where, being shown into a back room, he desired the doctor might be sent for, and on Swift's entering the room, and asking what were his commands, “ Sir,” said he, “ I am Sergeant Bet-tes-worth ;” (which was always his pompous way of pronouncing his own name, in three distinct syllables.) “ Of what regiment, pray, Sir ?” said Swift. “ O Mr. Dean, we know your powers of raillery:—you know me well enough ; I am one of his Majesty's Sergeants at Law, and I am come to demand if you are the author of this poem (producing it) and these vil-

lainous lines on me ;” at the same time reading them aloud, with great vehemence and much gesticulation. “Sir,” said Swift, “it was a piece of advice given me by Lord Somers, never to own or disown any writing laid to my charge ; because if I did this in some cases, whatever I did not disown afterwards, would infallibly be imputed to me as mine. Now, Sir, I take this to be a very wise maxim, and as such have followed it ever since ; and I believe it will hardly be in the power of your rhetoric, as great a master as you are of it, to make me swerve from that rule.” After some other conversation of the same nature, the Sergeant quitted the room, saying,—“Well, since you will give me no satisfaction in this affair, let me tell you, your gown is your protection : under the sanction of which, like one of your own *Yahoos*, who had climbed up to the top of a high tree, you sit secure, and squirt your filth on all mankind.” Swift, when he related this, said that the fellow shewed more wit than he thought he had possessed.

## SATISFACTORY BAIL.

A gentleman once appeared in the Court of King’s Bench, to give bail for a friend in the sum of three thousand pounds. Sergeant Davy, though he well knew the responsibility of the gentleman, could not restrain his accustomed impertinence.

“ Well, Sir, how do you make yourself to be worth three thousand pounds ?” The gentleman very deliberately specified the particulars up to two thousand nine hundred and forty pounds. “ Aye,” said the Sergeant, “ but that is not enough by sixty.” “ For that sum,” replied the other, “ I have a note of hand of one Sergeant Davy, and I hope he will have the honesty soon to discharge it.” This set the Court in a roar, the Sergeant was for once abashed, and Lord Mansfield said, “ Well, brother Davy, I think we may accept the bail !”

SIR WILLIAM JONES'S LAW MANUSCRIPTS.

It appears from a letter addressed by Mr. Jones to the Bishop of St. Asaph, dated Sept. 13, 1782, that he had written several tracts on legal subjects. What has become of these valuable MSS.?

“ In regard to your Lordship's indulgent and flattering prediction, that my Essay on Bailment would be my last work, and that for the future, business and the public would allow me to write no more, I doubt whether it will be accomplished, whatever may be my practice or situation ; *for I have already prepared many tracts on Jurisprudence*, and when I see the volumes written by Lord Coke, whose annual gains were twelve or

fourteen thousand pounds,\* by Lord Bacon, Sir Matthew Hale, and a number of Judges and Chancellors, I cannot think that I should be hurt in my professional career, by publishing now and then a law tract upon some interesting branch of the science; and the science itself is indeed so complex, that without writing, which is the chain of memory, it is impossible to remember a thousandth part of what we see, read, or hear. Since it is my wish, therefore, to become in time as great a lawyer as Sulpicius, I shall probably leave as many volumes of my works as he is said to have written."

## LORD SOMERS.

The following anecdotes of Lord Somers were copied from a manuscript in the possession of Dr. Birch. They may be found in the second volume of Mr. Seward's *Anecdotes of distinguished Persons*.

"April 26th, 1716, died John Lord Somers. Burnet hath done him justice in several places, and Addison has given us his character in colours so strong, that little remaineth to be added.

"His application and capacity were equally

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\* This does not appear to be correct. Even later, in the time of Roger North, the emoluments of the Attorney General did not exceed 7000*l.* a year, and Sir M. Hale tells us, that "a 1000*l.* a year was a great deal for any common lawyer to get."



great and uncommon. At his first going to school, he never gave himself any of the diversions of children of his age ; for at noon the book was never out of his hand. To the last years of his life, a few hours of sleep sufficed : at waking, a reader attended, and entertained him with the most valuable authors. Such management raised him to the highest eminence in his own profession, and gave him a superiority in all kinds of useful knowledge and learning.

“ Natural strength and clearness of understanding, thus improved, was the distinguishing peculiarity which appeared in all his performances. Every thing was easy and correct, pure and proper. He was unwearied in the application of all his abilities for the service of his country. As a writer he greatly assisted the cause of liberty in the days of its utmost peril. As an advocate, a judge, a senator, and a minister, the highest praises, and the most grateful remembrance, are due to his merit.

“ He was invariable and uniform in the pursuit of right paths. As he well understood, he was equally firm in adhering to the interest of his country while in its service, and when in a private station. To this uniformity the calumnies and reproaches of his enemies may be truly ascribed. They envied him his superiority ; and as their wishes and designs were far from being engaged

for the real welfare of society, a man so upright and able, naturally became the object of their hatred; and they had too easy and too much credit. What greater misfortune can be entailed on popular government than forwardness in receiving all the impressions of malevolence?

“When I had finished my letter, it came into my head to add Somers’s character, which was uniform, to Shrewsbury, which was all deformity.

“I have been so very short, not only for the reasons prefixed, but in expectation of your having additions from your truly worthy friend Mr. Yorke. The account of his behaviour at school I had many years ago from a school-fellow. I think Walsall, in Staffordshire, was the place where they learned their grammar together. I remember very well his account of Johnny Somers, being a weakly boy, wearing a black cap, and never so much as looking out when they were at play, &c.

“Mr. Winnington’s account is, that by the exactness of his knowledge and behaviour, he discouraged his father, and all the young men who knew him. They were afraid to be in his company.”

The high panegyric pronounced upon Lord Somers by Horace Walpole, in his *Anecdotes of royal and noble Authors*, will be a proper addition to the foregoing extracts.

“He was one of those divine men who, like a

chapel in a palace, remain unprofaned, whilst all the rest is tyranny, corruption, and folly. All the traditionary accounts of him, and the historians of the last age, represent him as the most incorrupt lawyer, and the honestest statesman ; as a master orator, a genius of the finest taste, and as a patriot of the noblest and most exclusive views ; as a man who dispensed blessings by his life, and planned them for posterity."

It is almost incredible that even the party animosity of Swift could have tempted him to draw up such a character of Somers as the following.

" The Lord Somers may be very deservedly reputed the head and oracle of that party, (the Whigs.) He hath raised himself by the coincidence of many circumstances to the greatest employments of the state, without the least support from birth or fortune ; he hath constantly, and with great steadiness, cultivated those principles under which he grew. That accident which first produced him into the world, of pleading before the Bishops whom King James had sent to the Tower, might have proved a piece of merit, as honourable as it was fortunate ; but the old republican spirit which the Revolution had restored, began to teach other lessons, that, since we had accepted a new King from a Calvinistical Commonwealth, we must also admit new maxims in religion and government. But since the nobility

and gentry would probably adhere to the established Church, and to the rights of Monarchy, as delivered down from their ancestors, it was the practice of these politicians to introduce such men as were perfectly indifferent to any, or no, religion, and who were not likely to inherit much loyalty from those to whom they owed their birth. Of this number was the person whom I am now describing. I have hardly known any man with talents more proper to acquire and preserve the favour of the Prince, never offending in words or gesture, which are in the last degree courteous and complimentary, wherein he set an excellent example to others, his colleagues, which they did not think fit to follow. But this extreme civility is universal and undistinguished, and in private conversation, where he observeth it as inviolably as if he were in the greatest assembly, it is sometimes censured as formal. Two reasons are assigned for this behaviour: first, from the consciousness of his humble original, he keepeth all familiarity at the utmost distance, which otherwise might be apt to intrude; the second is, that being sensible how subject he is to violent passions, he avoideth all incitements to them, by teaching those whom he converseth with, from his own example, to keep a great way within the bounds of decency and respect; and it is, indeed, true, that no man is more apt to take fire upon the least appearance

of provocation, which temper he strives to subdue with the utmost violence upon himself; so that his breast has been seen to heave, and his eyes to sparkle with rage, in those very moments when his words and the cadence of his voice were in the humblest and softest manner. Perhaps, that force upon his nature may cause that insatiable love of revenge which his detractors lay to his charge; who consequently reckon dissembling among his chief perfections. Avarice he has none, and his ambition is gratified by being the uncontested head of his party. With an excellent understanding, adorned with all the polite parts of learning, he has very little taste for conversation, to which he prefers the pleasure of reading and thinking, and, in the intervals of his time, amuseth himself with an illiterate chaplain, an humble companion, or a favourite servant. These were some few distinguishing marks in the character of that person who now presideth over the discontented party; although he be not answerable for all their mistakes; and if his precepts had been more strictly followed, perhaps their power would not have been so easily shaken. I have been assured, and heard him profess, that he was against engaging in that bloody persecution of Dr. Sacheverell, as what he foresaw was likely to end in their ruin; and he blamed the rough behaviour of some persons to the Queen, as a great

failure in prudence; and that when it appeared her Majesty was firmly resolved upon a treaty of peace, he advised his friends not to oppose it in its progress, but find fault with it after it was made; which would be a copy of the like usage they themselves had met with after the treaty of Ryswic, and the safest, as well as most probable way of disgracing the promoters and advisers. I have been the longer in representing to the reader some idea of this extraordinary genius, because whatever attempt hath hitherto been made with any appearance of conduct, or probability of success, to restore the dominion of that party, was undeniably contrived by him. And I profess the same for the future, as long as his age and infirmities will leave him capable of business." (*History of the Four last Years of Queen Anne.*)

The character of Lord Somers given by Addison, in the *Freeholder*, (*for May 14, 1716,*) is probably well known to the reader. This character is termed by Horace Walpole, in his *Catalogue of Royal and Noble Authors*, laboured, diffuse, and feeble, neither worthy of the author nor his subject. Addison compares Lord Somers with Bacon, which is certainly not a very happy parallel. Walpole has instituted a comparison between his Lordship and the French Chancellor de l'Hospital. It is by no means creditable to our literature, that the *Life* of so eminent a States-

man and Lawyer as Lord Somers, should yet remain to be written. The old Lives of him are extremely imperfect, and the late attempt of Mr. Maddock merits very little commendation.

LORD KEEPER WILLIAMS AND JAMES I.

When Williams was Chaplain to Lord Ellesmere, the Chancellor, he attracted the notice and regard of James I. who, notwithstanding his ecclesiastical character, raised him subsequently to the highest dignity of the Law. He was the last churchman who filled the office of Chancellor, while Lord Shaftesbury, in the reign of Charles II. was the last layman raised to the Woolsack. The Life of Lord Keeper Williams, by his Chaplain, Bishop Hacket, is one of the few good specimens of legal biography in our literature. The portion of it, however, which relates to the Lord Keeper's judicial career, is, comparatively, very small, though it affords some entertaining anecdotes, and some curious illustrations of the state of the law at that period. The following passage gives an admirable idea of the King's character, and of the manner in which he used to conduct himself towards his learned favourites.

“ Now he, whom I insist upon, being a subject thus fit for impression, his good master, King James, was as ready to put the stamp upon him; he never met with any before, no, not the Lord

Egerton, much less with any after, that loved him like King James, at the full rate of his worth. The King's table was a trial of wits. The reading of some books before him was very frequent while he was at his repast. Otherwise he collected knowledge by variety of questions, which he carved out to the capacity of his understanding writers.\* Methought his hunting humour was not off as long as his courtiers, I mean the learned, stood about him at his board. He was ever in search after some disputable doubts, which he would wind and turn about with the most stabbing objections that ever I heard; and was as pleasant and fellow-like in all these discourses, as with his huntsman in the field. They that, in many such genial and convivial conferences, were ripe and weighty in their answers, were indubiously designed to some place of credit and profit. Wherein

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\* The "variety of questions" put by James not unfrequently perplexed the bye-standers. Judge White-  
locke, in his Diary, or *Liber Famelicus*, relating an inter-  
view which he had with Sir Edward Coke, says, "I asked  
him, why he staid not at the Court to dinner? He told  
me, that whilst he stood by the King at dinner, he would  
be ever asking him questions of that nature, that he had as  
lief be out of the room; and that made him as far off as  
he might ever at such times. I guess it was concerning  
matters of his prerogative, which the King would take  
ill, if he were not answered in them as he would have it."



he followed the Emperor Adrian, as Spartianus remembers it : *Omnes professores et honoravit et divites fecit, licet eos quæstionibus semper agita- verit.* But among them all with whom King James communed, *was found none like Daniel*, (c. i. v. 19.) His Majesty gave his ear most graciously to this Chaplain, and directed his speech to him when he was at hand, oftener than to any that crowded near, to hearken to the wisdom of that Solomon. He had all those endowments mightily at command, which are behoved in a scholar, *Πρὸς εὐτελεύχεις*, as Aristotle terms them, unto extemporary colloquies. *Ingenium in numerato habuit*, as Quintil. lib. 6, said of a ready man, he had all his learning in ready money, and could spend it at an hour as well as at a day's warning. There was not a greater master of perspicuity and elucidate distinctions ; which looked the better in his English that ran sweet upon his tongue, especially being set out with a graceful facetiousness, that hit the joint of the matter ; for his wit and his judgment never parted. If the King led him quite out of the road of verbal learning, and talked to him of real and gubernative wisdom, he pleased his Majesty most of all, because his answers discovered that he loved to see through the present to the future. Chiefly, since he would be bold, not only to argue, but to quarrel against innovations. For, though he was never addicted to his

own opinions, no, not among his inferiors, with that pertinacious obligation for better for worse ; yet, neither his best friends nor the higher powers, could ever get him pleased with new crotchets, either in Church or State. *His constant rule was, that old imperfections were safer than new experiments.* To which purpose a saying of his was famous in court. The manner how it came in was thus : A great servant to the King pressed for a change of that which was well enough already, and commended his design by this note, That it would be an easier way for the people. *Sir, (says Dr. Williams,) a bed is an easy repose, but it is not wholesome to lie upon a new tick, and new driven feathers.* All these passages the King considered from time to time ; *multa viri virtus animo, &c.* And was glad he had a servant to be raised up, of whom he thought, as Cicero did of Demetrius Valerius, (*lib. iii. de Leg.*) *Et doctrinæ studiis et regendâ civitate princeps* ; that he was a full scholar, fit for the sacred and for the civil gown. In a word, *one of the stronger cattle, (Gen. 30. 41,) and designed for a bell-wether in Jacob's flock.*" (*Memorial of Williams, part i. p. 38.*)

The Historian, Arthur Wilson, tells us, that " this learned prelate was of a comely and stately presence ; and *that*, animated with a great mind, made him appear very proud to the vulgar eye ;

but that very temper raised him to aim at great things, which he effected." (*History of King James I.* p. 196.) Upon this passage, Dr. Hacket has observed, "*Quædam videntur et non sunt*; so far was his heart from pride, that he never thought himself the finer for the trappings of fortune. Yet, so far from baseness, that he knew the bench he sat upon; and would not be made despicable in the eyes of the world, much less to be brought about to serve great men's turns, and stretch the causes of the court, according to the contents of their letters and messages,\* which were no better, in a rude phrase, than to be a pander to their lust, to let them deflower justice." (*Memorial, part i.* p. 54.)

CHARACTER OF LORD MANSFIELD, BY THE  
BISHOP OF WORCESTER.

The Bishop of Worcester, in his *Life of Warburton*, has given the following character of Lord Mansfield. It is principally curious as the production of a contemporary, who had witnessed his Lordship's conduct in the House of Lords.

"Mr. Murray, afterwards Earl of Mansfield, and Lord Chief Justice of England, was so extra-

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\* This passage furnishes another example of the great prevalency of judicial corruption at that period. (*See Ante, vol. i.* p. 223.)

ordinary a person, and made so great a figure in the world, that his name must go down to posterity with distinguished honour in the public records of the nation. For his shining talents displayed themselves in every department of the State, as well as in the supreme Court of Justice, his peculiar province, which he filled with a lustre of reputation, equalled, perhaps, certainly not exceeded, by any of his predecessors.

“ Of his conduct in the House of Lords, I can speak with the more confidence, because I speak from my own observation. Too good to be the leader, and too able to be the dupe, of any party, he was believed to speak his own sense of public measures, and the authority of his judgment was so high, that in regular times the House was usually decided by it. He was no forward or frequent speaker, but reserved himself (as was fit,) for occasions worthy of him. In debate, he was eloquent as well as wise, or rather, he became eloquent by his wisdom. His countenance and tone of voice imprinted the ideas of penetration, probity, and candour; but what secured your attention and assent to all he said, was his constant good sense, flowing in apt terms, and in the clearest method. He affected no sallies of the imagination, or bursts of passion; much less would he condescend to personal abuse, or to petulant altercation. All was clear candid reason, letting

itself so easily into the minds of his hearers, as to carry information and conviction with it. In a word, his public senatorial character very much resembled that of Messala, of whom Cicero says, addressing himself to Brutus, ‘ Do not imagine, Brutus, that for worth, honour, and a warm love of his country, any one is comparable to Messala ; so that his eloquence (in which he wonderfully excels,) is almost eclipsed by those virtues ; and even in his display of that faculty, his superior good sense shews itself most ; with so much care and skill hath he formed himself to the truest manner of speaking ! His powers of genius and invention are confessedly of the first size, yet he almost owes less to them than to the diligent and studious cultivation of judgment.’

“ In the commerce of private life, Lord Mansfield was easy, friendly, and agreeable ; extremely sensible of worth in other men, and ready on all occasions to countenance and patronize it.”

#### THE STATE OF THE LAW IN AMERICA.

The present state of the Law in America, where many important experiments have been made upon the English system of jurisprudence, furnishes much matter for curious speculation. The subjoined observations upon the subject are borrowed from a Tract, intituled, “ *A Discourse concerning the Influence of America on the Mind ;*

*being the Annual Oration delivered before the American Philosophical Society, &c. By C. J. Ingersoll. Philadel. 1823.*" We shall, probably, have occasion, in the course of these volumes, to add some further remarks on this interesting subject.

" Annual Sessions of five-and-twenty Legislatures multiply laws, which produce a numerous bar, in all ages the teeming offspring of freedom. Their number in the United States has been lately computed at six thousand, which is, probably, an under estimate. American Lawyers and Judges adhere, with professional tenacity, to the Laws of the Mother Country. The absolute authority of recent English adjudications is disclaimed; but they are received with respect, too much bordering on submission. British Commercial Law, in many respects inferior to that of the Continent of Europe, is becoming the Law of America. The Prize Law of Great Britain was made that of the United States, by judicial legislation, during flagrant war between the two countries. The homage lately paid by the English Prime Minister to the neutral doctrines proclaimed by the American Government in the beginning of the French Revolution, which declares them worthy of the imitation of all neutral nations, may teach us, that the American State Papers contain much better principles of international jurisprudence than the

passionate and time-serving, however brilliant, sophisms of the British Admiralty Courts.\* On the other hand, English Jurisprudence, while silently availing itself of that of all Europe, and adopting without owning it, has seldom, if ever, made use of an American Law-book, recommended by the same language, system, and subject-matter. American translations of Foreign Jurists, on subjects in which the legislature of English Law is extremely deficient, appear to be less known in England than translations of the Laws of China. This veneration on our part, and estrangement on theirs, are infirmities characteristic of both. Our professional bigotry has been counteracted by penal Laws, in some of the States, against the quotation of recent British precedents, as it was once a capital offence, in Spain, to cite the Civil Law, and as the English Common Law has always repelled that excellent code from its tribunals. I cannot think, with the learned Editor of the Law Register, that the English Law-books are a dead expense to the American bar; or that, in his strong phrase, scarcely an important case is furnished by a bale of their Reports. But I de-

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\* The English reader who is acquainted with the admirable decisions, which have, during the present century, emanated from these Courts, will, doubtless, feel inclined to dispute Mr. Ingersoll's position.

plere the Colonial acquiescence in which they are adopted too often without probation or fitness. The use and respect of American jurisprudence in Great Britain, will begin only when we cease to prefer their adjudications to our own. By the same means we shall be relieved from disadvantageous restrictions on our use of British wisdom; and our system will acquire that level to which it is entitled by the education, learning, and purity of those, by whose administration it is formed.

“ In their national capacity, the United States have no common law; but all the original states are governed by that of England, with adaptations. In one of the new States, in which the French, Spanish, and English laws happen to be all naturalized, an attempt at codification from all these stocks is making under legislative sanction. In others, possibly all of the new States, which have been carved out of the old, a great question is in agitation, whether the English common law is their inheritance. Being a scheme of traditional precepts and judicial precedents, that law requires continual adjudications, with their reasons at large, to explain, replenish, and enforce it. Of these reports, as they are termed, no less than sixty-four, consisting of more than two hundred volumes and a million of pages, have already been uttered in the United States; most of them in the present century; and in a ratio of great in-



crease. The camel's load of cases, which is said to have been necessary to gain a point of law in the decline of the Roman Empire, is therefore already insufficient for that purpose in the American. Add to which, an American lawyer's library is incomplete without a thousand volumes of European legists, comprehending the most celebrated French, Dutch, Italian, and German treatises on natural, national, and maritime law, together with all the English Chancery and common law. I have heard of an American lawyer of eminence, whose whole property is said to consist in a large and expensive law library.

“Notwithstanding this mass of literature, the law has been much simplified in transplantation from Europe to America ; and its professional as well as political tendency is still to further simplicity. The brutal, ferocious, and inhuman laws of the feudists, as they were termed by the Civilians, (I use their own phrase) the arbitrary rescripts of the civil law, and the harsh doctrines of the common law, have all been melted down by the genial mildness of American institutions. Most of the feudal distinctions between real and personal property, complicated tenures and primogeniture, the salique exclusion of females, the unnatural rejection of the half-blood and anti-nuptial offspring, forfeitures for crimes, the penalties of alienage, and other vices of European jurisprudence,

which nothing but their existence can defend, and reason must condemn, are either abolished, or in a course of abrogation here. Cognisance of marriage, divorce, and posthumous administration, taken from the ecclesiastical, has been conferred on the civil tribunals. Voluminous conveyancing and intricate special pleading, among the costliest mysteries of professional learning in Great Britain, have given place to the plain and cheap substitutes of the old common law. With a like view to abridge and economise litigation, coercive arbitration, or equivalents for it, have been tried by legislative provision; jury trial, the great safeguard of personal security, is nearly universal, and ought to be quite so for its invaluable political influences. It not only does justice between the litigant parties, but elevates the understanding and enlightens the rectitude of the community. Sanguinary and corporal punishments are yielding to the interesting experiment of penitential confinement. Judicial official tenure is mostly independent of legislative interposition, and completely of executive influence. The jurisdiction of the courts is far more extensive and elevated than that of the mother country. They exercise among other high political functions, the original and remarkable power of invalidating statutes, by declaring them unconstitutional; an ascendancy over politics never before, or elsewhere

asserted by jurisprudence, which authorises the weakest branch of a popular government to annul the measures of the strongest. If popular indignation sometimes assails this authority, it has seldom, if ever, been able to crush those who have honestly exercised it; and even if it should, though an individual victim might be immolated, his very martyrdom would corroborate the system for which he suffered. Justice is openly, fairly, and purely, administered, freed from the absurd costumes and ceremonies which disfigure it in England. Judicial appointment is less influenced by politics, and judicial proceedings more independent of political considerations.

“The education for the bar is less technical, their practice is more intellectual, the vocation is, relatively at least, more independent in the United States than in Great Britain. Here, as there, it is a much frequented avenue to political honours. Of the five Presidents of the United States, four were Lawyers; of the several candidates at present for that office, most, if not all, are Lawyers. But without any public promotion, American society has no superior to the man who is advanced in any of the liberal professions. Hence, there are more accomplished individuals in professional life here, than where this is not the case. Under other governments, patronage will advance the unworthy, and power will oppress the meritorious.

Even in France, where there are, and always have been, lawyers of great and just celebrity, we sometimes see, that for exerting the noblest, and in some countries, the most common duties of their profession, for resisting the powerful, and defending the weak, they are liable to irresponsible arrest, imprisonment, and degradation, without the succour and sanctuary of a free press, and dauntless public sympathy.\* In Great Britain, it is true, there is no such apprehension to deter them; and equally true, that professional as well as political dignities are free to all the candidates.

“ British jurisprudence itself, too, that sturdy and inveterate Common Law, to which Great Britain owes many of the great popular, conservative principles of her Constitution, even these have been impaired by long and terrible wars, during which, shut up in their impregnable island, the offspring of Alfred and of Edward, infusing their passions, their politics, and their prejudices into their laws, have wrenched them to their occasions. The distinguishing attributes and merits of the Common Law are, that it is popular and mutable, takes

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\* In addition to Mr. Ingersoll's observations on this subject, we beg leave to refer our readers to a work lately published at Paris, under the title *De l'Administration de la Justice en France et de l'Ordre Judiciaire*.

its doctrines from the people, and suits them to their views. While the American Judiciary enforces this system of jurisprudence, may it never let wars, or popular passions, or foreign influences, impair its principles."

This panegyric lies open to many observations, not only from the view which it presents of our English Jurisprudence, but likewise from the frequently erroneous impressions which it is calculated to convey, with regard to the present state of American Law. In consequence, however, of the length of the extract, we shall defer any remarks upon it at present.

THE TRIAL OF ELIZABETH CANNING, FOR  
PERJURY.

This very remarkable trial commenced on the 29th of April, 1754, and occupied seven days. It involves one of the most inexplicable mysteries, and the most positive, yet utterly irreconcilable evidence, on the question of an *alibi*, to be found in the history of our own criminal law, or, perhaps, in that of any other country.

Canning stood indicted for perjury, in the evidence given by her on the prosecution of Mary Squires and Susannah Wells, for an assault and felony committed by them on her, of which they were convicted; but upon doubts arising of the truth of Canning's story, they received a pardon,

and all the circumstances underwent a thorough examination on the trial of Canning herself for perjury. Her story was shortly as follows : On the 1st of January, 1753, about nine at night, two men seized her in Moorfields, robbed her, and, by a blow on the temple, threw her into a fit. Six hours after, she found herself on the highway, dragged along by these men, who took her to the house of Wells, at Enfield Wash, distant about twelve miles ; where she arrived half an hour after recovering her senses, about four o'clock in the morning. She there saw Mary Squires and two young women. The former cut off her stays, and, after some abusive language, pushed her up stairs into a hay-loft, a few steps from the kitchen, and shutting the door upon her, threatened to cut her throat, if she heard her stir or move. In this room were a fire-place and grate, no bed or bedstead, nothing but hay to lie upon, a pitcher almost full of water, and about twenty-four pieces of bread, to the amount of a quartern loaf in the whole. Upon this she subsisted during the whole time she remained in the room, which was from Monday, the 2d of January, at four in the morning, till Monday, the 29th, at four in the afternoon. During all that time, she had no stool, nor did she see a human creature, except once she saw somebody look through a crack in the door. On Friday, the 26th of January, she had eaten

up all her bread, and had drank up all her water on Monday, the 29th; on which last day she escaped, by breaking down a board at the inside of a window, eight or ten feet from the ground, from which she jumped down, without hurt, taking with her a bedgown and a handkerchief, which she found in the chimney-grate. She then enquired her way home, without seeking refuge at any house on her way, and arrived at her mother's, in Aldermanbury, at a quarter past ten, and told her friends that her place of confinement was somewhere in the Hertfordshire road, which she learned by seeing a coach go by that frequented that road.

On the trial of Squires and Wells, this story was corroborated by Virtue Hall, one of the young women represented by Canning to have been in the house when she arrived, as to the incidents that occurred subsequent to that point of time. This witness afterwards recanted, and was not brought forward at Canning's trial on either side. The charge against Squires was met by an *alibi*, supported by no less than forty-one witnesses, who trace the progress of Squires, and her son and daughter, from South Parrot, in Dorsetshire, on the 29th of December, 1752, to their arrival at Enfield, on the 24th of January, 1754. All these witnesses speak with the greatest certainty to the person of Squires; and all the facts sworn to are like so many links in a chain, and display a

perfect congruity. One of these witnesses was George Squires, the son of Mary, who seems to have been of weak intellect, and makes a very indifferent figure on his cross-examination.

“ After you left Lewes, what is the first town you came to that you did know ?—Really I do not know. It is so long ago, I can't tell you.

“ I don't ask you the first town from Lewes, but the first town you do remember after you left Lewes ?—(No answer.)

“ It was not South Parrot, was it ?—No, it is not possible I can tell you ; I went from thence into Hampshire and Wiltshire. I went through Salisbury.

“ Is that the first town you can remember, after you left Lewes, you came at ?—No, I went through several, but don't remember their names ; I must have went through some ; I hope you will excuse me ; I hope you will not ask me any more.

“ Can you tell the name of any town you went through between Lewes and Salisbury ?—No, I cannot.

“ Where did you go after you went from Salisbury ?—I went to Hendon.

“ Where did you go when you went from Hendon ?—I went partly by Mear.

“ What was the next town when you left Mear ?—Really, Sir, I hope you will excuse me ; be



pleased to excuse me ; I cannot tell, indeed ; please to excuse me !”

Other evidence, of the strongest nature, was not wanting to prove the falsehood of Canning's story. There was no lock on the door of the room in which she said she had been confined. She confessed, that she had never attempted to escape till the end of the fourth week of her imprisonment, because the idea never occurred to her ; and yet the means of escape through the window were always offered to her. The room, in which she said she had been shut up, did not correspond with the account she had previously given of it, and it was proved, by several witnesses, that this room was inhabited, during the whole time of her alleged solitary confinement, by a labourer and his wife.

A formidable body of witnesses was produced for the defence. Canning, it appears, was certainly missing from the 1st January to the 29th of the same month, when she suddenly entered her mother's house, about a quarter after ten at night, in a most deplorable condition ; her hands black and blue ; her face bloated ; her ear bloody ; and her clothes in a wretched state. The keeper of the turnpike at Stamford-hill, which leads from Moorfields to Enfield, swore, that on the 1st of January, about ten or eleven at night, he heard a sobbing cry, and saw two men dragging a woman

between them over a stile ; and several witnesses deposed, that on the evening of the 29th of January, they saw a miserable-looking woman, on the same road, enquiring her way to London. These periods corresponded with the abduction and the return of Canning. Then are called more than twenty witnesses, who swear positively to their knowledge of Squires, and to their having seen and spoken with her at various periods, at and in the vicinity of Enfield, between the first and twenty-fourth days of January, on which latter day, according to the story of her own witnesses, she arrived at Mrs. Wells's. Several old women were put into the box, to prove the presence of Squires at Enfield, whose ignorance would not bear cross-examination, and whose testimony, where so much depended on accuracy of dates, was not to be greatly relied on. Margaret Richardson was cross-examined by Mr. Willes.

“ Do you know which is Old Christmas-day, and which is New Christmas-day ?—You must tell me ; my memory is not so good.

“ Which comes first ?—Why, the New Christmas-day.

“ How many days difference ?—Some call it nine ; but it may be more.

“ How old are you, good woman ?—I don't know justly.

“ What day of the week was Old Christmas-

day?—It was of a Tuesday or Wednesday ; I can't remember which.

“ Is Christmas-day Holy Thursday or Good Friday?—I can't resolve no such thing ; I am no scholar ; I can't pretend to know such things.

“ What month is Christmas-day in?—I can't say that neither, because you put me to a stop.

“ Is it the 25th of February?—I don't know justly, indeed.

*Mr. Nares.* “ You put the poor old woman in a hurry.

*Recorder.* “ Don't be affrighted. Can you tell what month Christmas is in?—I cannot.

“ In what season of the year is it?—To be sure I can tell that ; it is in winter.”

Such are the main points of this most perplexing case, which gave rise to a prodigious popular clamour. The pamphlets published on each side of the question would almost compose a library, and were written in a spirit of the utmost virulence and exasperation. Families were divided on the subject. It became a source of division between husbands and wives, children and parents. The trial, as was observed by the Recorder, was carried on by different sets of people, who interested themselves in it with uncommon zeal, and whose passions led them into the greatest extremities and highest extravagances. And this singular trial had as singular a termination, for

the Jury, who had certainly a knotty point to determine, seem, after all, to have given a verdict contrary to their real intention. The leaning of the Recorder, in his address to the Jury, is evidently against the prisoner. At twenty minutes past twelve in the morning, the Jury withdrew to consider their verdict, and returned at fifteen minutes after two, bringing in their verdict, "Guilty of perjury, but not wilful or corrupt." The Recorder told them, that he could not receive their verdict, because it was partial, and they must either find her guilty of the whole indictment, or else acquit her; upon which they retired again for twenty minutes, and then returned their verdict, "Guilty of wilful and corrupt perjury." A new trial was moved for, on the ground that two of the Jury dissented from the verdict. These two men made affidavits, that they considered Canning to have been mistaken in some points; but not to have wilfully perjured herself, and at their instigation the first verdict was carried in. When the Jury were directed to reconsider it, they would have acquitted her; but the foreman told them, that after having once found her guilty of perjury, they could not return a verdict of not guilty. And the deponents say, that they would not have joined in the verdict had they known that it is the act of the mind, and not an undesigned mistake, that constitutes the crime of per-

jury! The application for a new trial was, however, rejected, and, notwithstanding the Jury recommended her to mercy, Canning was transported, in August, 1754, to New England. After her conviction she persisted in her story, "and did, in the most serious manner, and with the strictest regard to truth, declare, that she remained fully persuaded, and well assured, that Mary Squires was the person who robbed her, and that the house of Susannah Wells was the place where she was confined twenty-eight days." In the Gentleman's Magazine for August, 1773, it is stated, that Canning died at Weathersfield, in Connecticut, on the 22d July, in that year. The account of her death in the Magazine, is accompanied with the observation, "that, notwithstanding the many strange circumstances of her story, none is so strange, as that it should not be discovered in so many years, where she had concealed herself during the time she had invariably declared she was at the house of Mother Wells." (*State Trials*, vol. xix. p. 283.)

#### SPECIAL PLEADING.

Lord Mansfield was an avowed enemy to Special Pleading; or, perhaps, more correctly speaking, to *Special Pleaders*; but it is only fair to acknowledge, that another very great man is a warm advocate for it. Sir William Jones, in his Prefatory Discourse to the Translation of Isæus, thus expresses

himself: " I shall not easily be induced to wish for a change of our present forms, how intricate soever they may seem to those who are ignorant of their utility. Our science of Special Pleading is an excellent logic ; it is admirably calculated for the purpose of analysing a cause, of extracting, like the roots of an equation, the true points in dispute, and referring them, with all imaginable simplicity, to the court or jury ; it is reducible to the strictest rules of pure dialect ; and if it were scientifically taught in our public seminaries of learning, would fix the attention, give a habit of reasoning closely, quicken the apprehension, and invigorate the understanding, as effectually as the famed peripatetic system ; which, however ingenious and subtle, is not so honourable, laudable, or profitable, as the science in which Littleton exhorts his sons to employ their courage and care. It may unquestionably be perverted to very bad purposes ; but so may the noblest arts, and even eloquence itself, which many virtuous men have, for that reason, denied ; there is no fear, however, that either the *contracted fist*, as Zeno used to call it, or the *expanded palm*, can do any real mischief, while their blows are directed and restrained by the superintending power of a court."

THE LAST DAYS OF LORD KEEPER WILLIAMS.

" From the heavy time of the King's (Charles I.)

death, he rose every midnight out of his bed, and, having nothing but his shirt and waistcoat upon him, kneeled on his bare knees, and prayed earnestly and strongly one quarter of an hour before he went to his rest again, \* \* \*. He observed the season of midnight, because the scriptures speak of Christ's coming to judge the quick and the dead at midnight. It is true, according to the motion of the sun and stars, it will be day as well as night, that is, cloudy darkness over all the earth. The matter of his prayer was principally this:—*Come, Lord Jesus, come quickly, and put an end to these days of sin and misery.* So much I learned from himself, and so report it. His days were consumed in heaviness, as his nights in mourning. Facetiousness, in which he was singular, came no more out of his lips, he ceased from discourse, from company as he could, and nothing could hale him out of this obscurity. Such another condoler for his King, worthy Spottswood remembers, (*Hist. p. 106.*) That Will. Elphelston, Bishop of Aberdeen, hearing of the unfortunate death of K. James IV. at Floyden, was never afterwards perceived to laugh, nor willingly did he hear anything that sounded to mirth or gladness. Mourning for the dead profits not, yet a tender nature is liberal of it, and will pay more than it needs. Says Sophocles, 'If tears would call the dead again, 'Ο χυρος ἔσται.

κτῆμα τῆ κλαίειν αὐτῶν, they would be more valuable than gold.' But a bucket of them will not empty the Dead Sea of grief. Wise Solon, in Laertius, taking on heavily for his son's death, says his companion to him, 'Grief will do you no good.' 'And that makes me grieve the more,' says Solon, 'because it will do me no good.' It is a very weak passion, and yet often too strong for reason. The Archbishop remained very silent in his dejected heaviness, and enquired after no news, except that sometimes he would lift up his head, and ask what was become of the King's Triers, *Baanah* and *Rachab*, especially, *Cromwell* and *Bradshaw*; looking for some remarkable judgment of God to come down upon them; which they have escaped for the great trial of good men's patience; and a gleam of felicity is granted to them here, that passing from extremity to extremity, their pain may be the sharper when they awake to judgment." (*Hacket's Life of Williams, Part ii. p. 226.*)

#### SIR WILLIAM JONES'S CHARACTER OF DUNNING.

We have already given the character of Lord Ashburton, which Sir Nathaniel Wraxall has drawn; we shall now present Sir William Jones's sketch of the same celebrated man. To Lord Ashburton Sir William was indebted for his seat on the Indian Bench, and for many other kind-



nesses, which he acknowledges in the strongest language, in a letter, addressed to his Lordship from India. "As to you, my dear Lord, we consider you as the spring and fountain of our happiness, as the author and parent, (a Roman would have added, what the coldness of our northern language will hardly admit,) the *God* of our fortune." (*Works*, vol. ii. p. 6.)

"The public are here presented not with a fine picture, but a faithful portrait, with the character of a memorable and illustrious man, not in the style of panegyric on a monument, but in the language of sober truth, which friendship itself could not induce the writer to violate.

"John Dunning, (a name to which no title could add lustre,) possessed professional talents, which may truly be called inimitable, for, besides their superlative excellence, they were peculiarly his own; and as it would scarcely be possible to copy them, so it is hardly probable that nature or education will give them to another. His language was always pure, always elegant; and the best words dropped easily from his lips into the best places, with a fluency at all times astonishing, and when he had perfect health, really melodious; his style of speaking consisted of all the turns, oppositions, and figures, which the old rhetoricians taught, and which Cicero frequently practised; but which the austere and solemn spirit of De-

mosthenes refused to adopt from his first master, and seldom admitted into his orations, political or forensic.

“ Many at the bar, and on the bench, thought this a vitiated style; but though dissatisfied as critics, yet, to the confusion of all criticism, they were transported as hearers. That faculty, however, in which no mortal ever surpassed him, and which all found irresistible, was his wit. This relieved the weary, calmed the resentful, and animated the drowsy; this drew smiles even from such as were the objects of it; scattered flowers over a desert; and, like sun-beams sparkling on a lake, gave spirit and vivacity to the dullest and least interesting cause. Not that his accomplishments as an advocate, consisted principally in volubility of speech, or liveliness of raillery. He was endued with an intellect sedate, yet penetrating, chaste, yet profound, subtle, yet strong. His knowledge, too, was equal to his imagination, and his memory to his knowledge. He was no less deeply learned in the sublime principles of jurisprudence, and the particular laws of his country, than accurately skilled in the minute but useful practice of all our different courts. In the nice conduct of a complicated cause, no particle of evidence could escape his vigilant attention, no shade of argument could elude his comprehensive reason. Perhaps the vivacity of his imagination sometimes

prompted him to sport where it would have been wiser to argue; and, perhaps, the exactness of his memory sometimes induced him to answer such remarks as hardly deserve notice, and to enlarge on small circumstances, which added little to the weight of his argument; but those only who have experienced, can in any degree conceive the difficulty of exerting all the mental faculties in one instant, when the least deliberation might lose the tide of action irrecoverably. The people seldom err in appreciating the character of a speaker, and those clients who were too late to engage DUNNING on their side, never thought themselves secure of success; while those against whom he was engaged, were always apprehensive of a defeat.

“As a lawyer, he knew that Britain could only be governed happily on the principles of her constitution, or public law; that the legal power was limited, and popular rights ascertained by it; but that the aristocracy had no other power than that which too naturally results from property, and which laws ought rather to weaken than fortify: he was, therefore, an equal supporter of just prerogative and of national freedom, weighing both in the noble balance of our recorded constitution. An able aspiring statesman, who professed the same principles, had the wisdom to solicit, and the merit to obtain, the friendship of this great man, and a connexion, planted ori-

ginally on the firm ground of similarity in political sentiments, ripened into personal affection, which nothing but death could have dissolved or impaired. Whether in his ministerial station he might not suffer a few prejudices insensibly to creep on his mind, as the best men have suffered because they were men, may admit of a doubt; but if ever prejudiced, he was never uncandid, and though pertinacious in all his opinions, he had great indulgence for such as differed from him.

“ His sense of honour was lofty and heroic; his integrity stern and inflexible; and though he had a strong inclination for splendour of life, with a taste for all the elegancies of society, yet no love of dignity, of wealth, or of pleasure, could have tempted him to deviate, in a single instance, from the straight line of truth and honesty. He carried his democratical principles even into social life, where he claimed no more of the conversation than his just share, and was always candidly attentive, when it was his turn to be hearer. His enmities were strong, yet placable; but his friendships were eternal; and if his affections ever subdued his judgment, it must have been in cases where the fame or interest of a friend was nearly concerned. The veneration with which he constantly treated his father, whom his fortunes and reputation had made the happiest of mortals, could be equalled only by the amiable tenderness

which he shewed as a parent. He used to speak with wonder and abhorrence of Swift, who was not ashamed to leave a written declaration, 'that he could never be fond of children,' and with applause of the Caliph, who, on the eve of a decisive battle, which was won by his valour and wisdom, amused himself in his tent with seeing his children ride on his scymitar, and play with his turban, and dismissed a general, as unlikely to treat the army with lenity, who durst reprove him for so natural and innocent a recreation.

“ For some months before his death, the nursery had been his chief delight, and gave him more pleasure than the cabinet could have afforded; but this parental affection, which had been the source of so much felicity, was, probably, a cause of his fatal illness. He had lost one son, and expected to lose the other, when the author of this painful tribute to his memory parted from him, with tears in his eyes, little hoping to see him again in a perishable state. As he perceives, without affectation, that his tears now steal from him, and begin to moisten the paper on which he writes, he reluctantly leaves a subject, which he could not soon have exhausted, and when he also shall resign his life to the great Giver of it, he desires no other decoration of his humble grave-stone, than this honourable truth :

“ With none to flatter, none to recommend,  
DUNNING approved, and marked him as a friend.”

ON THE USE OF TORTURE IN JUDICIAL  
PROCEEDINGS.\*

Some highly curious facts relative to this subject, are contained in Mr. Ellis's recent publication of Original Letters. We there find " a Warrant from Queen Elizabeth to Sir Thomas Smith and Dr. Wilson, for putting two of the Duke of Norfolk's servants to the rack."

" ELIZABETH, R. *By the Queene.*

" Right trusty and well-beloved, we grete you well, and fyndyng in the traytorous attempts lately discovered, that neither Barker nor Bannister, the Duke of Norfolk's men, have bettered their knolledg, neither will discover the same without torture; forasmuch as the knolledg hereof concerneth our suerty and estate, and that they have untruely allredy answered, We will, and by warrant hereof, authorise you to procede to the further examynation of them uppon all poynts that you can thynk by your discretions mete for knolledg of the truth, and they shall not seme to you to confess playnly their knolledg, then We warrant you to cause them both, or ether of them, to be brought to the rack; and first to move them with feare thereof to deale playnly in their answers, and if that shall not move them,

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\* Continued from vol. i. p. 160.

then you shall cause them to be putt to the rack, and to find the tast thereof, untill they shall deale more playnly, or untill you shall think mete. And so we remitt the whole procedyng to your further discretion, requiryng you to use speed herein, and to require the assistance of our Lieutenant of the Toure. Gyven under our Signet, the xvth of Septemb. 1571.

*“ To our trustie and right well beloved Counsellors, Sr. Thomas —yth, Kt. and to our —tie and well-beloved Doctor —son, one of the Masters of our Requestes.”*

The body of this Warrant is stated by Mr. Ellis to be in the hand-writing of Lord Burleigh, of whose “ favourable dealings,” with regard to the use of torture, we have already given some account. (*Ante*, vol. i. p. 616. See also *Miss Aikin’s Memoirs of the Court of Elizabeth*, vol. ii. p. 133.)

Two days subsequent to the date of the above letter, Sir Thomas Smith writes thus to Lord Burleigh :

“ I suppose we have gotten so much as at this time is like to be had ; yet, to-morrow do we intend to bring a couple of them to the rack, not in the hopes to get any thing worthy that pain or fear, but because it is so earnestly commanded to

us. As for Barker, I think he hath and will confess so much as his wit will serve him ; and yet, as it appeareth, hath been the most doer between the Duke and other foreign practisers. Bannister is somewhat obstinate ; but little he knoweth. We send you his, Barker's, Hegford's, and Charles's examinations, more than you have had already. I pray you trust, that to-morrow we will do what we can." (*Murdin's State Papers*, p. 95.)

It is singular, that a writer of Mr. Rose's historical knowledge, should have fallen into so palpable an error as to assert, that the only attempt to exercise torture in England, was a proposition made in Council by Laud, to have Felton put to the rack, (except when a design was laid to introduce the Civil Law, in the reign of Henry VI.) (*Observations on Fox's Historical Work*, p. 181.) An error which he has very imperfectly corrected in a note, where he says, that it afterwards occurred to him, that mention is made in our history of persons having been put to the rack, in order to extort confessions in cases of treason, in Queen Mary's time. How much more general the practice was, the reader has seen.

LORD THURLOW AND SIR THOMAS DAVENPORT.

The late Sir Thomas Davenport, then Mr. Davenport, had been in habits of intimacy with Lord Chancellor Thurlow, and had flattered himself



with the hopes of succeeding to the first valuable appointment in his power to confer ; but several good things passing by, the patience and temper of Mr. Davenport gave way. The Chief Justiceship of Chester becoming vacant, he thus shortly wrote to the Chancellor : “ The Chief Justiceship of Chester is vacant. Am I to have it ? ” To which the following laconic and emphatic answer was returned : “ *No, by God ! Kenyon shall have it.* ”

REMARKABLE CASE OF THE MURDER OF JANE  
NORKOTT.

The Coroner's inquest, on view of the body, and depositions of Mary Norkott, John Okeman, and Agnes, his wife, were inclined to find Jane Norkott a *felo de se*, (a suicide,) for they informed the Coroner and Jury, “ that she was found dead in her bed ; the knife sticking in the floor, and her throat cut.—That the night before she went to bed with her child, her husband being absent, and that no other person, after such time as she was gone to bed, came into the house, the examiners lying in the outer-room, and they must needs have seen or known if any stranger had come in ; ” whereupon the Jury gave up to the Coroner a verdict that she was *felo de se* : but afterwards, upon rumour amongst the neighbourhood, and their observation of divers circumstances, which manifested that she did not, nor

could possibly, (according to those circumstances,) murder herself: thereupon the Jury, whose verdict was not yet drawn into form by the Coroner assented, and desired the Coroner, that the body, which was buried, might be taken up out of the grave, which the Coroner assented unto; and, thirty days after her death, she was taken up, in the presence of the Jury and a great number of people: whereupon the Jury changed their verdict; and the persons being tried at Hertford assizes, were acquitted; but so much against the evidence, that Judge Harvey let fall his opinion, that it were better an appeal were brought, than so foul a murder escaped unpunished.

Accordingly, the child of the deceased Jane Norkott brought an appeal against John Norkott, his father, his grandmother, and aunt, and her husband, Okeman; "and, because the evidence was so strange," says Sir John Maynard, "I took exact and particular notice." And it was as follows:

After the matters above-mentioned had been related on the trial, an ancient and grave person, minister to the parish where the fact was committed, being sworn to give evidence, deposed; "That the body being taken up out of the grave, thirty days after the party's death, and lying on the grass, and the four defendants being present, were required each of them to touch the dead body.

Okeman's wife fell upon her knees, and prayed God to shew tokens of her innocency. The appellant did touch the dead body; whereupon the brow of the dead, which before was of a livid and carrion colour, (in *terminis*, the verbal expression of the witness,) began to have a dew, or gentle sweat, arise on it, which increased by degrees, till the sweat ran down in drops on the face; the brow turned to a lively and fresh colour, and the deceased opened one of her eyes, and shut it again; and this opening the eye was done three several times; she likewise thrust out the ring or marriage finger three times, and pulled it in again; and the finger dropped blood from it on the grass." Sir Nicholas Hyde, Chief Justice, seeming to doubt this evidence, asked the witness, "Who saw this besides you?"

*Witness.* "I cannot swear what others saw: but, my Lord," (said he,) "I do believe the whole company saw it; and if it had been thought a doubt, proof would have been made of it, and many would have attested with me." Then the witness, observing some admiration in the auditors, spake farther: "My Lord, I am minister of the parish, and have long known all the parties; but never had occasion of displeasure against any of them, nor had to do with them, or they with me; but, as I was minister, the thing was wonderful to me: but I have no interest in the matter, but as

called upon to testify the truth, and that I have done." (This witness was a very reverend person, as I guessed, of about seventy years of age; his testimony was delivered gravely and temperately, but to the great admiration of the auditory.) Whereupon, applying himself to the Chief Justice, he said, "My Lord, my brother, here present, is minister of the next parish adjacent, and I am sure saw all done that I have affirmed." Therefore, that person was also sworn to give evidence, and did depose in every point,— "the sweating of the brow,—the change of the colour,—thrice opening the eye,—and the thrice motion of the finger, and drawing it in again;"—only the first witness added, that he himself dipped his finger in the blood which came from the dead body, to examine it, and he swore he believed it was blood.

I conferred afterwards with Sir Edward Powell, Barrister at Law, and others, who all concurred in the observation; and for myself, if I were upon oath, can depose, that these depositions, (especially the first witness,) are truly reported in substance.

The other evidence given against the prisoners, *viz.* the grandmother of the plaintiff, and against Okeman and his wife, "That they confessed they lay in the next room to the dead body that night; and that none came into the house till they found

her dead the next morning ; therefore, if she did not murder herself, they must be the murderers. To that end, further proof was made :—

1. “ That she lay in a composed manner in her bed, the bed-clothes not at all disturbed, and her child by her in bed.

2. “ Her throat cut from ear to ear, and her neck broke. So that if she first cut her throat, she could not possibly break her neck in the bed.

3. “ There was no blood in the bed, saving a tincture of blood on the bolster whereon her head lay, but no substance of blood at all.

4. “ From the bed’s head there was a stream of blood on the floor, which ran along until it ponded in the bendings of the floor, to a very great quantity ; and there was also another stream of blood on the floor at the bed’s foot, which ponded also on the floor to a very great quantity ; but no continuance or communication of blood on either of those two places, from one to the other, neither upon the bed, so that she bled in two several places ; and it was deposed, turning up the mat of the bed, that there were clots of congealed blood on the straw of the mat underneath.

5. “ The bloody knife was found in the morning sticking in the floor, a good distance from the bed ; but the point of the knife, as it stuck, was towards the bed, and the haft from the bed.

6. "There was the print of a thumb and four fingers of a left hand."

*Sir Nicholas Hyde, Chief Justice.* "How can you know the print of a left hand from the print of a right hand in such a case?"

*Witness.* "My Lord, it is hard to describe; but if it please that honourable Judge to put his left hand upon your left hand, you cannot possibly place your right hand in the same posture." Which being done, and appearing so, the defendants had time to make their defence; but gave no evidence to any purpose.—The jury departed from the bar; and returning, acquitted Okeman, and found the other three Guilty: who, being severally demanded why judgment should not be pronounced, said nothing but severally, "I did not do it, I did not do it."—Judgment was given, and the grandmother and husband executed; but the aunt had the privilege to be spared execution, being with child. I inquired if they confessed any thing at their execution, but they did not, as I was told. (*State Trials, vol. x. Appendix, p. 29, A. D. 1641.*)

SIR JAMES WHITELOCKE.

Sir Bulstrode Whitelocke, in his Memorials, gives the following account of the death of his father, Sir James Whitelocke, who was Chief Justice of Chester, and afterwards one of the Judges of the King's Bench, in the reign of James I.

“ This Trinity Term my father fell ill of a cold, which so increased upon him, that he was advised to go into the country. Whereupon he took his leave of his brethren, the Judges and Sergeants, and was cheerful with them; but said, *God be with you, I shall never see you again*; and this without the least disturbance or trouble of his thoughts. And, soon after he came into the country, on the 22d day of June, he died; and in his death the King lost as good a subject, his country as good a patriot, the people as good a judge, as ever lived. All honest men lamented the loss of him. No man in his age left behind him a more honoured memory. His reason was clear and strong, and his learning deep and general. He had the Latin tongue so perfect, that sitting Judge of assize at Oxford, when some foreigners, persons of quality, being there, and coming into Court to see the manner of our proceedings in matters of justice, this Judge caused them to sit down, and briefly repeated the heads of his charge to the Grand Jury in good and elegant Latin, and thereby informed the strangers and the scholars of the ability of our Judges, and the course of our proceedings in matters of law and justice. He understood the Greek very well, and the Hebrew; and was versed in the Jewish Histories, and exactly knowing in the history of his own country, and in the pedigree of most persons of honour and

quality in the kingdom ; and was conversant in the studies of antiquity and heraldry. He was not by any excelled in the knowledge of his own profession of the Common Law of England, wherein his knowledge of the Civil Law, whereof he was a graduate in Oxford, was a help to him. His learned arguments, both at the bar and bench, will confirm this truth."

PROJECTS TO REFORM THE LAW.

To the observations already made on this subject, (*see vol. i. p. 10.*) the reader is requested to subjoin the following additional matter.

The author of the "Characters of C. J. Fox," (Dr. Parr,) after noticing the plan proposed by Sir Matthew Hale, for amending the Law, observes, "These are excellent regulations. The reform, which I hope will one day or other be accomplished in our penal code, is so extensive, that it cannot be effected by the authority of Courts and Judges without troubling Parliament. My wish is, that sages of the law should not be employed in it exclusively ; that the Committee should consist not only of Members in both Houses of Parliament, but of able Lawyers, who are not in Parliament ; that some of the Judges should form a part of the Committee, and that when the code is brought before the Lords, and while the merits of it are debating, the Judges should attend



in their places, and give their opinions. After all, if the business were undertaken seriously, it would be easy to adjust any difference upon the duties which are to be assigned to the Judges. So again, I would gladly give up any opinion upon reforming the whole code at once, if I were convinced that the legislature were earnestly bent upon revising and reforming every part of it *seriatim*." (*Characters, &c. vol. ii. p. 498.*)

The same learned writer also observes, "I wish, as Mr. Barrington does, men in Parliament to have the assistance of Lawyers who are not in Parliament. They may bring equal abilities to the task, and, perhaps, in some cases, they may be able to devote more time to it. But, I think, that the labours of both will be facilitated, and their regulations improved, by the farther assistance of studious persons, whose talents have long been employed on the general science of jurisprudence, whose legal knowledge is accompanied by extensive reading in history, and by a spirit truly philosophical, and whose minds are wholly exempt from those prejudices which always arise, more or less, from professional pursuits, thoughts, and actions. It is plain that Mr. Barrington believed many amendments in our penal statutes to be necessary, and from the multiplicity and variety of the subjects which must be discussed by those who would reform them, I am

led to think, that a general repeal, followed by a general re-enactment, would be more easy and more efficacious than a series of separate declaratory statutes. When the whole body of the code was under contemplation, it would be more practicable, not only according to the opinion of Covarravias, to observe the rule of distributive justice in different species or degrees of the same crime, but to introduce the same measure of distributive justice between one crime and another." (*Vol. ii. p. 330.*)

In pursuing this subject the following details, relative to the formation of the French code, will not, probably, be thought misplaced. They are borrowed from the *North American Review* for July, 1821, where they form part of an able article on an American Translation of Pothier's *Maritime Contracts*.

"The Revolution came and swept away this vast accumulation of laws. To supply its place, temporary decrees were enacted by the different legislatures. The project of a general Civil Code was first drawn up by Cambaceres, under the Republic, and before the return of Bonaparte from Egypt. On the accession of the latter to the first Consulship, his ardent and restless mind was turned to this important subject, and he aspired to combine the fame of the legislator with the glory which he had acquired in arms. The same object

had before occupied the attention of the different National Assemblies which so rapidly succeeded each other ; but they were too much distracted by external danger and domestic faction to mature a work, to accomplish which required either the tranquillity of peace and social order, or the power of a single will. After the return of the First Consul from the field of Marengo, he appointed a Board of Commissioners to draw up the plan of a code, which should supersede all the pre-existing laws concerning private civil rights. It consisted of MM. Portalis, Tronchet, Bijot, Preameneu, and Malleville, all eminent and experienced lawyers of the old school, who produced the *projet de Code Civil*, which was printed and submitted to discussion in a mode adapted to free it from imperfections, to remove the objections to its general plan, to simplify its provisions, and render them more explicit, and produce the most perfect model of legislation the world had yet seen. The Revolution, which had levelled in the dust almost all the social institutions of France, without discriminating the good from the evil, rendered the task comparatively easy. The innumerable customs of the provinces had disappeared ; and the multitude of royal ordinances was superseded by decrees of different National Assemblies, which had not yet gained that reverence and strength which time alone can give to the works of man. From this

mass of ruins the legislator might select such materials as he thought fit for the construction of his new edifice. The Roman law was alone left, having the efficacious authority of a code of *written reason*; an authority which it must always command wherever it has been once known and established. It furnished an inexhaustible repository of legal principles, adapted to the wants of a highly civilized and polished state of society, and had no small pretensions to be considered as the universal code of Europe. From this source, then, from the ancient customary law of France, and especially from the works of Pothier himself, they drew the materials of their new creation.

“After this work had been prepared, it was submitted to all the Courts of Appeal, who made their observations upon the plan, which were also printed, and the whole was then subjected to the reversion of the Council of State. Each book was then separately submitted to the legislative body for its adoption, accompanied with an *exposé des motifs*. These *observations* of the judges, the *procès verbal* of the deliberations of the Council of State, and the *motifs*, form an excellent commentary upon the text of the Code. *The Code de Commerce*, which was principally compiled from, and includes the subject matters of, the Commercial Ordinance of 1673, and the Marine Ordinance of 1681, was prepared in a similar

manner ; and after these succeeded the *Code de Procedure Civil*, the *Code Penal*, and the *Code de Procedure Criminelle*. These still form, with a very few alterations, the law of France ; and certainly, if despotic authority exerted for the accomplishment of beneficent designs, can compensate for the miseries inflicted by military ambition, the fame of Napoleon must in some degree be justified from the imputation of having wielded his power only for the destruction of mankind."

SIR THOMAS MORE AND ERASMUS.

"It is reported that he who conducted Erasmus to England, procured that he and Sir Thomas More should first meet together in London, at the Lord Mayor's table, neither of them knowing each other. And in the dinner time they chanced to fall into argument, Erasmus still endeavouring to defend the worsèr part ; but he was so sharply set upon and opposed by More, that, perceiving that he was now to argue with a readier wit than ever he had before met withal, he broke forth into these words, not without some choler, *Aut tu Morus es, aut nullus* ; whereunto Sir Thomas readily replied, *Aut tu es Erasmus aut Diabolus* ; because at that time he was strangely disguised, and had sought to defend impious propositions ; for although he was a singular humanist, and one that could utter his mind in a most eloquent

phrase, yet he had always a delight to scoff at religious matters, and find fault with all sorts of clergymen. He took a felicity to set out sundry commentaries upon the Fathers' works, censuring them at his pleasure, for which cause he is termed *Errans mus*, because he wandereth here and there in other men's harvests; yea, in his writings, he is said to have hatched many of those eggs of heresy which the Apostata Friar Luther had before laid; not that he is to be accounted an heretic, for he would never be obstinate in any of his opinions; yet would he irreligiously glance at all antiquity, and find many faults with the present state of the church. Sir Thomas, in success of time, grew less affectionate unto him, by reason he saw him still fraught with much vanity and inconstancy in respect of religion: as when Tindall objecteth unto Sir Thomas, that his darling Erasmus had translated *church* into *congregation*, and *Priest* into *Elder*, even as himself had done, Sir Thomas answered thereto, *If my darling Erasmus hath translated those places with the like wicked intent that Tindall hath done, he shall be no more my darling, but the devil's darling.* Finally, long after, having found in Erasmus's works many things necessary to be amended, he counselled him as his friend, in some later book of retractations, to correct in his writing what he had unadvisedly written in the heat of youth. But he,

who was far different from St. Augustine in humility, would never follow his counsel ; and therefore he is censured by the church for a busy fellow ; many of his books are condemned, and his opinions accounted erroneous, though he always lived a Catholic priest, and hath written most sharply against all those new Gospellers who now began to appear in the world ; and, in a letter to John Fabius, Bishop of Vienna, he saith, that he hated those seditious opinions, with the which at this day the world is miserably shaken ; neither doth he dissemble, saith he, being so addicted to piety, that if he incline to any part of the balance, he will bend rather to superstition than to impiety ; by which speech he seemeth, in doubtful words, to tax the church with superstition, and the new apostolical brethren with impiety." (*More's Life of More.*)

See some observations upon this passage in Jortin's *Life of Erasmus*, vol. i. p. 177.

SONNET TO G. HARDYNGE, ESQ.

Of Mr. Hardyng we have already given some account, (*Ante*, vol. i. p. 177.) The following sonnet was addressed to him by Sir William Jones.

HARDYNGE, whom Camden's voice and Camden's  
fame

To noble thoughts, and high attempts excite,  
Whom thy learned sire's well-polish'd lays invite

To kindle in thy breast, Phœbæan flame,  
 Oh rise ; oh ! emulate their lives and claim  
 The glorious meed of many a studious night,  
 And many a day spent in asserting right,  
 Repressing wrong, and bringing fraud to shame.  
 Nor let the glare of wealth, or pleasure's bowers  
 Allure thy fancy. Think how Tully shone,  
 Think how Demosthenes, with heavenly fire,  
 Shook Philip's throne and lightened o'er his towers.  
 What gave them strength ? Not eloquence alone,  
 But minds elate above each low desire.

SIR WILLIAM JONES'S PROFESSIONAL LIFE.

It is singular that we should meet in our legal annals with three celebrated men who have enjoyed the name and title of Sir William Jones. The first, the author of the Reports, who held a seat on the Bench in the reign of Charles I. ; the second, Attorney General for a short period during the reign of Charles II. ; and the third, "Linguist Jones," the subject of the present brief notice.

He appears to have been designed for the Bar from an early period. It was strongly recommended by Sergeant Prime, and other legal friends of his mother, that young Jones should be placed, at the age of sixteen, in the office of some eminent special pleader. Even at this early age the juvenile student had the curiosity to peruse the



Abridgment of Coke's Institutes by Ireland, with so much attention, that he is stated to have frequently amused the legal friends of his mother, by reasoning with them on old cases, generally supposed to be confined to the learned of the profession. The Law, however, at that time, observes his biographer, had little attraction for him; and he felt no inclination to renounce his Demosthenes and Cicero for the pleadings in Westminster Hall. His disgust to the study of the law had also been particularly excited by the perusal of some old and inaccurate abridgments of law cases in barbarous Latin. This disinclination probably induced Mrs. Jones to reject the advice of the learned Sergeant, and her son was accordingly sent to the University. The progress which he made in so many various branches of literature and science, and the attachment which he imbibed for those pursuits, no doubt tended to indispose his mind for the confined and severe labours which the profession of the law exacts. It was not until he had determined to resign the charge of Lord Althorp's education, in the year 1770, at the age of twenty-four, that Mr. Jones became a member of the Temple; but he did not on this occasion desert his former studies. "On my late return to England," says he in a letter to his friend Reviczki, "I found myself entangled, as it were, in a variety of important considera-

tions. My friends, companions, relations, all attacked me with solicitations to banish poetry and oriental literature for a time, and apply myself to oratory and the study of the law, in other words, to become a Barrister, and pursue the track of ambition. Their advice, in truth, was conformable to my own inclinations; for the only road to the highest stations in this country is that of the law, and I need not add how ambitious and laborious I am."

In another letter, written in the same year, (1771,) addressed to Mr. Wilmot, we trace the progress of his studies, "I have just begun to contemplate the stately edifice of the Laws of England,—

"The gather'd wisdom of a thousand years."— if you will allow me to parody a line of Pope. I do not see why the study of the law is called dry and unpleasant; and I very much suspect that it seems so to those only who would think any study unpleasant which required great application of the mind and exertion of memory. I have read most attentively the two first volumes of Blackstone's Commentaries, and the two others will require much less attention. I am much pleased with the care he takes to quote his authorities in the margin, which not only give a sanction to what he asserts, but point out the sources to which the student may apply for more

diffusive knowledge. I have opened two common place books, the one of the law, the other of oratory, which is surely too much neglected by our modern Speakers. \* \* \* But I must lay aside my studies for about six weeks, while I am printing my grammar, from which a good deal is expected; and which I must endeavour to make as perfect as a human work can be. When that is finished I shall attend the Court of King's Bench very constantly, and shall either take a lodging in Westminster, or accept the invitation of a friend in Duke Street, who has made me an obliging offer of apartments."

That Mr. Jones's more elegant pursuits encroached upon the moments which would otherwise have been devoted to his legal studies, is very evident from the foregoing passage; and from another letter, written in the same year, we find that he was not without apprehensions of his professional character suffering in consequence of his reputation as a man of letters. "As to the years in which the poems were written," he observes, "they are certainly of no consequence to the public; but (unless it be very absurd) I would wish to specify them, for *it would hurt me, as a student at the Bar, to have it thought that I continue to apply myself to poetry; and I mean to insinuate that I have given it up for several years, which I must explain more fully in the preface.*

For a man who wishes to rise in the law, must be supposed to have no other object."

Under these impressions, Mr. Jones, like Sir William Blackstone, in an address to the Muse, expressed his determination to renounce polite literature, and to devote himself entirely to the study of the law. He was called to the Bar in January, 1774, and in the Autumn of the same year, we find him, in a letter to his friend Schultens, expressing his determination to renounce for the next twenty years, all studies but those which were connected with his profession. He then passes a warm eulogium upon the study of the law, and after comparing it with lighter pursuits, tells his correspondent that he prefers its fruitful and useful olive to the barren laurels of literature. "To tell you my mind freely," he adds, "I am not of a disposition to bear the arrogance of men of rank, to which poets and men of letters are so often obliged to submit."

For some time after his being called to the bar, Mr. Jones declined practice, though, in 1775, for the first time, he attended the spring circuit and sessions at Oxford, whether as a spectator or actor his biographer does not inform us. In the following year, he was regular in his attendance at Westminster Hall, and was appointed a Commissioner of Bankrupts, through the interest of Lord Bathurst. We find him also talking of

his "practice at the bar;" and in the summer of the next year (1777,) he writes like one overwhelmed with business. "My law employments," says he, in a letter to Schultans, "attendance in the courts, incessant studies, the arrangement of pleadings, trials of causes, and opinions to clients, scarcely allow me a few moments for eating and sleeping." This intense application at length injured Mr. Jones's health, and he was compelled to visit Bath "for the purpose of recruiting his exhausted spirits and strengthening his stomach;" and upon this occasion, he informs Lord Althorp, that "he had abstained, with some reluctance, from dancing, an amusement which would be too heating for a water-drinker."

In 1778, Mr. Jones gave to the world his Translation of the Orations of Isæus, to which he added, a Dissertation on the Attic Laws of Succession, and on the Forms of Pleading in the Athenian Courts. This publication may be regarded as in accordance with the author's professional pursuits. He had at this time, as we are informed by his biographer, every reason to be satisfied with the proportion of business which fell to his share; and a letter addressed to Lord Althorp in this year, confirms the statement, "The agitation of forensic business," says he, "and the sort of society in which I have been forced to live, afford me few moments of leisure,

except those in which nature calls for perfect repose." About this period, the prospect of a seat on the bench in India first opened itself to Mr. Jones, as we learn from the letter last referred to. "The disappointment," he observes, "to which you allude, and concerning which you say so many friendly things to me, is not yet certain, my competitor is not yet nominated; many doubt whether he will be: I think he will not, unless the Chancellor should press it strongly. It is still the opinion and wish of the bar that I should be the man. I believe the Minister hardly knows his own mind. I cannot legally be appointed till January, or next month at soonest, because I am not a barrister of five years' standing until that time; now, many believe that they keep the place open for me until I am qualified. I certainly wish to have it, because I wish to have twenty thousand pounds in my pocket before I am eight and thirty years old; and then I might contribute, in some degree, towards the service of my country in parliament as well as at the bar, without selling my liberty to a patron, as too many of my profession are not ashamed of doing, and I might be a speaker in the House of Commons in the full vigour and maturity of my age; whereas, in the slow career of Westminster Hall, I should not, perhaps, even with the best success, acquire

the same independent station till the age at which Cicero was killed."

The celebrated riots of 1780, gave Mr. Jones an opportunity of publishing a short legal pamphlet, under the title of *An Inquiry into the legal Mode of suppressing Riots, with a Constitutional Plan of future Defence*. During the same year, his practice was augmented, and he was engaged as counsel in some important cases. "I spoke," says he to the Bishop of St. Asaph, "yesterday in Westminster Hall for two hours and a half, on a knotty point of law, and this morning for above an hour on a very interesting public question; to-morrow I must argue a great cause." About this period he employed himself upon his celebrated Treatise on the Law of Bailments, and projected some other professional works. (*See Ante.*) His attention, however, was still earnestly directed towards an Indian Judgeship, and with this view he undertook the translation of an Arabian Poem, on the Mahomedan Law of Succession to the Property of Intestates. (*See his Works, vol. viii. p. 183.*) The attainment of his object was for some time doubtful. "With regard to Asiatic Letters," he observes, in a letter to Gibbon, "a necessary attention to my profession will compel me wholly and eternally to abandon them, unless Lord North (to whom I am already under no small obligation,) should think

me worthy to concur in the improved administration of justice in Bengal, and should appoint me to supply the vacancy on the India Bench." The long expected honour was at last conferred upon him, and in March, 1783, during the administration of Lord Shelburne, he was appointed a Judge of the Supreme Court of Judicature at Fort William, in Bengal, and was knighted on the occasion.

The foregoing notice of Sir William Jones's professional life may, perhaps, be thought trifling; but it is not altogether useless. It will serve to shew, that it is not absolutely impracticable to unite the greatest proficiency in other studies with a sound and practical knowledge of the law, and to attain, notwithstanding that rare and dangerous union, a distinguished rank in the profession.

We shall conclude with some lines on the Death of Sir William Jones, from a well-known poem.

He, too, whom Indus and the Ganges mourn,  
The glory of their banks from Isis torn,  
In learning's strength is fled, in judgment's prime,  
In science temperate, various, and sublime.  
To him familiar every legal doom,  
The Courts of Athens, or the Halls of Rome,  
Or Hindoo Vedas taught; for him the Muse  
Distill'd from every flower Hyblæan dews;  
Firm when exalted, in demeanour grave;  
Mercy and truth were his; he loved to save.



His mind collected ; at opinion's shock  
 Jones stood unmov'd, and from the Christian rock  
 Celestial brightness burning on his breast,  
 He saw the star, and worshipped in the East !"  
 (*Pursuits of Literature*, p. 364, 16th Edit.)

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A Lawyer, now deceased, a celebrated wag, was pleading before a Scotch Judge, with whom he was upon the most intimate terms. Happening to have a client, a female, of the name of Tickle, defendant in an action, he commenced his speech in the following humorous strain : " Tickle my client, the defendant, my Lord." The auditors, amused with the oddity of the speech, were almost driven into hysterics by the Judge replying,—“ Tickle her yourself, Harry, you are as able to do it as I.”

#### THREE JUDICIAL PORTRAITS.

If any of our readers can solve the following enigma, they will accomplish what we have ourselves in vain endeavoured to do. Three Judges of the last century are intended to be represented, but for what individuals in particular the portraits are intended, we are unable to divine. One of them is, probably, Mr. J. Buller. The portraits are drawn by Dr. Parr with that power and spirit for which his pen is remarkable.

“ At this very hour do I shrink, when my imagination presents to me the spectres of three furred *αὐδουκτονοί*, in whose abilities, as exercised in trials for capital offences, ‘ not light, but darkness visible, served only to discover sights of woe.’

“ With learning, taste, and genius, which adorned the head, but improved not the heart; one of them was a sober, subtle, inexorable interpreter and enforcer of sanguinary statutes, with a ready memory, keen penetration, barren fancy, vulgar manners, and infuriate passions; another indulged himself in the gibberish of a canting fanatic, and the ravings of an angry scold, before trembling criminals;—with sagacity enough to make the worse appear the better cause to superficial hearers, and with hardihood enough not to profess much concern for the bodies of men, or their souls; the third carried about him an air, sometimes of wanton dispatch, and sometimes of savage exultation, when he immolated hecatombs at the altar of public justice;—armed with ‘ giant strength,’ and accustomed ‘ to use it like a giant,’ these protectors of our persons transferred to thievery that severity which the Court of Areopagus employed only against cut-throats, and they did so where judges were not bound by a *peculiar*, direct, and sacred oath, adapted to the *peculiar character of the tribunal*, and where offenders had not the chance, as among the Athenians, of a

more favourable issue, of appeals to the *Thesmo-thetæ*, nor that privilege of going before trial into voluntary exile, which, on the first institution of this Court, had been granted to them by legislators, who εἶθ' Ἡρώες ἦσαν, ἢ τε θεοί, ἐκ ἐπίθεντο τοῖς ἀτυχήμασιν ἀλλ' ἀνδρωπίως ἐπικυφίσαν, εἰς ὅσον εἶχε καλῶς, τὰς συμφορὰς. (*Demos. Orat. adv. Aristocrat.*)

“ If a Βῶμος Ελέυ like that at Athens had been placed in the avenue to our English Courts, there *διασπόλοι ἀνοδῆς* would have differed from each other in their outward demeanour, and yet have remained equally guiltless of ‘ bearing the sword in vain.’ *Elaphocardius*, upon approaching the hallowed spot, might have paused for a second, winced under a slight stroke of rebuke from the monitor within, and quietly sneaked by on the other side. *Cardamoglyphus* would have wrung his hands, lifted up his eyes to heaven, implored forgiveness to himself as a miserable sinner, and before sun-set would have boasted of ‘ not being as other men are,’ regraters, sabbath-breakers, libertines, and more especially as that execrable criminal who stood before him at the bar. But the steps of *Cynopes* would not have been turned aside to the right hand or to the left; his eye would have darted upon the emblems of the altar with a glare of fierce disdain; he would negligently have swept the base of it with the skirts of his robe; he would have laughed inwardly at

the qualms of one of his compeers, and scoffed without disguise at the mummeries of the others. Happily these arbiters of life and death are now no more : they have left an example not very likely to be imitated by their learned successors, and my hope is, that the mercy which they shewed not to others in this world, may in another world be shewn to them." (*Characters of Fox, vol. ii. p. 344.*)

LOCKE'S ADVICE ON THE STUDY OF THE LAW.

*Civil Law.*

"When he has pretty well digested Tully's Offices, and added to it Puffendorf *de officio hominis et Civis*, it may be seasonable to set him upon Grotius *de Jure belli et pacis*, or which, perhaps, is the better of the two, Puffendorf *de Jure Naturali et gentium* ; wherein he will be instructed in the natural rights of men, and the original and foundations of society, and the duties resulting from thence. This general part of Civil Law and History, are studies which a gentleman should not barely touch at, but constantly dwell upon, and never have done with. A virtuous and well-behaved young man that is well versed in the general part of the Civil Law, (which concerns not the chicane of private cases, but the affairs and intercourse of civilized nations in general, grounded upon principles of reason,) understands

Latin well, and can write a good hand, one may turn loose into the world, with great assurance that he will find employment and esteem every where."

*Common Law.*

"It would be strange to suppose an English gentleman should be ignorant of the laws of his country. This, whatever station he is in, is so requisite, that from a justice of the peace to a minister of state, I know no place he can well fill without it. I do not mean the chicane or wrangling and captious part of the law; a gentleman, whose business is to seek the true measures of right and wrong, (and not the arts how to avoid doing the one, and secure himself in doing the other,) ought to be as far from such a study of the law, as he is concerned diligently to apply himself to that wherein he may be serviceable to the country. And to that purpose, I think the right way for a gentleman to study our law, which he does not design for his calling, is to take a view of our English Constitution and Government, in the ancient books of the Common Law, and some more modern writers, who out of them have given an account of this government; and having got a true idea of that, then to read our history, and with it join, in every king's reign, the laws then made. This will give an insight into the

reason of our statutes, and shew the true ground upon which they came to be made, and what weight they ought to have." (*Locke's Essays on Education*, p. 84. See also *Bishop Burnet's Advice on the same subject*, ante, p. 37.)

DEAN SWIFT AND SERGEANT BETTESWORTH.

The best account of the singular fracas between the Dean and the Sergeant is contained in Sir Walter Scott's *Life of Swift*, (p. 418,) from which it is now borrowed.

"In a Satire, printed in 1733, ridiculing the Dissenters for pretending to the title of 'Brother Protestants and Fellow Christians,' the Dean, among other ludicrous illustrations of their presumption, introduced this simile :

' Thus at the bar the booby B——,  
Though half-a-crown o'er pays his sweat's worth,  
Who knows in law nor text nor margent,  
Calls Singleton his brother Sergeant.'

The blank in the termination of the first couplet indicated Mr. Bettesworth, a Member of Parliament and Sergeant at Law,\* remarkable for his

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\* "The rhyme is said to have been suggested by a casual circumstance: a porter brought a burthen to the Dean's house while he was busy with the poem, and labouring to find a rhyme for this uncommon name, the more anxiously as Bettesworth exulted in the idea of its

florid elocution in the House and at the Bar, who had been very active in promoting those proceedings which Swift regarded as prejudicial to the clergy. Upon reading the lines, he was wrought up to such a height of indignation, that, drawing out a knife, he swore he would with that very instrument cut off the Dean's ears. After this denunciation, he went, in the height of his fury, to the Deanery, and from thence to Mr. Worrall's, where Swift was on a visit. The family were at dinner, and the stranger being shewn into another apartment, the Dean was called out to him. The Sergeant advanced to him with great haughtiness, and said, 'Doctor Jonathan Swift, Dean of St. Patrick's, I am Sergeant Bettesworth,' this being his affected mode of pronouncing his name. 'Of what regiment?' answered Swift. After a very angry parley, Bettesworth began to raise his voice, and gave such indications of violence, that Mr. Worrall and the servants rushing in, compelled him to withdraw. The tradition in the Dean's family bears, that

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being impossible. The fellow's demand being considered as exorbitant, he wiped his forehead, saying, with the humour of a low Irishman, 'Oh, your Reverence, my sweat's worth half-a-crown.' The Dean immediately caught at the words, 'Aye, that it is, there's half-a-crown for you.' This anecdote is given on the authority of Mr. Theophilus Swift."

Bettesworth actually drew his knife; but the Dean's own narrative, transmitted to the Lord Lieutenant, does not countenance that last excess, only affirming, that, by Bettesworth's own report, he had a sharp knife in his pocket, and a footman attending in the hall, to open the door to one or two ruffians, who waited his summons in the street.\* The Dean remained composed and unmoved during this extraordinary scene. It was fortunate for the Sergeant's person, as well as his character, that he did not proceed in his meditated vengeance on the person of an old man, and a clergyman, since the attempt must have been made at the risk of his life. So soon as the news transpired, the inhabitants of that part of Dublin, called the Earl of Meath's Liberty, assembled, and sent a deputation to Swift, requesting his permission to take vengeance on Bettesworth for his intended violence to the patriot of Ireland. Swift returned them thanks for their zeal; but enjoined them to disperse peaceably, and adding a donation of two or three guineas, prohibited them from getting drunk with the money, adding,

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\* " Various accounts of this interview have been given; but that of the Dean to the Duke of Dorset, immediately after it took place, ought to be preferred." (*Scott's Swift*, vol. xviii. p. 244.) The additional circumstances, stated in the version of this story, (p. 135, *Ante*,) are grounded on the authority of Mr. Sheridan,



' You are my subjects, and I expect you will obey me.' It is no slight proof of the despotism of his authority, founded as it was, solely upon respect and gratitude, that his defenders complied with his recommendation in both particulars, and peaceably and soberly separated to their dwellings. For some time, however, they formed a guard among themselves for the purpose of watching the Deanery and the person of the Drapier, lest Bettesworth should have adopted any new scheme of vengeance.

" The consequences of this rashness were very serious to Mr. Bettesworth, for not only was he overwhelmed by the Dean and his friends with satire and ridicule,\* to which he had shewn himself so keenly sensible; but in the bitterness of his heart he confessed, in the House of Commons, that Swift's satire had deprived him of 1200*l.* a year."

SIR GEORGE JEFFERIES.

The ensuing anecdotes of Jefferies are borrowed from Mr. Seward's excellent Collections, *vol.* ii. *p.* 85.

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\* See "Bettesworth's Exultation." (*Scott's Swift, vol.* x. *p.* 534.) "Epigram inscribed to the Honourable Sergeant Kite." (*p.* 536.) "The Yahoos Overthrown; or, the Kevan Bayle's New Ballad." (*p.* 537.) "On the Archbishop of Cashel and Bettesworth." (*p.* 541.)

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“ A learned and ingenious collector in London has in his possession the patent for creating this insolent and cruel magistrate Earl of Flint. Jefferies wished to have this title, not as corresponding to his general character, but as having an estate in the County of Flint. Jefferies early distinguished himself by his brutal treatment of prisoners, and of practitioners of the law, whom he disliked. At the end of ‘ The Ninth Collection of Papers relative to the present juncture of Affairs in England,’ 4to. 1698, there is this singular advertisement: ‘ Lately published, the Trial of Mr. Papillon, by which it is manifest, that the then Lord Chief Justice, (Jefferies,) had neither learning, law, nor good-manners, but more impudence than ten carted whores, (as was said of him by King Charles II.) in abusing all those worthy citizens who voted for Mr. Papillon and Mr. Dubois, calling them a parcel of factious, pragmatical, sneaking, whoring, canting, suiveling, prick-eared, crop-eared, atheistical fellows, rascals, and scoundrels, as in page 19, and other places of the said Trial, may be seen. Sold by Michael Janeway, and most Booksellers.’ Yet Jefferies, amidst all his cruelties, was a lover of buffoonery. Sir J. Reresby says, that he once dined with Jefferies, when he was Lord Chancellor, and

that the Lord Mayor was a guest, and some other gentlemen : that Jefferies, according to custom, drank deep at dinner, and called for Mountfort, one of his gentlemen, who had been a comedian, and an excellent mimic, and that to divert the company, adds Sir John, (as he was pleased to term it,) he made him plead before him, in a feigned cause, during which, he aped all the great lawyers of the age, in their tone of voice, and in their action and gesture of body.

“ When that exquisite congeries of musical instruments, the present Temple organ, was to be tried previously to its being set up in the church at which it is now placed, Jefferies was the umpire between the merit of it and the organ now in the new church at Wolverhampton, and gave his judgment in favour of the first. Jefferies said of himself, that he was not near so sanguinary on the Western Circuit, as his employer, James the Second, wished him to have been.\* On that execrable business, Jefferies exhibited a striking instance of the power of virtue upon a mind the most vicious and profligate. He had no sooner retired to his lodgings at Taunton to prepare himself for the opening of his bloody commission, than he was called upon by the minister of the church of

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\* This question will be examined more at large in a subsequent part of these volumes.

St. Mary Magdalen, in that town, who, in a very mild manner, remonstrated with him upon the illegality and barbarity of that business, upon which he was then going to proceed. Jefferies heard him with great calmness, and, soon after he returned to London, sent for him, and presented him to a stall in the Cathedral of Bristol. Jefferies was committed to the Tower on the flight of James II. from England. He is said to have died in that fortress of a disease occasioned by drinking brandy, to lull and to hebetate the compunctions of a terrified conscience."

#### JUDICIAL CORRUPTION.

To the illustrations of this subject in a former volume, (*Ante*, vol. i. p. 223,) the following passage may be added, which proves the extent to which Judicial Corruption had attained in the reign of James I.

"Among the qualities of a good judge, there is one remaining and fit to bring up the rear, which the king looked upon as verily to be presaged in his new officer, (Lord Keeper Williams,) an hand clean from corruption and taking gifts *which blind the eyes of the wise and pervert the words of the righteous*, (*Deut. c. 16, v. 19.*) 'Twas loudly exclaimed, (and the king was ashamed to have so far mistaken the persons,) that there were sucking horse-leeches in great places. Things

not to be valued at money were saleable, and what could not gold procure? As Menander writes, Φίλοι δικασται, μαρτυρες, μονον διδω : αυτῆς γὰρ ἰξεις τις Θεας ὑπηρετας. That is, friends and judges, and witnesses, you may have them for a price : nay, such as sit in the place of God, will serve you for such wages. The wise king having both prevailed by monitions and menaces against this sordid filthiness, cast his liking upon a man whom he might least suspect for gripleness and bribery. The likeliest indeed, of all others, to shake this viper from his hand, and to be armed with a breast-plate of integrity against the mammon of iniquity ; for he was far more ready to give than to take, to oblige than to be beholding, *magis illud laborare ut illi quam plurimi debeant*, as Salust says of Jugurtha. He was well descended, of fortunate and ancient times, and had made his progress to advancements by steps of credit ; a good bridle against base deviations. What, then, made an unsavoury historian call him Country Pedant ? A reproach with which H. L. doth flirt at him in his History of King Charles, a scornful untruth. So I shake off this bar and return to the reverend Dean, who was in a function of holy calling next to God ; among them I know all have not been incorrupt. *The sons of Samuel turned aside after lucre, and took bribes and perverted Judgment*, 1. Sam. c. 8. v. 3. But commonly I trust they do

not forget what a scandal it is, if God's stewards turn the devil's rent-gatherers. He was also unmarried, and so unconcerned in the natural impulsion of avarice to provide for wife and children. Our old moral men touched often upon this string, that *Justice is a Virgin*. Παρθενος εστι δικη, says Hesiod, and therefore fit to be committed to the trust of a virgin magistrate. He was never sullied with suspicion, that he loved presents, not so much as *Gratuidad di Guantes*, as the Spaniard's phrase is; but to go higher, they are living that know what sums of value have been brought to his secretary's, such as might have swayed a man that was not impregnable; and with how much solicitousness they have been requested to throw them at his feet for favours already received; which no man durst undertake, as knowing assuredly it would displace the broker and be his ruin. And it was happy for him when, five years after, lime-hounds were laid close to his footsteps, to hunt him, and every corner searched to find a little of that dust behind his door. But it proved a dry scent to the inquisitors, for, to his glory and the shame of his enemies, it could never appear that the least bird-lime of corruption did stick to his fingers." (*Hacket's Life of Lord Keeper Williams, Part i. p 54.*)

## REPORTS OF MASTERS IN CHANCERY.

“ They feigned a tale, principally against Masters’ reports in the Chancery, that Sir Nicholas Bacon, when he came to heaven gate, was opposed, touching an unjust decree which had been made in the Chancery. Sir Nicholas desired to see the order, whereupon the decree was drawn up; and finding it to begin *Veneris, &c.* ‘ Why,’ saith he, ‘ I was then sitting in the Star Chamber; this concerns the Master of the Rolls; let him answer it.’ Soon after came the Master of the Rolls, Cordal, who died indeed a small time after Sir Nicholas Bacon; and he was likewise stayed upon it; and looking into the order, he found, that, upon the reading of a certificate of Dr. Gibson, it was ordered that his report should be decreed. And so he put it upon Dr. Gibson, and there it stuck.” (*Bacon’s Apothegms.*)

EXTRACTS FROM THE WILL OF AN EARL OF  
PEMBROKE.

*Imprimis*—For my soul, I confess I have heard very much of souls, but what they are, or whom they are, or what they are for, God knows, I know not; they tell me now of another world, where I never was, nor do I know one foot of the way thither. While the King stood, I was of his religion, made my son wear a cassock, and thought

to make him a Bishop; then came the Scots and made me a Presbyterian; and since Cromwell entered I have been an Independent. These, I believe, are the kingdom's three estates, and if any of these can have a soul, I may claim one; therefore, if my executors do find I have a soul, I give it to him who gave it to me. *Item.*—I give my body, for I cannot keep it, to be buried. Do not lay me in the church porch, for I was a Lord, and would not be buried where Colonel Pride was born. *Item.*—My will is, that I have no monument, for then I must have epitaphs and verses, and all my life long I have had too much of them. *Item.*—I give all my deer to the Earl of Salisbury, who I know will preserve them, because he denied the King a buck out of one of his own parks. *Item.*—I give nothing to Lord Say; which legacy I give him, because I know he will bestow it on the poor. *Item.*—To Tom May I give five shillings; I intended him more: but whoever has seen his History of the Parliament, thinks five shillings too much. *Item.*—I give Lieutenant-General Cromwell one word of mine, because hitherto he never kept his own. *Item.*—I give up the ghost.—*Concordat cum originali.*

## LORD AVONMORE AND CURRAN.

“ Lord Avonmore was one of the brightest ornaments of his country; to a masculine under-



standing, immense capacity, great and profound learning, he added a powerful wit and an overwhelming eloquence. His wit, though not so frequently exercised as Mr. Curran's, was yet a gem of the first water. A great susceptibility in his temperament subjected him to great gusts of impatience. Mr. Curran, with intent to cure his friend of this imperfection, and also to relieve himself from its effects, coming one day rather late to dinner, to shelter himself from the storm which he found gathering about him, observed, on entering the room, that he was delayed by a melancholy circumstance which took place in Clarendon market, through which he was passing. It was a butcher and a child; the butcher had a bloody knife—Lord Avonmore could not be patient; his extreme feeling took the alarm, 'What,' he exclaimed, 'my God! has the villain murdered the child? Oh! good heavens!' His feelings were so wound up that he, by this dreadful anticipation, had neither eye nor ear. He at length perceived a laugh in the room, and, looking at Mr. Curran, 'What! did you not say that the butcher had stabbed the infant to the heart?' 'No, my Lord, I said he plunged the bloody blade into the throat of a pig.' " (*O'Regan's Memoirs of Curran*, p. 89.)

## SIR THOMAS PLUMER.

The forcible and familiar manner in which Sir Thomas always delivered his judgments, will be long remembered. In the celebrated case of *Cholmondely v. Clinton*, he is said to have thus expressed himself: "Testator says to himself, "I'll have the right heir of Samuel Rolle; and be *he* male, or be *he* female, he's the man for my money!"

## LORD ELLENBOROUGH.

When Lord Ellenborough was Attorney General, he was listening with some impatience to the judgment of a learned judge, afterwards his colleague, who said, in ——— v. ———, "I ruled that, &c." "You rule!" said the Attorney General, in a tone of suppressed indignation, loud enough to be heard, however, by many of his brethren of the bar, "You rule! you were never fit to rule any thing but a copy-book!"

## ON THE LEGAL CHARACTER.

The exclusive devotion which the study of the law exacts is certainly unfavourable to the general character of its professors. The quaint maxim, that "Lady Common Law must lie alone," is, from the commencement of his career, invariably inculcated upon the mind of the student. "The Law," says Sir Matthew Hale, "will admit of no

rival, nothing to go even with it." "As to the profession of the law," observes Roger North, "I must say of it in general, that it requires the whole man, and must be his North star, by which he is to direct his time, from the beginning of his undertaking it to the end of his life." Nearly the same expressions are made use of by Sir William Jones, in a letter to the Bishop of St. Asaph, "My ultimate knowledge of the nature of my profession obliges me to assure you that it requires the *whole man*, and admits of no concurrent pursuits; that, consequently, I must either give it up or it will engross me so much that I shall not for some years be able to enjoy the society of my friends or the sweets of liberty." Under a similar impression, the able author of the Pursuits of Literature strongly advises the students of our universities not to mingle the study of the law with their academical pursuits, since they will necessarily be compelled, upon entering the profession, to abandon all other occupations.

Unfortunately these opinions are but too well founded. The science of the law, as it at present exists, demands the painful industry of a long and laborious life. No one who has not attempted to master it can conceive the insurmountable difficulties which continually present themselves to the most diligent mind, making new claims upon

its patience, its resolution, and its energy. It is impossible that even the most assiduous person should arrive at that point of knowledge which would justify him in laying aside his books and resting satisfied in the conviction that he is master of the science. This impression naturally deters the lawyer from the prosecution of other pursuits. He is aware that, in turning the powers of his mind to foreign employments, his professional attainments will but too probably suffer. At all events he is certain that they will suffer in the estimation of others. Perhaps no instance can be pointed out in which a devotion to occupations not within the pale of the profession has not been more or less injurious to the reputation of the person indulging in it. It is true that men of high genius may have surmounted the obstacles which this circumstance has thrown in their way, but they have nevertheless experienced its effects. Even the splendid intellect of Bacon, employed upon subjects alien to his profession, subjected him to censure, as a lawyer. "The several books," says Osborn, in his advice to his son, "incomparable Bacon was known to read, besides those relating to the law, were objected to him as an argument of his insufficiency to manage the place of Solicitor-General, and may lie as a rub in all their ways who, out of a vain glory to manifest a general knowledge, neglect this caution."

Under a conviction, not only that the law does in fact require the devotion of the whole mind, but also that the opinion of the world demands it, it is not surprising that few lawyers venture to trespass beyond the bounds of their profession. To some, indeed, whose resolution, or whose necessities are not so imperious, this enthrallment of the intellects is so irksome that even on the threshold of their studies they abandon them. Others, with superior energy, resolutely gird themselves for the task, and cast aside, without remorse, all other hopes and occupations. Others, again, will attempt to compromise their sterner duties and their pleasures, and endeavour to mingle the sweets of literature with the austerities of the law ; an experiment, however, which is seldom attended with success. It is no uncommon spectacle to see men of high talents, disgusted or dispirited, diverging from the study of the law to other pursuits. Of such men we have two well-known examples in West, the friend of Gray, and in the poet Cowper. The two following extracts so forcibly display the feelings of the writers that it is impossible not to insert them.

“I have lived,” says West, “in the Temple till I was sick of it ; I have just left it, and find myself as much a lawyer as I was when I was in it. It is certain, at least, that I may study the law here as well as I could there, my being in

chambers did not signify to me a pinch of snuff. They tell me my father was a lawyer, and, as you know, eminent in the profession, and such a circumstance must be of advantage to me; my uncle, too, makes some figure in Westminster Hall, and there's another advantage. Then my grandfather's name would get me many friends. Is it not strange that a young fellow that might enter the world with so many advantages, will not know his own interest? &c. What shall I say in answer to all this? For money I neither doat upon it nor despise it; it is necessary stuff. For ambition, I am not deficient in that; but it is not to sit upon a bench. In short, is it not a disagreeable thing to force one's inclination, especially when one is young? Not to mention that one ought to have the strength of an Hercules to go through our common law, which I am afraid I have not. Well, but then, say they, if one profession do not suit you, you may chuse another more to your inclination. Now, I protest, I do not know my own inclination, and I believe, if that was to be my direction, I should never fix at all. Oh the folly of young men that will never know their own interest! They never grow wise till they are ruined, and then nobody pities them nor helps them."

"Had I employed my time," says Cowper in a

letter to his friend, Rose,\* “as wisely as you, in a situation very similar to yours, I had never been a poet, perhaps; but I might by this time have acquired a character of more importance in society, and a situation in which my friends would have been better pleased to see me. But three years misspent in an attorney’s office were almost of course followed by several more, equally misspent in the Temple, and the consequence has been, as the Italian epitaph says, *Sto qui*. The only use I can make of myself now, at least the best, is to serve *in terrorem* to others when occasion may happen to offer, that they may escape, (so far as my admonitions can have any weight with them,) my folly and my fate. When you feel yourself tempted to relax a little of the strictness of your present discipline, and to indulge in amusement incompatible with your future interest, think on your friend at Weston.” (*Hayley’s Cowper*, vol. iii. p. 294.)

Of the second class, or the students who have devoted themselves, body and soul, to the law, our courts can claim an eminent example in a gentleman who is said to have made it his boast that

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\* We cannot mention the name of Mr. Rose without begging such of our readers as are not already acquainted with it to turn to the brief but very interesting memoir of him, which is to be found at the conclusion of the third volume of Hayley’s Cowper.

after he left school he never opened any other than a law book. A portion of the same spirit dictated Blackstone's Farewell to his Muse, and has prevailed upon many a reluctant student, like Prospero, to plunge the magic books which have been the delight of his youthful years, deeper than plummet ever sounded. Of those who endeavour to unite the study of the law with less severe employments, the number is by no means inconsiderable, but it is seldom from this body of men that the successful practisers in our courts are taken. Let the reader reflect for a moment on the state of the bench and the bar at the present time, and he will, probably, acknowledge the justice of this opinion.

This exclusive dedication of the mind to professional pursuits which marks the true lawyer, must necessarily tend to develop a peculiar intellectual character. Unfortunately that character is by no means of the highest order. The law is, undoubtedly, a science of detail, and the lawyer, therefore, gradually loses those powers of generalization which are so essentially necessary to the philosopher and the statesman. The penetrating judgment of Swift, who was intimate with many of the most celebrated lawyers of his day, induced him to declare, that lawyers, "of all others, seem least to understand the nature of government in general." So Burke, in speaking of



Mr. Thomas Grenville, observes, " Mr. Grenville was bred to the law, which is, in my opinion, one of the first and noblest of human sciences ; a science which does more to quicken and invigorate the understanding than all the other kinds of learning put together ; but it is not apt, except in persons very happily born, to open and to liberalise the mind exactly in the same proportion." (*Burke's Speech on American Taxation.*) In fact, it cannot be expected, that a man, whose mind is devoted to the study of a system, depending, as our English Jurisprudence does, so greatly upon arbitrary precedent, should be able, in the consideration of other subjects, immediately to unfetter his reason. To judge of the effect of legal studies upon the mind, we may refer to the writings and arguments of some of our elder lawyers, where we shall find abundant proofs of the absurd mode of reasoning into which they often fell. The same style of argument is too frequently carried, by the lawyers of the present day, into the House of Commons, where we find them attempting to dispose of important questions upon technical niceties. It has been remarked by the author of the Pursuits of Literature, in a line, certainly not very eminently poetical, that

" In state affairs all Barristers are vain."

But it unfortunately happens, that they are some-

times worse than vain,—that they obstruct the progress of intelligence and improvement. Superstitiously attached, by long habits, to all existing institutions, they deem it a sort of sacrilege to alter any thing which has even the prescription of error to support it. Accustomed as they are in their own courts to uphold incongruities and absurdities for the purpose of rendering the landmarks of the law stable and certain,\* they do not hesitate for a moment to declare in favour of all existing institutions. Hence it happens, that the attempts to amend the system of our laws have often been opposed by the lawyers themselves, not, it may be granted, from any interested motives, but from a conviction of the impolicy and danger of disturbing the ancient edifice, which they hold in so much veneration. “By long use and custom,” says Sir Mathew Hale, (*See Hargrave’s Law Tracts, p. 264,*) “men, especially that are aged, and have been long educated in the profession and practice of the law, contract a kind of superstitious veneration of it beyond what is just and reasonable.” Sir Edward Coke, who was certainly deeply imbued with this supersti-

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\* The trite case of Dower of a Trust will occur to every legal reader. The law says that Dower shall be favoured, and as a proof of this favouritism, excludes the wife from her Dower of a Trust, while the curtesy of the husband is admitted.

tious veneration, has expressed himself like a true lawyer, on the subject; "Commonly, a new invention doth offend against many rules and reasons, (as here it appeareth,) of the common law; and the ancient judges and sages of the law have ever (as it appeareth in our books) suppressed innovations and novelties in the beginning, as soon as they have offered to creep up, lest the quiet of the common law might be disturbed, and so have Acts of Parliament done, the like whereof, by the authorities quoted in the margents, you may, instead of many others upon this occasion, take a little taste. But our excellent author in his three books hath said nothing but *ex veterum sapientium ore et more.*" (Co. Litt. 379, b.) It is certainly much to be feared, that a reformation in our laws will never proceed from its professors, and yet it is impossible that it can ever be effectually accomplished without their assistance.

It must be acknowledged, that there are many eminent instances of men whose minds have been uncontaminated by the prejudices of their profession, and who have displayed that felicitous union of practical ability with speculative talents, which constitutes statesman-like genius. That genius was possessed, in no inconsiderable degree, by Sir Samuel Romilly, whose unwearied efforts to reform our criminal code will be for ever honourable to his name and memory. Mansfield, and Thurlow, and

Dunning, must also be considered as having burst through the trammels of professional habits. The display of their splendid talents in the House of Commons did much to uphold the reputation of the bar.

It is remarked by Sir William Jones, that "the only road to the highest stations in this country, is that of the law;" a circumstance which powerfully affects the legal character. The life of an eminent lawyer in modern times is one continued temptation,—one constant struggle between his principles and his love of power. The government always find it worth while to secure the services of such a man, and possess abundant means of alluring him to their standard. The sophistries with which the lawyer has been used to mislead a jury, he now employs to deceive his own conscience, and the result is in general what his purchasers desire. How many of the legal opponents of government perceive the error of their ways on a vacancy occurring in the Chief Justiceship of Chester! and what a singular diversity we may sometimes observe between the political opinions of Mr. A. B., a rising man at the bar, and Sir A. B., the Solicitor General! In addition to this, the law itself, in its maxims and its spirit, inclines very much to the prerogative, and its professors very generally follow the same inclination. There are some periods, indeed, at

which the bar have been singularly slavish, and when it has required all the weight of individual honour and integrity to rescue the profession from absolute disgrace. The exalted virtues of Sir Matthew Hale, and the honesty of Sergeant Maynard, can scarcely redeem the character of a body of men who could eulogise the unconstitutional measures of Charles II.\* It is true, that the bar, and even the bench, have made some very creditable stands against the encroachment of power. Sir Edward Coke opposed the despotic notions of James I. more energetically than any other man of his time, and by the part which he acted in promoting the Petition of Right, has

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\* "The Society of Barristers and Students of the Middle Temple, thanked his Majesty for the attention he had shewn to the trade of the kingdom, concerning which and its balance, (and upon this last article they laid particular stress) they seemed to think themselves peculiarly called upon to deliver an opinion; but whatever might be their knowledge in matters of trade, it was, at least, equal to that which these addressers showed in the laws and constitution of their country, since they boldly asserted the king's right to levy the duties, and declared that it had never been disputed but by persons engaged in what they were pleased to call rebellion against his royal father. The address concluded with a sort of prayer that all his majesty's subjects might be as good lawyers as themselves, and disposed to acknowledge the royal prerogative in all its extent." (*Fox's Historical Work*, p. 92.)

earned the gratitude of posterity; but even his patriotism is outweighed by the wonderful political profligacy of his contemporary, Lord Bacon. Later times can boast of a Somers and a Camden; but upon the whole, it must, we fear, be granted, that the lawyers are not the most honest politicians.

It is, perhaps, amongst the worst attributes of the law, that it is calculated to give a suppleness of conscience by no means favourable to integrity of character. That a man who is occupied half his time in "making the worse appear the better reason," should, in matters affecting his own feelings and interests, make use of a portion of that sophistry which he has found so successful when applied to deceive others, cannot be a matter of surprise. Nor is it, indeed, by any means so difficult a task as it may at first appear, to mislead the moral sense. In the instances, which we every day observe, of men who have forsaken their earlier principles, it would be unfair to suppose that they are continuing to act in direct opposition to the dictates of their consciences. Their offence is glossed over in their own eyes by a false but specious reasoning, and, in many cases, they probably believe themselves acting with equal honesty, as when at a former period of their lives they opposed the very measures which they now advocate. This power of self-deception gives

double force to the temptations to which a man of eminence at the bar is exposed, and, unless resisted, is destructive to all high and honourable principle.

In what degree the law, when compared with other professions, is calculated to promote the individual happiness of its votaries, seems to be a question incapable of a very satisfactory solution. To men of ardent temperament and powerful intellect, the law, connected as it is with political hopes and views, certainly opens the noblest prospect. On the other hand, there are many circumstances peculiar to it, which detract very considerably from the share of happiness which its professors enjoy. It has been remarked, that "there is, perhaps, no profession whose followers more completely experience the truth of the maxim, that *Hope delayed maketh the heart sick.*" How bitter this sickness of the heart is, they who have experienced it alone can tell: and how few there are in the profession who have been exempted from the feeling! That the noon of his manhood should be devoted to a struggle against disappointment and dependence, cannot fail to raise some sentiments of regret in the heart of every one, whatever may be the firmness of his will, and the confidence of his hopes. The lapse of years which has raised the friends of his youth to independence and fortune, to a set-

tled station in life, and to the enjoyment of the domestic affections, too often finds him the same lonely and unrequited labourer as at the commencement of his painful career. Nor has the mode of life which the lawyer is compelled to adopt, any lenitive to offer for his cares. Separated, in all probability, from the society of his family, he has no other will than his own to observe, no other pleasures than his own to pursue; a situation ill adapted to develop those social affections in which so much of the true happiness of life consists. He is far removed from the happy hearth of his youthful home, and from those domestic sympathies, which in former years were so dear to him. In *his* silent and solitary chamber no eye sparkles, no smile beams as he enters. In sickness he has no one to soothe him; in despondency no one to support him. In his joy and his sorrow no one has part. Under such circumstances, it is not surprising that the vivid feelings of his earlier and happier years should become blunted and deadened. Perhaps he still retains sufficient sensibility to observe, with bitter reflections, the gradual change of heart and character which is taking place within him. In vain he touches the springs of those delightful affections of which his bosom was formerly the seat. The beautiful machinery is broken, and his cold heart remains unmoved. To a person who has once



possessed strong feelings, this growing apathy of the affections is more painful than words can express.

The picture which the domestic life of a lawyer too often exhibits, has been painted by a powerful pencil.

“ I had seen other great lawyers and judges, some of them crabbed old bachelors, others uneasily yoked to vulgar helpmates, having married in early life a woman, whom they had dragged up as they rose, but who were always pulling them down ;—had seen some of these learned men sink into mere epicures, and become dead to intellectual enjoyment,—others, with higher minds, and originally fine talents, I had seen in premature old age, with understandings contracted and palsied by partial or overstrained exertion, worn out mind and body, and only late, very late in life, attaining wealth and honour, when they were incapable of enjoying them. This had struck me as a deplorable and discouraging spectacle,—a sad termination of a life of labour !” (*Patronage, vol. ii. p. 283.*)

The foregoing observations must be regarded as presenting the most unfavourable view of the legal character. The reverse of the picture may be studied in the lives of such men as Hale, and Somers, and Romilly.

## POETICAL WILLS.

The following Poetical Wills are said to have been proved in the Prerogative Court of Canterbury.

The fifth day of May,  
Being airy and gay,  
And to hyp not inclined,  
But of vigorous mind,  
And my body in health,  
I'll dispose of my wealth,  
And all I'm to leave,  
On this side the grave,  
To some one or other,  
And, I think to my brother  
Because I foresaw,  
That my brethren in law,  
If I did not take care,  
Would come in for a share,  
Which I no wise intended,  
'Till their manners are mended,  
And of that, God knows, there's no sign.  
I do therefore enjoin,  
And do strictly command,  
Of which witness my hand,  
That nought I have got,  
Be brought into hotch-pot;  
But I give and devise,  
As much as in me lies,

To the son of my mother,  
 My own dear brother,  
 To have and to hold,  
 All my silver and gold,  
 As the affectionate pledges,  
 Of his brother,

JOHN HEDGES.

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What I'm going to bequeath,  
 When this frail part submits to death,—  
 But still I hope the spark divine  
 With its congenial stars shall shine,—  
 My good Executors, fulfill,  
 And pray ye fairly, my Last Will, }  
 With first and second Codicil. }  
 And first I give to dear Lord Hinton,  
 At Twyford School now, not at Winton,  
 One hundred guineas, and a ring,  
 Or some such memorandum thing :  
 And truly much I should have blundered,  
 Had I not given another hundred  
 To dear Earl Paulett's second son,  
 Who dearly loves a little fun :  
 Unto my nephew, Stephen Langdon,  
 Of whom none says he e'er has wrong done,  
 The Civil Law he loves to lash,  
 I give one hundred pounds in cash :  
 One hundred pounds to my niece Tudor,  
 (With leering eyes one Clarke did view her,)

And to her children just amongst 'em,  
A hundred more ; and not to wrong 'em,  
In equal shares I freely give it,  
Not doubting but they will receive it.  
To Betty Mudford and Mary Lee,  
If they with Mrs. Mudford be,  
Because they round the year did dwell  
In Davies' Street, and served full well ;—  
The first ten pounds, the other twenty ;  
And, girls, I hope that will content ye.  
In seventeen hundred and sixty-nine,  
This with my hand I write and sign,  
The sixteenth day of fair October,  
In merry mood, but sound and sober,  
Past my three score and fifteenth year,  
With spirits gay, and conscience clear ;  
Joyous and frolicksome, though old,  
And like this day serene, tho' cold ;  
To foes well wishing, and to friends most kind ;  
In perfect charity with all mankind.

For what remains I must desire,  
To use the words of Matthew Prior ;  
Let this, my will, be well obeyed,  
And farewell all, I'm not afraid ;  
For what avails a struggling sigh,  
When soon or later all must die ?

M. DARLEY.

## THE DUMB DAY.

“ There was an incident, that happened not long after his Lordship came into the place of Chief in that Court, which, though in itself, and in the end of it, ridiculous, yet, being an affront to the Court, and in particular to the Lord Chief Justice, and by the whole bar of Sergeants, all in a lump together, ought to be related, as I shall do, really as it was acted by them. It hath been the usage of the King’s Bench, at the side-bar below in the Hall, and of the Common Pleas, in the Chamber within the Treasury, to hear Attorneys and young Counsel, that came to move them about matters of form and practice. His Lordship had a younger brother, (Hon. Roger North,) who was of the profession of the law. He was newly called to the bar, and had little to do in the King’s Bench ; but the Attorneys of the Common Pleas often retained him to move for them, in the Treasury, such matters as were proper there, and what they might have moved themselves. But, however agreeable this kind of practice was to a novitiate, it was not worthy the observation it had ; for, once or twice a week was the utmost calculate of these motions. But the Sergeants thought that method was, or might become, prejudicial to them, who had a monopoly of the bar, and would have no water to go by their mill, and supposed it was high time to put a stop to such beginnings, for fear it might grow worse. But the doubt was, how they should signify their re-

sentment, so as to be effectually remedial. At length they agreed, for one day, to make no motions at all; and opportunity would fall for shewing the reason how the Court came to have no business. When the Court (on this Dumb Day, as it was called,) was sat, the Chief Justice gave the usual signal to the eldest Sergeant to move. He bowed, and had nothing to move; so the next and the next, from end to end of the bar. The Chief seeing this, said, 'Brothers, I think we must rise; here is no business.' Then an Attorney steps forward, and called to a Sergeant to make his motion; and after that turned to the Court, and said, that he had given the Sergeant his fee and instructions over night, to move for him, and desired he might do it. But profound silence still. The Chief looked about and asked, 'What was the matter?' An Attorney that stood by, very modestly said, 'That he feared the Sergeants took it ill that motions were made in the Treasury.' Then the Chief Justice scented the whole matter, and, 'Brothers,' said he, 'I think a very great affront is offered to us, which we ought, for the dignity of the Court, to resent. But that we may do nothing too suddenly, but take consideration at full leisure, and maturely, let us now rise, and to-morrow morning give order as becomes us. And do you, Attorneys, come all here to-morrow, and care shall be taken for your

dispatch, and, rather than fail, we will hear you or your clients, or the barristers at law, or any person that thinks fit to appear in business, that the law may have its course.' And so the Court rose. This was like thunder to the Sergeants, and they fell to quarreling one with the other, about being the cause of this great evil they had brought upon themselves ; for none of them imagined it would have had such a turn as this was, that shook, what was the paladium of the coif, the sole practice there. In the afternoon they attended the Chief and the other Judges of the Court, and in great humility owned their fault, and begged pardon, and that no further notice might be taken of it ; and they would be careful not to give the like offence for the future. The Chief told them, that the offence was in public, and in the face of the Court, and they must make their recognitions there next morning, and in such a manner as the greatness of their offence demanded ; and then they should hear what the Court would say to them. Accordingly they did ; and the Chief first, and then, the rest in order, gave them a formal chiding, with acrimony enough ; all which, with dejected countenances, they were bound to hear. When this discipline was over, the Chief pointed to one to move ; which he did, (as they said,) more like one crying than speaking : and so ended the comedy, as it was acted in Westminster Hall, called the Dumb Day." (*Life of Lord Guilford, vol. i. p. 195.*)

## A. NEW JURY.

The following lines are said to have been handed in court to a beautiful young lady, who was attending a trial at the Warwick Assizes.

Whilst petty offences and felonies smart,  
Is there no jurisdiction for stealing one's heart?  
You, fair one, will smile and cry "Laws, I defy you!"  
Assured that no peers can be summoned to try you;  
But think not that paltry defence will secure ye,  
For the Muses and Graces will just make a Jury.

## JUDICIAL ANTICIPATION.

A pleasant *jeu d'esprit* under the above title appeared in the year 1812, in imitation of a celebrated political satire, which the reader will probably recollect. At this period there were certain seats vacant on the benches of our courts of justice, and a number of candidates are supposed to appear before the privy council, and to urge their own merits. Amongst them are Mr. Justice Gibbs, Mr. Park, the Sol. Gen. Sir W. Garrow, Mr. Topping, Mr. Jekyll, and Mr. Brougham. Lord Ellenborough delivers the decision of the privy council. The satire was believed to be the production of the authors of the Rejected Addresses. Beneath will be found the speech put in the mouth of Mr. Park.

"My Lords and Gentlemen of his most Gracious Majesty's most Honourable Privy Council.



“ My learned friend, the Solicitor General, having, for a moment, left your most honourable bar, (Oh! I see he is now returned; but as I am now on my legs, I have no doubt my learned friend will allow me to precede him,) with all that humility which becomes a candidate for the high and important situation to which I now aspire, I offer myself at your most honourable bar. [(Looking round,) It is quite impossible.—There is such a noise—the commotion of sitting down.] My lords and gentlemen, I was entreating you to permit me to approach your most honourable bar, as a candidate for one of those elevated situations now at your disposal, for I believe none of us (at least I can answer for myself,) meant to oppose the very learned judge, who has just addressed you, as a candidate for a still higher situation, and I am perfectly aware of the small merit upon which I can rest my very feeble pretensions; nobody (I think) can be more fully sensible of it. At the same time, my lords and gentlemen, I do feel it to be a duty I owe to myself and family (as every man who has the happiness of being a father can sympathise with me, and your lordships and you, gentlemen, many of you at least, I know have families too, and most promising and (I hope) happy families, and cannot fail to sympathize with me.) [Really there is such a noise—I was going

to say something—] my lords and gentlemen, oh—I feel it to be a duty to my family to procure my promotion by all respectful means. I am now, my lords and gentlemen, in the annual receipt of a most prodigious professional income; but, upon my word, it is not for me to say how long my unaccountable popularity may last. I give you my word, I know not how I gained it, and I know not how long I may maintain it; but this I do say, that I hope I have never forgotten my courtesy to all for a public estimation, which I am conscious of not deserving. I really do feel that young men of talents (I will not mention names because I ought not, and therefore I do not,) are treading close at my heels, and I am anxious to compromise the uncertainty of my present large profits for the certainty of my future smaller ones, in a situation, however, attended with rank and honour, such as men of my humble talents have seldom gained before, and perhaps never will again. My learned friend, the Solicitor General, will, I know, go very much upon those splendid abilities, which we all know him to be in possession of, and will waive his law, (if I may so speak.) Now, my lords and gentlemen, I go pretty much upon my law, if your lordships and you, gentlemen, will allow a recollection of the names of cases to be called *law*; and here I would quote to your most Honourable Body a case from

the northern circuit, in which I was for the plaintiff, and my lord Ellenborough, when his lordship was at the bar, was (I recollect) for the defendant; the name of the case was Jackson and Holroyd, (the same name, my lord, as that of the gentleman at our bar—its very odd that it should be so, but it is—I see my learned friend, the Solicitor General, smiles at what I am going to say: it may be very ridiculous—but it's extremely distressing.) My lords and gentlemen, my learned friend has really quite put my case out of my head;—but I had looked into all the books on the subject, as it was my duty to do, and therefore I did it. However, my lords and gentlemen, having, I hope, made good my plea of set off, I mean my opposition of my law to my learned friend, the Solicitor General's talents, I think I have set myself straight with him, and that so far our pretensions are equal. Well—but then my learned friend turns round and says, 'Oh—but I have been Solicitor General!'—Now really I do say, my lords and gentlemen, this is not quite fair—what has a man of his talents gained by having been for, really, my lords, only six months, Solicitor General? Surely the conduct of one or two prosecutions for the crown, and the praying judgment against five or six duellists and smugglers—I don't mean to say they were not to blame—they have been convicted, and I am bound to say pre-

perly convicted—it is not open to me to impeach the verdicts—and if it was, I hope I have no disposition to do so ; besides, duelling and smuggling are very improper. But surely the exercise of such an office for a few months cannot have added so largely to his stock of ideas—and besides, for half that time it was the long vacation, and he was down at Ramsgate, enjoying himself in his pleasure-boat, (laughing immoderately.) Your lordships are aware that he has really a very pretty place at Ramsgate.—I am sure I don't mean to say anything against him—and upon my word it would be the very worst height of ingratitude in me to do so—for I don't know whether your lordships are aware that he was so kind as to give me an invitation one summer—and very pleasant it was, (laughing most vehemently,) and plenty of prawns we had. Well, but to be sure, that has nothing to do with what I was going to say—Oh—it was simply this, that my learned friend's short Solicitor-Generalship ought not to go for anything : I beg, though, it mayn't be understood that I mean to undervalue that high and important office, or to cast any imputation (for I do assure your lordships and you, gentlemen, I have no instructions, I mean, no intention of doing so,) upon his manner of filling it. I am sure no man in this world looked up to that situation more than I did, or would have felt more honoured by being invested with it ;—not

but that I was glad to see it so advantageously and profitably filled, as by my learned friend. My lords and Gentlemen, I don't know that I can add any thing more :—our claims are before your most honourable bar ; the Solicitor General's and mine have been gone into pretty much at length ; and, which ever way they are decided, I'm sure I shall be perfectly satisfied with that decision, and bow to it most implicitly, as it is my duty so to do."

## EPIGRAM.

A case occurred a few years ago, in the Court of Chancery, in which the four gentlemen, whose names will be found below, were concerned. The following lines were said to describe their respective merits briefly but correctly.

Mr. Leach  
 Made a speech,  
 Impressive, clear, and strong ;  
 Mr. Hart,  
 On the other part,  
 Was tedious, dull, and long.

Mr. Parker  
 Made that darker,  
 Which was dark enough without ;  
 Mr. Bell  
 Spoke so well,  
 That the Chancellor said, " I doubt."

## VAGABONDS IN THE REIGN OF ELIZABETH.

The following singular letter from Fleetwood, the recorder of London, to Lord Burleigh, may serve to throw some light on the history of the poor laws which originated in this reign. (*See Ellis's Original Letters, vol. ii. p. 283.*)

“ My singuler good Lord, uppon Thursday at even, her majestie in her cooche, nere Islyngton, taking of the aier, her Highnes was environed with a number of rooges. One Mr. Stone, a foote-man, came in all hast to my Lord Maior, and after to me, and told us of the same. I dyd the same night send warrants owt into the seyde quarters, and in to Westminster and the Duchie: and in the mornyng I went a brood my self, and I tooke that daye lxxiiij roogs, whereof some were blynd, and yet great usurers, and very riche: and the same daye, towards night, I sent for Mr. Harrys and Mr. Smithe, and the governors of Bridwell, and tooke all the names of the roogs; and sent theym frome the Sessions Hall unto Bridwell where they remayned that night. Upon Twelff daye in the forenoone, the Master of the Rolls, my self, and others receyved a charge before my lords of the counsell as touching roogs, and masterles men, and to have a pryvie searche. The same daye at after dyner (for I dynd at the Rolls) I mett the governors of Bridwell, and so

that after nowne we examined all the seyd roogs, and gave theym substantiall payment. And the strongest we bestowed in the mylne and the lighters. The rest wee desmyssed with a promise of a dooble paye if we mett with theym agayne. Upon Sounday, being crastins of the Twelfth daye, I dynd with the Deane of Westminster, where I conferred with him touching Westminster and the Duchie, and then I tooke order for Southwarke, Lambeth, and Newyngton, from whence I receyved a shooll of xl roogs, men and women, and above. I bestowed them in Bridwell. I dyd the same afternowne peruse Pooles, where I tooke about xx<sup>ti</sup> cloked roogs that there use to kepe standing. I placed theym also in Bridwell. The next mornyng, being Mounday, the M<sup>r</sup> of the Rools and the rest, tooke order, with the constable, for a pryvie searche ageynst Thursdaye, at night, and to have the offenders brought to the Sessions Hall upon Frydaye, in the mornyng, where wee, the Justices, should mete. And, agaynst the same tyme, my Lo. Maior and I dyd the lyke in London and Sowthwarke. The same afternowne the masters of Bridwell and I met, and after every man beyng examined, eche one receyved his payment according to his deserts; at whiche tyme the strongest were put to worke, and the other dismissed into their countries. The same daye the M<sup>r</sup> of the Savoye was with us, and sayd he was

sworne to lodge '*claudicantes, egrotantes, et peregrinantes*;' and the next mornyng I sent the constables of the Duchie to the hospitall, and they browght unto me, at Bridwell, vi tall fellows, that were draymen unto bruers, that were neither '*claudicantes, egrotantes, nor peregrinantes.*' The constables, if they might have theyre owen wills, wold have browght as many moo. The master dyd wryte a very curtese letter unto us to produce theym: and although he wrote charitably unto us, yet were they all sowndly payed, and sent home to thare masters. All Tewsdays, Wednesdays, and Thursdays, there cam in numbers of roogs; they were rewarded all according to their deserts. Upon Frydaye mornyng, at the justice hall, there were browght in above a C lewd people, taken in the pryvie searche. The M<sup>rs</sup> of Bridwell receyved theym, and immediately gave them punishment. This Satterdaye, after causes of consciens herd by my Lord Maior and me, I dined, and went to Polls and in other places as well within the liberties as elsewhere, and I founde not one rooge stirryng. Emongst all these thyngs I dyd note, that we had not of London, Westminster, nor Southwarke, nor yet Midd. nor Surr. above twelve, and those we have taken order for. The resedew for the most were of Wales, Salop, Cestr. Somerset, Barks, Oxford, and Essex; and that fewe or none of thaym had been about Lon-



don above iij or iiij mounths. I dyd note also that we mett not agayne with any in all our searches that had receyved punishment. The chieff nurserie of all these evell people is the Savoye, and the brick kylnes nere Islyngton. As for the brick kylnes, we will take such order that they shall be reformed. And I trust, by your good Lordship's help, the Savoye shall be amended ; for suerlie, as by experiens I fynd it, the same place, as it is used, is not converted to a good use or purpose. And this shall suffice for roogs.

“ Upon Weddensdaye last, a Frenche merchaunt, in a bagge sealed, delivered to a carrier's wiff, of Norwich, xl<sup>ti</sup> to be carried to Norwich. She secretlie conveyed the money to a house a good way off from the inne ; and, within half a quarter of an houre, the Frenche merchaunt cam agayne to se his money packed up. But the woman denyed that ever she receyved any one penny, with such horrible protestacions as I never herd of before. Mr. Secretarie Walsingham wrote me his letters for the ayde of the Frenche man ; and, after great search made, the money was fonnde and restored. She not knowing of the same, I examined her in my studie privatlie, but by no means she wold not confesse the same, but did bequeath herself to the devell, both bodie and sowle, if she had the money or ever saw it. And this was her craft, that she then had not the money.

and in dead she sayd the trowth, for it was either at her frynds where she left it, or els delyvered. And then, I perceyving her fewke, I asked her whether the Frenche merchaunt dyd not bryng her a bagge sealed, full of metall that was weightie, were it either platts, coyne, coynters, or such lyke : then, quoth she, I will aunswer no further. And then I used my Lo. Maior's advise, and bestowed her in Bridwell, where the masters and I saw her punished ; and being well whipped, she sayd that the devell stood at her elbowe in my studie, and willed her to denye it. But so soon as she was upon the crosse to be punished he gave her over. And thus my singular good Lo. I end this tragicall part of this wicket woman.

“ This mornyng the Deputie of Holbourne and two of the Wardmot Enquest browght me this examination. I send for the partie. He was browght before my Lo. Maior and me. And we have commanded hym to wards expecting your good Lo. advise as touching his offenses.

“ Thus most humbly I send unto your good Lo. this last weeks dairye ceasing at this tyme to troble your honour any further. At Bacon howse this 14th of Ja. 1581.

“ Your Lordships

most bounden

“ W. FLETEWOOD.”

## SIR EDWARD COKE AND DR. COWELL.

Dr. Cowell, a celebrated civilian in the reign of James I., was induced, at the solicitation of Archbishop Bancroft, to publish a law dictionary, under the title of "The Interpreter." Like a true civilian, Cowell indulged in some severe reflections upon the common law; and, amongst other offences of the kind, ventured to censure Littleton's Tenures, and repeated Hottoman's remarks on that book. Sir Edward Coke was, of course, highly indignant at an attack upon a work which he had declared to be "the most perfect and absolute book which was ever written in any science;" an opinion which he undertook to maintain "against all opposites whatever." But this was not the first offence which the civilian had given him. Cowell had been employed by Bancroft to draw up the reasons against the too frequent grants of prohibitions by the courts of common law, which were delivered to James I., and were denominated *Articuli Cleri*. The bitter disputes which these complaints occasioned between the common lawyers and the churchmen may be seen by a reference to the cases of prohibitions in the 12th Report. Sir Edward, zealous for the honour of his master, Littleton, and for that system which he had declared to be "the perfection of reason," endeavoured, by every means, to mortify

and annoy his adversary. It was customary at that time for the civilians to practise in Westminster Hall as well as at Doctors' Commons, and whenever Dr. Cowell used to appear in the common law courts, Sir Edward was accustomed to address him by the name of *Dr. Cow-heel*. Not content, however, with the vengeance which his tongue and his pen inflicted, Coke resolved to make a formal complaint against him to the king. Knowing his Majesty's weak side, he assured him that "Dr. Cowell had disputed too nicely upon the mysteries of this our monarchy; yea, in some points very derogatory to the supreme power of the crown," and had asserted "that the king's prerogative was, in some cases, limited." It must be acknowledged that the latter charge did not become the mouth of Coke, who had resolved, with several of his brothers, "That the king hath no prerogative but that which the law of the land allows him." (See 12 Rep. 76.) Nor have the obnoxious passages in the Interpreter a very anti-prerogative character. They are as follows. "1. That the king is *solutus a legibus*, and not bound by his coronation oath. 2. That it is not *ex necessitate* that the king should call a parliament to make laws, but that he may do that by his absolute power; for *voluntas regis* with him is *vox populi*. 3. That it is a favour to admit the consent of his subjects in giving subsidies. 4. That he draws

his arguments from the Imperial Laws of the Roman Emperors, which are of no force in England."

The king, who imagined it a sort of blasphemy in a subject to meddle with the prerogative, issued his proclamation against the buying and selling, or reading the Interpreter, and took this occasion to indulge in some remarks upon the royal authority, which far surpass in absurdity any thing contained in Dr. Cowell's obnoxious volume. The commencement of the proclamation ran as follows. "This latter age and time of the world, wherein we are fallen, is so much given to verbal profession, as well of religion as of all commendable moral virtues, but wanting the actions and deeds agreeable to so specious a profession, as it hath bred such an insatiable curiosity in many men's spirits, and such an itching in the tongues and minds of most men, as nothing is left unsearched to the bottom, both in talking and writing. For from the very highest mysteries in the Godhead, and the most inscrutable councils in the Trinity, to the very lowest pit of hell and the confused actions of the devils there, there is nothing now unsearched into by the curiosity of men's brains. Then not being contented with the knowledge of so much of the will of God as it hath pleased him to reveal, but they will needs sit with him in his most private closet, and be-

come privy of his most inscrutable counsels : and therefore it is no wonder that men in these our days do not spare to wade in all the deepest mysteries that belong to the persons and state of kings and princes, *that are Gods upon earth*, since we see (as we have already said) that they spare not God himself."

It appears that this proclamation was drawn from the king by the proceedings which parliament was about to take against Dr. Cowell, but which were abandoned on the interference of his majesty. It is even said that at one period James had declared at the council table his approbation of the doctor's book.

LORD CHANCELLOR NORTHINGTON.

"A more singular character than the late Lord Chancellor Northington has not, perhaps, been unfolded to modern observation. He possessed considerable abilities, was an upright judge, and gave satisfaction in the high office he enjoyed : in private life he was the very reverse of every thing which would seem to produce dignity in a public station. In his youth he was a professed debauchee, and the sentiments and language of that character were retained by him to the latest moment of his existence. On his return home from the administration of justice, he would not hesitate to swear at his servants, and be indecent

with his company.—Indeed, the state coach was not always considered sacred to chaste and decent speech, and the uneasiness of that rumbling machine, when his lordship's feet have been tender from the gout, has called forth very strong exclamations in the presence of the mace and seals. Some of his friends have been so free as to declare they have actually seen an oath on his lips when he presided on the woolsack, though it was never known to escape further. One occasion, however, was marked with language too expressive to pass unnoticed.

“The speaker, Onslow, who attends with the most scrupulous regard, both in public and private, to the dignity of his character, was complaining, on his arrival later than usual at the House of Commons, on some day of important business, that he had been stopped in Parliament Street, owing to the obstinacy of a carman, and was told that the Lord Chancellor had experienced a considerable delay from the same cause. ‘Well,’ (said the speaker) did not his lordship show him the mace, and strike him dumb with terror?’ ‘No,’ (it was replied) ‘he did not; but he swore, by God, that if he had been in his private coach, he would have got out and beat the damned rascal to a jelly.’” (*Strictures on the Lives and Characters of Eminent Lawyers, &c.* 1790, p. 17.)

## THE LAST DAYS OF JUDGE JEFFERIES.

“ The Lord Jefferies’ fate, as well as that of his master, King James, came on apace :—for the Prince of Orange being landed, advanced towards London without opposition, and the King, having taken the seal from the Chancellor, left him in the lurch, and withdrew privately, on the 10th of December, in the dead of the night, down the Thames, in order to go for France. The Great Seal was afterwards found by a fisherman in the Thames, and the Chancellor, now without protection, having rendered himself obnoxious to most people, and being perfectly hated by the nation, on Monday, between three and four in the morning, withdrew, and having in disguise got down safe to Wapping, put himself on board a collier, which was pretended to be bound for Newcastle, but, indeed, was designed for Hamburgh : but some persons having notice thereof, by means of the mate, they went to a justice for a warrant to apprehend him ; but he thought fit to put them off ; whereupon they applied themselves forthwith to the Lords of the Council, who granted them a warrant, and they went immediately to search the ship : but he, on Tuesday night, not thinking himself safe on board the collier in which he was to pass, lay in another ship hard by, so that those who came that day to search for him,



missed of him on board ; but had information given them, that he was hard by, at a little peddling ale-house, where accordingly they found him, being the sign of the Red-cow, in Anchor and Hope Alley, near King Edward's Stairs, from whence they immediately hurried him in a coach, guarded with several blunderbusses, to the Lord Mayor's, where the crowd was so great, and the rabble so numerous, all crying out together, ' vengeance, justice, justice !' that the Lord Mayor was forced to come out into his balcony, and, with his hat in his hand, desired the people to go away, and keep the peace ; and did promise them, that he had already sent to the Lords of the Council about the matter, and that they should have justice done them ; and that, in the mean time, their prisoner should be safely guarded : whereupon the people withdrew, and soon after my Lord, under a strong guard, was sent to the Lords of the Council, who committed him to the Tower, where he continued to the 18th of April, 1689, when he was freed by death from his earthly confinement. He had for some years before been subject to terrible fits of the stone, which, in all probability, now accelerated his death, though others gave out, that he abandoned himself to drinking, thinking to support his sinking spirits by it, and that it helped forward to put a period to his life. He was buried privately in the Tower the Sunday

night following, by an order his relations got from King William." (*Lives of the Chancellors*, vol. i. p. 185.)

## NELSON'S LUTWYCH.

In the year 1718, an abridgment and translation of the Cases in Lutwych was published by a person of the name of Nelson, whose labours are noticed by Mr. Viner, in the Preface to the 18th volume of his Abridgment, in the following commendatory manner: "For besides these, there are many other grievances, among which may be reckoned such books as *Nelson's Lutwych*,—a book which deserved public censure at least, as being a reproach and dishonour to the profession, and rather adapted to Billingsgate than Westminster Hall. What notion will any foreigner entertain of our law to see a volume thereof stuffed with such ungentlemanlike language, and to meet with such ridiculous and scoundrel titles as 'Law Quibbles,' &c. to see skeleton treatises on some particular head very imperfectly done, with the help of a number of idle precedents, swelled up into a thick volume."

In fact, Mr. Nelson performed his task in a very flippant style, treating the learned Lutwych with great irreverence. Thus, we find such remarks as the following: "But now the Sergeant is come to the digressive part of his Report,

where he observes that which neither the Court nor Counsel could see, &c. This objection was made by him on purpose to shew his readiness in answering it."—So again, "This is only a hearsay report, which the Sergeant had *ex relatione* of his brother Girdler, which, for ought I know, may be as good authority as Justice Warburton's old manuscript; only I must observe, that if I tell a long and impertinent story *what* another man told me, it will not be allowed as evidence to a common jury, but it may serve to prolong the time, and so may this to enlarge the book." Another specimen of Mr. Nelson's style of annotation will be sufficient. "The Sergeant tells us, This case is reported by Sir J. Savil, and that the record was now printed to correct a mistake in that report, where 'tis said, there were two disturbances alleged, &c. but certainly this could not be any reason for publishing this record, for after one hundred and fifteen years, when this case happened, it cannot be material to inform the world that there was but one disturbance set forth in that declaration; there must be some other reason for it, and probably it was to acquaint the reader, (to use the common expression,) how long the Lutwyches have followed the law; for I found John Lutwych was attorney on the record for the defendants, and so he was in 9 *Jac.* (*Winch's, Ent.*

fo. 9.") After this, the reader need not be warned against buying Nelson's Lutwych.

A LONDON JURY ; HANG HALF, AND SAVE HALF.

" Some affirm this of an Essex, others of a Middlesex Jury ; and my charity believes it *equally true*, that is, *equally untrue*, of all *three*. What gave first occasion to this libelling proverb I know not. This I know, reports of this nature, like round bodies down precipices, once moved move themselves ; and a mouse may stir what a man cannot stay in this kind. The best is, though none can hinder a slanderer from speaking, they may hinder them from speaking the truth.

" This proverb would fain suggest to credulous people, as if *Londoners*, frequently impannelled on juries, and loaded with multiplicity of matters, aim more at *dispatch* than *justice* ; and, to make quick riddance, (though *no haste to hang true men*,) acquit half, and condemn half. Thus they divide themselves *in æquilibrio* between *justice* and *mercy*, though it were meet the latter should have the more advantage, and the beam break on the pitiful side. Others extend this proverb also to their arbitrations betwixt party and party ; as if not minding the merits of the cause, they cleave the thing controverted into equal moieties between plaintiff and defendant.

" The falseness of these suggestions will ap-

pear to such who, by perusing history, do discover the *London Jurors* most conscientious in proceeding *secundum allegata et probata*, always inclining to the merciful side in saving life, when they can find any cause or colour for the same; and amongst many thousands take two most memorable instances.

“ The first, Sir Nicholas Throgmorton, who, on the 17th of April, 1554, was (in the reign of Queen Mary,) arraigned for High Treason in Guildhall, before Sir Thomas White, Lord Maior, the Earls of Shrewsbury and Derby, Sir Thomas Bromley, Lord Chief Justice, &c. Mr. Edward Griffin, the Attorney General, pressed the prisoner very sorely for his correspondence with the Carews in the West, and his being privy to the rising of Sir Thomas Wyatt. Sir Nicholas pleaded many hours for himself, no lesse stoutely than wisely, yet with due submission to the Court, till at last his *Jury* passed upon him; whose names, *ad perpetuam rei memoriam*, are here inserted :

- |             |                 |               |
|-------------|-----------------|---------------|
| 1. Wheston, | 5. Beswick,     | 9. Painter,   |
| 2. Lucar,   | 6. Barscarfeld, | 10. Banks,    |
| 3. Yoong,   | 7. Hightleie,   | 11. Calthrop, |
| 4. Martin,  | 8. Low,         | 12. Cater.    |

“ These acquitted the prisoner; and, though much menaced by the Court, stood stoutely to their verdict, for which they were all imprisoned, five of them fined, and paid 260*l.* a piece, the rest

lower sums; and, after their discharge from durance, commanded to attend the Council-table at an hour's warning.

“ The other is of a person who was lately arraigned in Guildhall, and whom I list not to name, partly because he is easily guessed, partly because he was of so turbulent a spirit, that his name would set all my book at dissension. He, being charged with what concerned his life, was, by an uncorrupted Jury, though heavily pressed to the contrary, clearly acquitted; and one passage (omitted in his printed tryal,) I must here insert.

“ Speaking his farewell to the *Jury*, now ready to depart the bar, he requested them to remember a statute in the reign of King Henry the Seventh, as making much in his behalf. ‘ Sirrah,’ said one of the Judges on the bench to this prisoner, ‘ I know that statute better than you do.’ To whom he calmly replied, ‘ I believe you, Sir; but I desire that these Gentlemen of the Jury should understand it but as well as I do.’ And so it seems they did, for his life was saved thereby.”  
(*Fuller's Worthies*,—*London*.)

Mr. Barrington, in his *Observations on the Ancient Statutes*, (p. 458,) cites several authorities to prove the corruption of the London Juries in former times.

## LEGAL RECOLLECTIONS OF LONDON.—NO. II.

[Continued from vol. i. p. 200.]

On quitting the Temple, the legal pilgrim proceeds up Chancery Lane, a very ancient thoroughfare. It was built in the time of Henry III. and was then called New Lane, but subsequently acquired its present appellation, probably from its vicinity to the Chancery offices. Nearly at the bottom of Chancery Lane stands Sergeant's Inn, formerly called "Faryngdon's Inn." It appears to have been converted into a residence for the Sergeants about the year 1414, being at several times demised to them by the dean and chapter of Ely, whose property it was. (*Herbert's Inns of Court*, p. 352.) At what precise period the judges fixed their chambers in this inn does not clearly appear. In Coke's Reports, if we remember right, the conferences of the judges are sometimes stated to have been held at Sergeant's Inn, Chancery Lane, and sometimes at Sergeant's Inn, Fleet Street. At present those chambers are a disgrace to the profession. Their darkness, meanness, and inconvenience, totally unfit them for the use to which they are applied. The chambers of the Masters in Chancery resemble palaces in comparison with them. At the gateway of the inn stand our old friends, "the Common Baylers,"

(see *ante*, v. i. p. 68,) so well described in *Hudibras*.—

“ Vouchers, Forgers, Common Bail,  
And Affidavit Men.”

A little above Sergeant's Inn we arrive at the Rolls. This house was originally founded by Henry III. as an asylum for converted Jews, and was styled *Domus Conversorum*. (See 1 *Madox's Exchequer*, 259.) About the year 1377, it was first applied to its present use, and William Burstal, clerk, is said to have been the first *Custos Rotulorum*, as he was at that time called. The Court of the Master of the Rolls is small, but convenient; indeed, his whole establishment is compact and well contrived. His house, his court, and his chapel, all adjoin one another. The chapel was built by Inigo Jones. Amongst the many eminent men who have presided over this Court there is none who claims a more particular notice than Sir Harbottle Grimstone, whose character has been drawn by Burnet. (*Own Times*, vol. i. p. 535.) Burnet was chaplain to Sir Harbottle, and the circumstance which led to his dismissal from that office was so singular that we shall insert the account of it in his own words.

“ I continued at the Rolls, avoiding, very cautiously, every thing which related to the public; for I abhorred the making the pulpit a stage for



the venting of passion, or for the serving of interests. There was a parish in London vacant where the election lay in the inhabitants, and it was probable that it would have fallen on me ; though London was in so divided a state that every thing was managed by the strength of parties. Old Sir Harbottle Grimstone lived still to the great indignation of the Court. When the fifth of November, being Gunpowder Treason, came, in which we had always sermons at the chapel of the Rolls, I begged the Master of the Rolls to excuse me then from preaching ; for that day led one to preach against popery, and it was indecent not to do it. He said he would end his life as he had led it all along, in an open detestation of popery. So, since I saw this could not be avoided, though I had not meddled with any point of popery for above a year together, I resolved, since I did it so seldom, to do it to purpose. I chose for my text these words, *Save me from the lion's mouth ; thou hast heard me from the horns of the unicorn.* I made no reflections in my thoughts on the lion and the unicorn, as being the two supporters of the king's scutcheon, (for I ever hated all points of that sort as being a profanation of scriptures,) but I shewed how well popery might be compared to the lion's mouth, then open to devour us ; and I compared our former deliverance from the extremities of

danger to the being on the horn of a rhinoceros. And this leading me to the subject of the day, I mentioned that wish of king James I. against any of his posterity that should endeavour to bring that religion in amongst us. This was immediately carried to the Court. But it only raised more anger against me, for nothing could be made of it. They talked most of the choice of the text as levelled against the king's coat of arms. That had never been once in my thoughts. The Lord Keeper North diverted the king from doing any thing on account of my sermon. And so the matter slept till the end of the term, and then North writ to the Master of the Rolls, that the king considered the chapel of the Rolls as one of his own chapels, and since he looked on me as a person disaffected to his government, and had, for that reason, dismissed me from his own service, he therefore required him not to suffer me to serve any longer in that chapel."\*

In the chapel are some curious monuments, which have been described by Pennant. (*Hist. of London*, p. 231.)

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\* A similar anecdote is somewhere related of the elder Sheridan, the friend of Dean Swift. Preaching on the anniversary, we believe, of the Brunswick accession, he inadvertently chose for his text—*sufficient for the day is the evil thereof*—which was immediately construed into a most disrespectful allusion.

On the other side of Chancery Lane, a little higher than the Rolls, we arrive at the great gateway of Lincoln's Inn. Before the time of Edward I. the site of this inn was occupied by a Monastery of Black Friars, but in that reign Henry Lacy, the great Earl of Lincoln, being a person, as it is stated, "well affected to the study of the laws, first brought the professors of that honourable and necessary study to settle in this place." The present gateway, fronting Chancery Lane, was finished, as we are informed by Dugdale, (*Orig. Jur.* p. 232,) in the reign of Henry VIII. The whole history of the buildings, from the Chapel to the Woodhouse, may be found in the same writer. The hall is not equal to those of the Temple, nor does the chapel, which was built by Inigo Jones, merit much attention. In short, Lincoln's Inn is by no means rich in legal associations.

On leaving Lincoln's Inn and passing into Lincoln's Inn Fields we recognize several celebrated legal residences. The large mansion, a portion of which is now the Verulam Club-house, was formerly occupied by lord Kenyon; the capacious messuage at the corner of Great Queen Street was built for the duke of Newcastle, (the minister.) It was proposed, at one period, to purchase this house with the public money, and to make it the town residence of the chancellor for the time be-

ing; the idea was, however, abandoned. But there are far nobler associations than these connected with this scene. It was the place where Lord Russell perished. How simple and affecting is the account of his execution given by Burnet! "He went into his coach with great cheerfulness. Dr. Tillotson and Dr. Burnet accompanied him. As they were going he looked about him and knew several persons; some he saw staring on him who knew him, and did not put off their hats. He said there was great joy in some, but that did not touch him so much as the tears he observed in the eyes of others, for that, he said, made him tender. He sung within himself as he went along; and Dr. Burnet asking him what he was singing, he said it was the 119th psalm,—but that he should sing better very soon. As the carriage turned into Little Queen Street, he said, 'I have often turned to the other hand with great comfort, but now I turn to this with greater.' As he said this, he looked towards his own house, and Dr. Tillotson saw a tear drop from his eye. Just as they were entering Lincoln's Inn Fields, he said, 'This has been to me a place of sinning, and God now makes it the place of my punishment.' He wondered to see so great a crowd assembled. He had before observed that it rained, and said to his companions, 'This rain may do you hurt that are bareheaded.' He

then knelt down, and prayed three or four minutes by himself. When that was done, he took off his coat and waistcoat; he had brought a nightcap in his pocket, fearing his servant might not get up to him. He undressed himself, and took off his cravat, without the least change of countenance. Just as he was going down to the block, some one called out to make a lane, that the Duke of Albemarle might see; upon which he looked full that way. Dr. Burnet had advised him not to turn about his head, when it was once on the block, and not to give a signal to the executioner. These directions he punctually attended to. 'When he had lain down,' says Dr. Burnet, 'I once looked at him, and saw no change in his looks; though in the moment in which I looked, the executioner happened to be laying his axe to his neck, to direct him to take his aim; I thought it touched him, but am sure he seemed not to mind it.' The executioner at two strokes cut off his head."

[*To be continued.*]

JENNINGS'S CASE.—*Circumstantial Evidence.*

A gentleman, travelling to Hull, was stopped late in the evening, about seven miles short of it, by a single highwayman, with a mask on, who robbed him of a purse containing twenty guineas. The highwayman rode off, a different road, full speed, and the gentleman pursued his journey. It, how-

ever, growing late, and he being already much affrighted and agitated at what had passed, he rode only two miles further, and stopped at the Bell Inn, kept by Mr. James Brunell. He went into the kitchen to give directions for his supper, where he related to several persons present his having been robbed; to which he added this peculiar circumstance, that when he travelled, he always gave his gold a certain mark; that every guinea in the purse he was robbed of, was so particularly marked, and that most probably the robber, by that means, would be detected. Supper being ready, he retired. He had not long finished his supper, before Mr. Brunell came into the parlour. After the usual enquiries of landlords, of hoping the supper and every thing is to his liking, &c. &c. "Sir," says he, "I understand that you have been robbed, not far from hence, this evening."—"I have, Sir."—"And that your money was all marked?"—"It was."—"A circumstance has arisen which leads me to think that I can point out the robber."—"Indeed!"—"Pray, Sir, what time in the evening was it?"—"It was just setting to be dark."—"The time confirms my suspicions!" Mr. Brunell then informed the gentleman that he had a waiter, one John Jennings, who had of late been so very full of money at times, and so very extravagant, that he had had many words with him about it, and had

determined to part with him on account of his conduct being so very suspicious ; that long before dark that day he sent him out to change a guinea for him, and that he had only come back since he (the gentleman) was in the house, saying that he could not get change ; and that Jennings being in liquor, he had sent him to bed, resolving to discharge him in the morning. That at the time he returned him the guinea, he (Mr. Brunell) did not think it was the same which he had given him to get silver for, having perceived a mark upon this which he was very clear was not upon the other ; but that, nevertheless, he should have thought no more of the matter, as Jennings had so frequently gold of his own in his pocket, had he not afterwards heard, (for he was not present when the gentleman was in his kitchen relating it) the particulars of the robbery, and that the guineas which the highwayman had taken were all marked : that, however, a few minutes previously to his having heard this, he had, unluckily, paid away the guinea which Jennings returned him, to a man who lived some distance off, and was gone ; but the circumstance of it struck him so very strongly, that he could not, as an honest man, refrain from giving this information.

Mr. Brunell was thanked for his attention and public spirit. There was the strongest room for suspecting of Jennings ; and if, on searching him,

any of the marked guineas should be found, as the gentleman could swear to them, there would then remain no doubt. It was now agreed to go softly up to his room; Jennings was fast asleep; his pockets were searched, and from one was drawn forth a purse, containing exactly nineteen guineas. Suspicion now became demonstration, for the gentleman declared them to be identically those which he had been robbed of. Assistance was called, Jennings was awaked, dragged out of bed, and charged with the robbery. He denied it firmly, but circumstances were too strong to gain him belief. He was secured that night, and the next day carried before a neighbouring justice of the peace. The gentleman and Mr. Brunell deposed the facts on oath; and Jennings having no proofs, nothing but mere assertions of innocence, to oppose them, which could not be credited, he was committed to take his trial at the next assizes.

So strong were the circumstances known to be against him, that several of his friends advised him to plead guilty on his trial, and to throw himself on the mercy of the court. This advice he rejected, and when arraigned, pleaded not guilty. The prosecutor swore to his being robbed; but that, it being nearly dark, the highwayman in a mask, and himself greatly terrified, he could not swear to the prisoner's person, though he thought him of much the same stature as the



man who robbed him. To the purse and guineas, which were produced in court, he swore—to the purse, positively—and, as to the marked guineas, to the best of his belief, and that they were found in the prisoner's pocket.

The prisoner's master, Mr. Brunell, deposed to the fact, as to the sending of the prisoner to change a guinea, and of his having brought him back a marked one in the room of one he had given him unmarked. He also gave evidence as to the finding of the purse, and the nineteen guineas in the prisoner's pocket. And, what consummated the proof, the man to whom Mr. Brunell paid the guinea, produced the same, and gave testimony to the having taken it that night in payment of the prisoner's master. Mr. Brunell gave evidence of his having received of the prisoner that guinea which he afterwards paid to this last witness. And the prosecutor, comparing it with the other nineteen found in the pocket of the prisoner, swore to its being, to the best of his belief, one of the twenty of which he was robbed by the highwayman.

The judge, on summing up the evidence, remarked to the jury, on all the concurring circumstances against the prisoner; and the jury, on this strong circumstantial evidence, without going out of court, brought in the prisoner guilty. Jennings was executed some little time after at Hull, re-

peatedly declaring his innocence to the very moment he was turned off. This happened in the year 1742.

Within a twelvemonth after, lo ! Brunell, Jennings's master, was himself taken up for a robbery done on a guest in his own house ; and, the fact being proved on his trial, he was convicted, and ordered for execution. The approach of death brought on repentance, and repentance confession. Brunell not only acknowledged the committing of many highway robberies, for some years past, but the very one for which poor Jennings suffered !

The account he gave was, that he arrived at home by a nearer way and swifter riding, some time before the gentleman got in who had been robbed. That he found a man at home waiting, to whom he owed a little bill, and that not having quite enough loose money in his pocket, he took out of the purse one guinea, from the twenty he had just got possession of, to make up the sum ; which he paid, and the man went his way. Presently came in the robbed gentleman, who, whilst Brunell was gone into the stables, and not knowing of his arrival, told his tale as before related, in the kitchen. The gentleman had scarce left the kitchen before Brunell entered it ; and being there informed, amongst other circumstances, of the marked guineas, he was thunderstruck ! Having paid one of them away, and not daring to ap-

ply for it again, as the affair of the robbery and marked guineas would soon become publicly known,—detection, disgrace, and ruin, appeared inevitable. Turning in his mind every way to escape, the thought of accusing and sacrificing poor Jennings at last struck him.—The rest the reader knows. (*Theory of Presumptive Proof.*)

DID SHAKSPEARE EVER STUDY THE LAW ?

This question has been diligently discussed by several of the Commentators upon our great Dramatist. Malone has declared his belief, “ that, on leaving school, Shakspeare was placed in the office of some country attorney, or the seneschal of some manor court.” (*Reed's Shakspeare, vol. i. p. 60.*) This conjecture appears to rest entirely on the occurrence of various legal phrases in the poet's works, which has drawn from Mr. Malone the observation, “ that Shakspeare's knowledge of legal terms is not such merely as might be acquired by the casual observations of even his all-comprehending mind : it has,” continues Mr. Malone, “ the appearance of *technical* skill, and he is so fond of displaying it on all occasions, that I suspect he was early initiated in, at least, the forms of law, and was employed, while he yet remained at Stratford, in the office of some country attorney, who was at the same time a petty conveyancer.”—Mr. Malone's theory is supported by

Mr. White, in his "Specimen of a Commentary," and by Dr. Drake, in his "Shakspeare and his Times;" but is opposed by Mr. Chalmers, in his "Apology," where he asserts, that the poet might have derived his technical knowledge of the law from a very few books.—We give the passages cited by Mr. Malone in support of his opinion, from which the learned reader will form his own conclusions.

" — For what in me was *purchased*,  
Falls upon thee in a much fairer sort."

(*K. Hen. IV. P. II.*)

"Purchase is here used in its strict legal sense, in contradistinction to an acquisition by descent.

"Unless the devil have him in *fee-simple, with fine and recovery.*"

(*Merry W. of Win.*)

"He is 'rested on the case." (*Comedy of Er.*)

" — With *Bills* on their necks,  
Be it known unto all men by these presents."

(*As you Like it.*)

" — who writes himself *Armigero*,  
In any *bill, warrant, quittance, or obligation.*"

(*Merry Wives of Win.*)

"Go with me to a notary, seal me there  
Your *single bond.*"

(*Mer. of Venice.*)

"Say, for non-payment that the debt should  
double."

(*Venus and Adonis.*)

“ On a conditional bond's becoming forfeited for non-payment of money borrowed, the whole penalty, which is usually the double of the principal sum lent by the obligee, was formerly recoverable at law. To this our poet here alludes.

“ But the defendant doth that plea deny ;  
To 'cide his title, is impannelled  
A quest of thoughts.” (Sonnet 46.)

“ In *Much ado about Nothing*, Dogberry charges the watch to keep their fellows' counsel and their own. This Shakspeare transferred from the oath of a Grand Juryman.

“ And let my officers of such a nature  
Make an *extent* upon his house and lands.”  
(*As you Like it.*)

“ He was taken *with the manner.*”  
(*Love's Labour Lost.*)

“ *Enfeoff'd* himself to popularity.”  
(*K. Hen. IV. P. I.*)

“ He will seal the fee-simple of his salvation,  
and cut the entail from all remainders, and a perpetual succession for it perpetually.”  
(*All's Well that Ends Well.*)

“ Why, let her *accept before excepted.*”  
(*Twelfth Night.*)

“ ——— Which is four terms, or two actions ;  
and he shall laugh without *intervallums*.”

(*K. Hen. IV. P. II.*)

“ ——— Keep leets and *law-days*.”

(*K. Richard II.*)

“ *Pray in aid* for kindness.” (*Ant. and Cleo.*)

“ No writer but one who had been conversant with the technical language of leases and other conveyances, would have used determination as synonymous to end. Shakspeare frequently uses the word in that sense. See *vol. xii. (Reed's Shakspeare,) p. 202. n. 2 ; vol. xiii. p. 127. n. 4 ;* and (*Mr. Malone's Edit.*) *vol. x. p. 202. n. 8.* “ from and after the *determination* of such a term ;” is the regular language of conveyancers.

“ Humbly complaining to your Highness.”

(*K. Richard III.*)

“ Humbly complaining to your Lordship, your orator,” &c. are the first words in every Bill in Chancery.

“ A kiss in fee-farm ! In witness whereof these parties interchangeably have set their hands and seals.”

(*Troilus and Cressida.*)

“ Art thou a *feodary* for this act ?” (*Cymbeline.*)

“ See the note on that passage, *vol. xviii. pp. 507, 508. n. 3. Reed's Edit.*

“Are those precepts served?” says Shallow to Davy, in *K. Henry IV.*

“Precept in this sense is a word only known in the office of a Justice of Peace.

“Tell me what state, what dignity, what honour,  
Canst thou *demise* to any child of mine?”

(*K. Richard III.*)

“— hath demised, granted, and to farm let,” is the constant language of leases. What poet but Shakspeare has used the word *demised* in this sense?

“Perhaps it may be said,” adds Malone, “that our author in the same manner, may be proved to have been equally conversant with the terms of divinity or physic. Whenever as large a number of instances of his ecclesiastical or medicinal knowledge shall be produced, what has now been stated will certainly not be entitled to any weight.” (*Malone, Reed's Shakspeare, vol. ii. p. 276. n. 9.*)

#### SINGULAR ENTRIES.

In the older Books of Entries we occasionally find some amusing precedents. The following form of a Declaration is from Rastal's Entries, 2 b.

*Action sur le case vers. Barber  
pur raser le barbe  
inartificialiter.*

“R. S. Nuper de N. Barber attachiatus fuit ad

respondendum H. B. de placito, quod cum idem R. ad barbam ipsius H. bene et artificialiter cum novacula munda et salubri radere apud N. assumpsisset, predictus R. barbam ipsius H. cum quadam novacula immundi et insalubri tam negligenter et inartificialiter rasisit, quod facies ipsius H. morbosa et scabiosa devenit, ad damnum ipsius H. 40s. ut dicitur. Et unde idem H., &c."

But we find a still more singular entry in *Brownlow Redivivus*, (p. 505,) with the marginal abstract of which alone we shall treat the reader.

"Count per la *Coachmaker's Widow*, vers. *le Frenchhome*. Eo quod defendens simul cum, &c. in querentem insultum fecit, et ipsam intoxicavit, et ad lectum ei ignotum adduxit, et illam super lectum istum deposuit, et in isto lecto cum querenti contra voluntatem suam impudenter recubuit, et se intrusit."

#### A DIGNIFIED GRAND JURY.

Sir John Dodderidge, one of the Justices of the King's Bench, in the reign of James I. having reprov'd the Sheriff of Huntingdon for impannelling men not qualified to sit on the Grand Jury, the Sheriff at the next assizes provided the following dignified list, containing the actual names of so many individuals in his county.

"A true and remarkable List of the Jury impannelled at Huntingdon Assizes, on the Nor-



folk Circuit, before Judge Dodderidge, 1619;  
17 Jac. I.

Maximilian, KING of Fozland,  
Henry, PRINCE of Godmanchester,  
George, DUKE of Somersham,  
William, DUKE of Weston,  
William, MARQUIS of Stukeley,  
Edward, EARL of Hartford,  
Robert, LORD of Warsley,  
Richard, BARON of Bythorpe,  
Robert, BARON of Winwick,  
Edmund, KNIGHT of Saint Neot's,  
Peter, ESQUIRE of Everton,  
George, GENTLEMAN of Spaldock,  
Robert, YEOMAN of Bowham,  
Stephen, POPE of Weston,  
Humphrey, CARDINAL of Kimbolton,  
William, BISHOP of Bugden,  
John, ARCHDEACON of Paxton,  
John, ABBOT of Stukeley,  
Richard, FRIAR of Ellington,  
Henry, MONK of Stukeley,  
Edward, PRIEST of Graffham,  
Richard, DEACON of Catsworth."

*Harlei. Miscel.* iii. 476.

(*Fuller's Worthies.—Devonshire, 275.*)

A SPECIAL PLEADER.

"The greatest and most laborious naturalists,

in their description of animal creation, are obliged to leave numerous subjects unnamed, and imperfectly described, that can only be classed under the general title of 'Non-descriptors.' Of this indefinite class is the Special Pleader, whose existence cannot be naturally accounted for, as Heaven could design these orders of beings for no possible purpose of convenience or utility. We are told, indeed, that the wisdom of the Deity has created nothing in vain: the crocodile and the tiger, it is true, may exist as admonitory cautions against treachery and cruelty:—the Special Pleader's existence may be intended by Divine Wisdom for similar purposes, with this additional advantage, that nothing is better calculated strongly to inculcate the Christian virtue of Patience in both agent and patient.

“ A Special Pleader appears to be of the spider kind;—they alike spin their web for the destruction of weak and unwary prey; one murders the little innocent fly, that flutters in the sunshine, the other strangles justice in his nets of form; both are equally pernicious and poisonous. Tully, that terrestrial god of literature, seems to have known something of these sort of men, and he thus describes them:—‘ *Leguleius quidam cautus et acutus, præco actionum, cantor formularum, auceps syllabarum.*’

“ This description answers to nothing in or out

of nature, but a Special Pleader." (*Sketches of Eminent Lawyers*, 1790, p. 115.)

A JUSTICE OF THE PEACE.

The following lines from the Third Canto of *Hudibras*, are supposed to be intended as a Satire upon Prideaux, a mercenary and cruel magistrate :

“ An old dull sot, who told the clock  
For many years at Bridewell dock,  
At Westminster, and Hicks's Hall,  
And Hiccius Doctius play'd in all ;  
Where in all governments and times,  
H' had been both friend and foe to crimes,  
And used to equal ways of gaining,  
By hind'ring justice, or maintaining :  
To many a whore gave privilege,  
And whipt for want of quarteridge,  
Cart-loads of bawds to prison sent,  
For being behind a fortnight's rent,  
And many a trusty pimp and croney  
To Puddle-dock for want of money :  
Engaged the constable to seize  
All those that would not break the peace ;  
Nor give him back his own foul words,  
Though sometimes Commoners or Lords,  
And kept 'em prisoners of course,  
For being sober at ill hours,  
That in the morning he might free,  
Or bind them over for his fee.

Made monsters fine, and puppet plays,  
For leave to practise in their ways,  
Farm'd out all cheats, and went a share  
With th' headborough and scavenger ;  
And made the dirt i' th' streets compound,  
For taking up the public ground ;  
The kennel, and the king's highway,  
For being unmolested, pay ;  
Let out the stocks and whipping-post,  
And cage, to those that gave him most ;  
Imposed a tax on bakers' ears,  
And for false weights, on chandelers ;  
Made victuallers and vintners fine  
For arbitrary ale and wine ;  
But was a kind and constant friend  
To all that regularly offend :  
As residentiary bawds,  
And brokers that receive stolen goods,  
That cheat in lawful misteries,  
And pay church duties and his fees ;  
But was implacable and awkward  
To all that interlop'd and hawker'd."

The interview between the Knight and the Justice is admirably related ; but is too long for insertion in this place.

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Mr. Garrow, some years ago, examining a very young lady, who was a witness in a case of as-

sault, asked her, if the person who was assaulted did not give the defendant very ill language,—if he did not call him a damn'd Scotch Cobbler, and utter other words, so bad, that he, the learned counsel, had not impudence enough to repeat? She replied in the affirmative.—“ Will you, Madam, be kind enough,” said he, “ to tell the Court what these words were ? ”—“ Why, Sir,” replied she, “ if *you* have not impudence enough to speak them, how can you suppose that *I* have ? ”

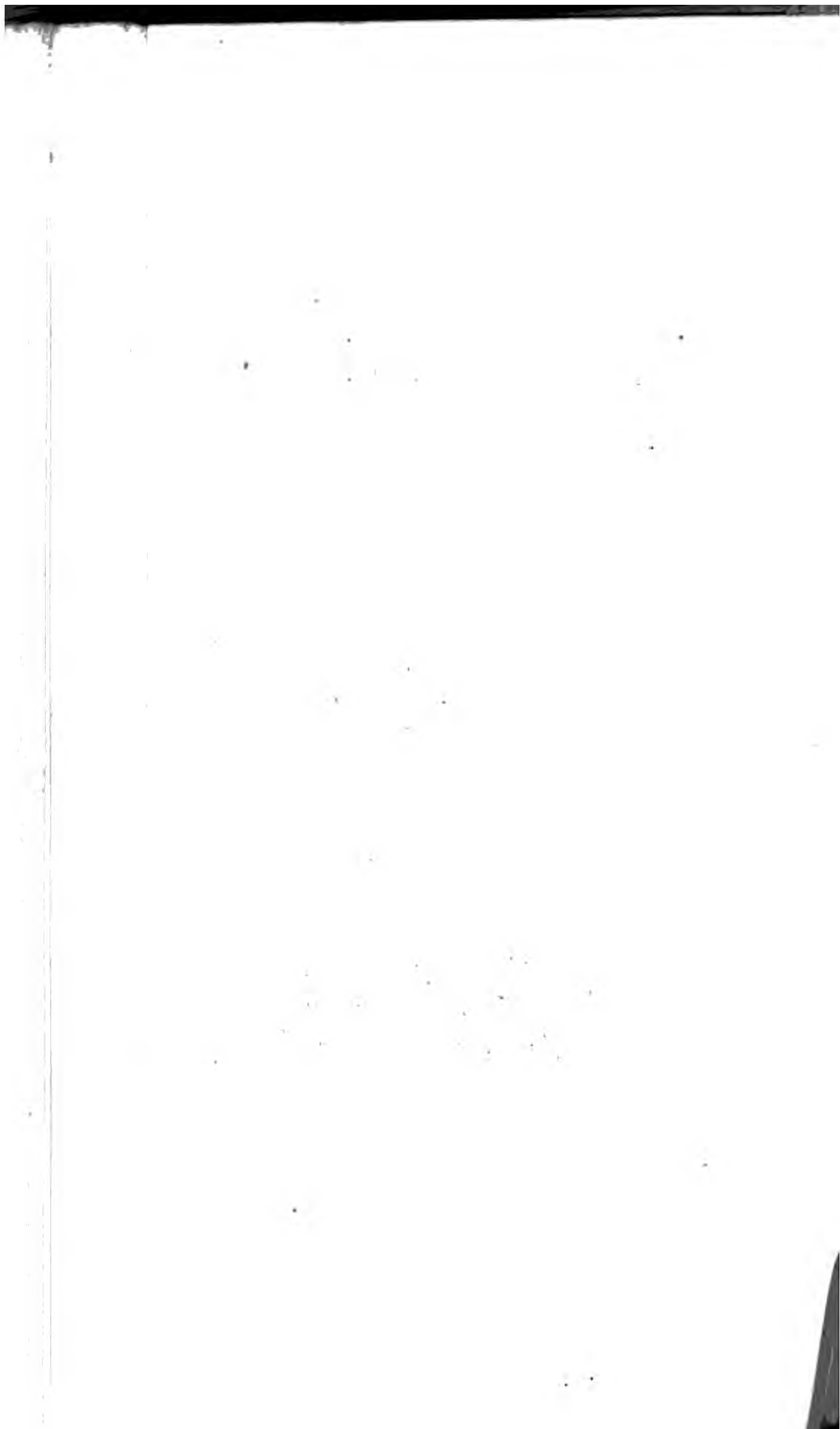
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A case was argued before the Court of Chancery, in which there was some dispute about the age of a woman, whom Mr. Graham, (now the Baron,) had stated to be five-and-forty, rather against the evidence. The Master of the Rolls, (Sir Pepper Arden,) disputing a little the position of Mr. Graham, the latter said,—“ *I'll lay you a bottle*—— my Lord, I beg your pardon, I really forgot where I was.”

END OF VOL. II.

1  
2  
3  
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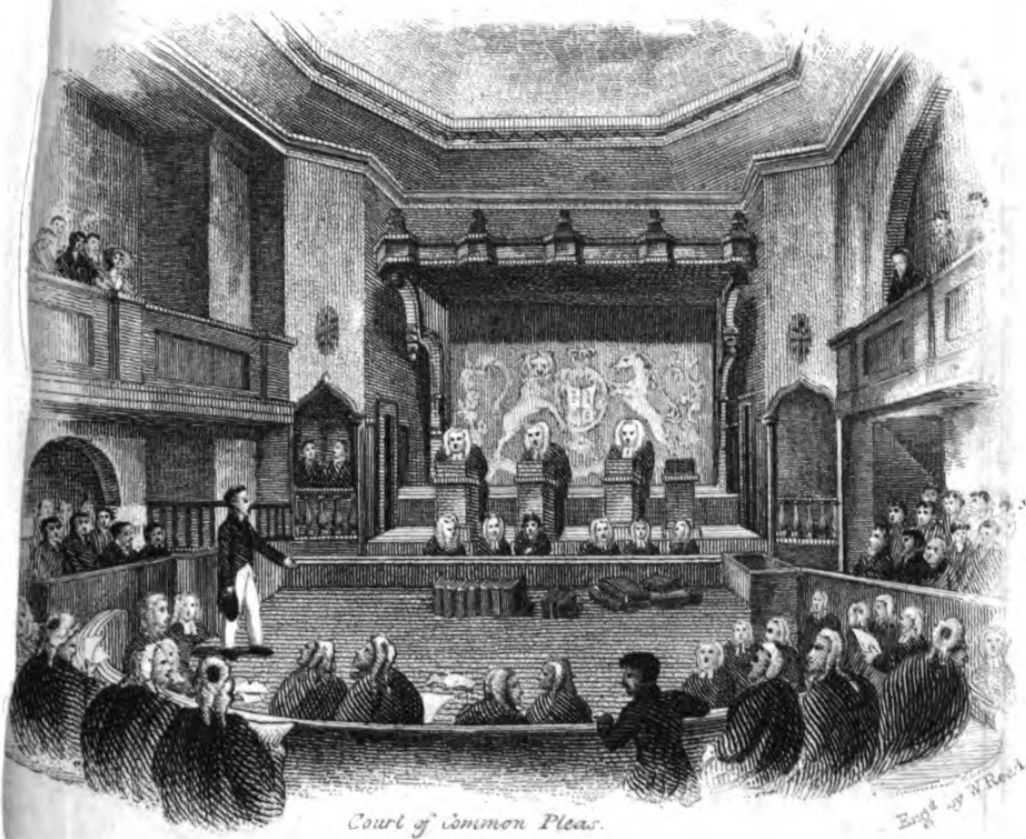
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AND

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VOL. III.



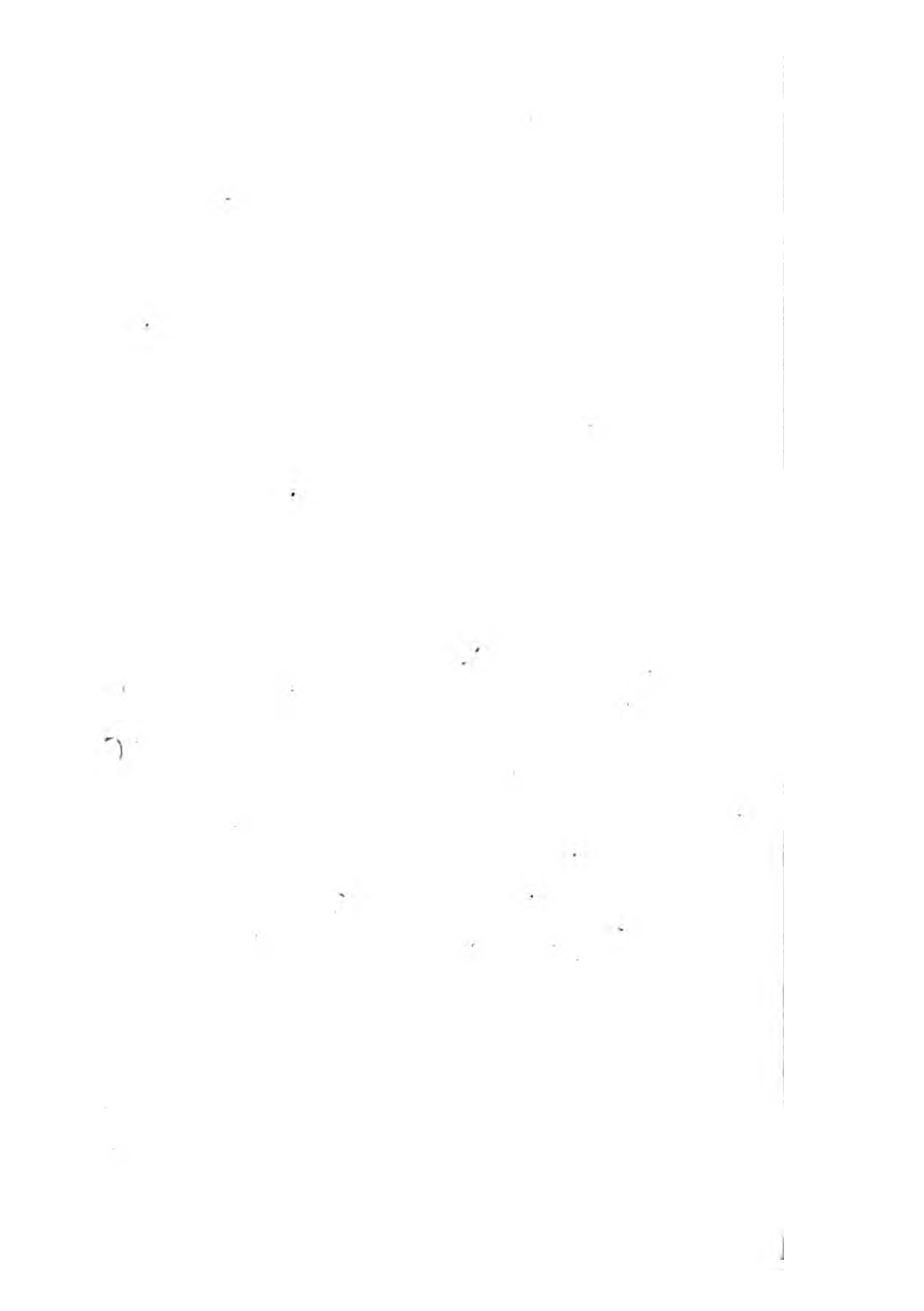
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# CONTENTS

OF

VOL. III.

---

	PAGE.
The Reports . . . . .	1
Salaries of the Judges . . . . .	26
Sir Julius Cæsar . . . . .	33
Lord Chancellor Shaftesbury . . . . .	39
The Revels of the Inns of Court . . . . .	43
Did Sir Thomas More persecute Heretics? . . . . .	53
Judicial Politeness . . . . .	56
Calling to the Bar . . . . .	57
Character of Lord Hardwicke, by Lord Chesterfield . . . . .	59
Charles the Second's Visit to the Temple . . . . .	63
The Lawyer and Sawyer . . . . .	66
Lord Hardwicke . . . . .	67
Lady Hardwicke . . . . .	69

VOL. III.

b

	PAGE.
Parliamentum Indoctum . . . . .	72
Professional Emoluments . . . . .	73
Character of an Honest Lawyer . . . . .	75
Mr. Justice Powis . . . . .	81
Examination of a Learned Apothecary . . . . .	82
Profession of the Law . . . . .	87
A Special Pleader . . . . .	90
Mr. Fearne . . . . .	94
Charles the Second's Visit to Lincoln's-Inn . . . . .	96
The Law of Assault and Battery among the Anglo-Saxons . . . . .	101
Mr. Justice Powis and Mr. Yorke (afterwards Lord Hardwicke) . . . . .	105
Sir Thomas More . . . . .	107
Public Life of Sir Edward Coke . . . . .	108
Character of Sir Matthew Hale . . . . .	128
Lord Chancellor Bathurst . . . . .	133
Mr. Sergeant Maynard . . . . .	137
Festival at the Inner Temple . . . . .	142
Mr. Justice Buller . . . . .	149
Prescribing for a Right of Robbery . . . . .	154
Lord Kenyon's Latinity . . . . .	155
Lord Clarendon and his Friends . . . . .	156

CONTENTS.

iii

	PAGE.
Readings in the Inns of Court . . . . .	162
Ancient Practice of Retaining Lawyers . . . . .	166
Lord Mansfield's Wit . . . . .	167
Sergeants' Rings . . . . .	171
Lord Chief Justice Scroggs . . . . .	174
Trials for the Popish Plot . . . . .	178
Chinese Indictment for High Treason . . . . .	180
Law of the Novels . . . . .	185
Sir Francis Pemberton . . . . .	187
Price of Law Books in Former Times . . . . .	191
Ignoramus . . . . .	193
Crime of Multiplication . . . . .	202
The Pervise of Paul's . . . . .	204
Curran's <i>Bon Mots</i> . . . . .	205
Mr. Curran and Lord Clare . . . . .	209
Legal Biography . . . . .	ib.
The Law of Gibbets . . . . .	227
Sir Samuel Romilly . . . . .	229
Horse Pleas . . . . .	243
Blackstone and the Bookseller . . . . .	244
Dr. Parr's Character of Lord Thurlow . . . . .	245
Lord Chief Justice Kelyng, and Lord Holles . . . . .	247
Character of Sir Samuel Romilly . . . . .	249

	PAGE.
Length of Legal Instruments . . . . .	254
How John Bull looked over his Attorney's Bill . . . . .	256
Lord Mansfield and Mr. Dunning . . . . .	257
Lord Chief Justice Holt . . . . .	ib.
Legal Recollections of London . . . . .	259
Sir William Jones (the Attorney General) . . . . .	264
The Law of Wagers . . . . .	270
Novel Motions . . . . .	274
Amendment of the Law during the Commonwealth . . . . .	276
Lord Eldon and Sergeant Cockle . . . . .	279
Singular Forgery . . . . .	280
Points of Hindu Law . . . . .	281
Trespass for intermeddling with a Feme . . . . .	286
Jefferies and Dr. Fairfax . . . . .	ib.
Settling a Cause out of Court in Ireland . . . . .	288

## LAW AND LAWYERS.

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### THE REPORTS.

It is difficult to ascertain with accuracy the period at which the practice of reporting the decisions of our Courts of Justice first had its commencement. It seems probable that it began in the reign of Edward I. although there are no reported cases of that King's reign to be found in the year-books. A few broken cases are indeed contained in Fitzherbert's Abridgment, "but," says Sir M. Hale, "we have no successive terms or years thereof, but only ancient manuscripts perchance, not running through the whole time of this King." (*Hist. of the C. L. p. 165.*) He adds that "they are very good but very brief." From the commencement of the reign of Edward II. to that of Henry VIII. the year-books are continued in a tolerably regular series. Many scattered cases also, which are not to be met with in the year-books, may be found in the Abridgment of Fitz-

herbert, who must have derived them from collections of reports which have now perished.

Before the printing of the year-books, an acquaintance with reported decisions must necessarily have been very confined,\* a fact which seems to be proved by the mode of argument observed at the Bar during the early period of our law. "The ancient order of argument by our Sergeants and Apprentices," says Sir Edward Coke, "at the bar, is altogether altered. They never cited any book, case, or authority, in particular† as "*it is holden in 40 Ed. 3,*" &c. but "*est tenuis ou agree in nre liures, ou est tenuis adjudge in termes,*" or such like, which order yet remains at moots at the bar in the Inner Temple to this day." (*Preface to 10 Rep. xii. see also Selden's Dissertation on Fleta, p. 212 of the translation.*)

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\* Some idea of the scarcity and value of law-books at this early period may be formed by a reference to the solemn instrument or bond given by Selden in his Dissertation on Fleta, in which the party binds himself to restore, within a certain period, a copy of Bracton which he had borrowed. (*See Dissertation, p. 13 of the Translation.*)

† Perhaps this may account for the fact of several of our older text writers not citing any authorities in support of the positions which they lay down. This is the case both with Littleton and Fitzherbert in his *Natura Brevium*. (*See Coke's Preface to 10 Rep. and Bacon's Preface to his Maxims of the Law.*)

Mr. Reeves does not appear to have been aware that this was the customary mode at that period of supporting by authorities an argument in Court, and has supposed that in the reign of Edward III. there did not exist reports possessing sufficient authority to be cited in Court. "There were certainly," he observes, "no reports of established and general credit; otherwise it is not easy to imagine why no adjudications are vouched for what is laid down as law in the year-books of that reign. (Edw. 3.) According to the form of these reports everything is to be taken on the bare authority of the person pronouncing it." (*Hist. of the Law, v. 3, p. 150.*)

Great obscurity prevails with regard to the persons who reported the decisions which are to be found in the year-books. The commonly received opinion is, that certain officers of the Court were employed for this purpose, an opinion sanctioned by C. B. Gilbert: "William the Conqueror," he observes, "to make the Norman tongue current, ordained that the pleadings in the Courts of Justice should be in French, and afterwards they were entered on record by the Prothonotary in Latin, that being a dead language and subject to no variation; the French continued till Hilary, 36 Ed. 3; then, by the statute 36 Ed. 3. c. 15, it was abolished, but the pleadings continued to be in Latin, but the Prothonotaries being used to



make notes in French, still continued the old way, it being a language much shorter and more expeditious to take notes; of these are composed the *Year-books*." (*Gilb. Hist. of the Common Pleas*, p. 46.) Sir William Blackstone gives a similar account, informing us that the reports "were taken by the Prothonotaries or chief Scribes of the Court, at the expense of the Crown, and published annually, whence they are known under the denomination of the year-books." (*Comment. v. i. p. 72.*) "The most ancient compilations of this sort," says Mr. Douglas, "were the work of persons specially appointed for the purpose. In what particular manner they exercised their function, how far the Courts superintended, or the Judges assisted or revised their labours, no where appears, and indeed every thing relating to them is involved in so much obscurity, that I believe their very names are unknown." (*Pref. to Douglas's Rep. p. ii.*) This does not appear to be quite correct. In the preface to the first volume of the last edition of the year-book, (sometimes called Maynard's Edward II.) it is stated that "Mr. Selden, to whom knowledge of this kind was familiar, doth, out of a copy which he used, give us the name of the compiler of this work, to wit, Richard de Winchedon, who lived in the times in which the cases here reported were adjudged." The passage in Selden may be found in his *Disser-*

tation annexed to Fleta, and is as follows :—“ What we have related concerning the use of the Imperial Law, in the above age, is likewise confirmed by what occurs in the Law Annals of King Edward II. most beautifully transcribed from the manuscript of Richard de Winchedon, who lived at that time, *and was in all appearance the first compiler of them.*” (*Dissertation, p. 211 of the Translation.*) Again, in the year-books, at the end of one of the terms, we find the following passage, “ *Icy finessent les Reports de M Horewoode.*” It appears also that in Dyer’s time there were a number of manuscript reports extant, which, as Mr. Vaillant tells us, (*see his Preface to Dyer’s Reports,*) were well known at that time by the names of Tanfield, Warberton, Harper, Turner, Randal, Mason, and Rhodes. It is probable that some of these persons were the *Annalists*, or compilers of the year-books.

With regard to the number of these official reporters they are supposed by Plowden to have been four, who received an annual stipend from the King. (*Preface to Plowden’s Rep. p. iv.*)

There is some doubt as to the period when the official reporters discontinued their labours. The cases in the year-books extend to the 28 Hen. 8 ; but Sir Edward Coke, in the preface to 3 Rep. says: “ to return again to those grave and learned reporters of the laws in former times, who (as I

take it) about the end of the reign of K. Hen. 7, ceased, between which, and the cases reported in the reign of Hen. 8, you may observe no small difference: so as about the end of the reign of Henry 7, it was thought by the sages of the law that at that time the reports of the law were sufficient, &c." Mr. Douglas places the discontinuance of official reports at the beginning of the reign of Henry VIII. (*Preface to Rep. p. iii.*) and in the preface to 5 Mod. (p. vi.) we meet with the following remarks. "After the first 12 years of Henry VIII. this method was discontinued. It is true there are some cases from that time to the twenty-seventh year of Henry VIII. which are bound up with the year-books; but Mr. Fleetwood tells us they are collected with so little judgment that he did not think them worthy to be placed in the Tables which he made of those books, and therefore composed a table of them by itself."

It would be too long and difficult a task to enter, in this place, into an examination of the style of reporting adopted in the year-books, or into the character of the reports themselves. For information on this subject the reader is referred to Sir M. Hale's *History of the Common Law*, (p. 165, &c.) and to Mr. Reeves's *History*. (*vol. ii. p. 357, vol. iii. p. 147, 254, vol. iv. p. 185.*)

It may be remarked, that the study of the year-books was only abandoned in the course

of the last century. Lord Mansfield observed, that when he was young, few persons would confess that they had not read a considerable part at least of the year-books; but that at the time at which he was speaking, few would pretend to more than an occasional recourse to them in very particular cases. (*See Butler's Reminiscences, p. 134.*) At the present day, indeed, the very perusal of the year-books is attended with difficulty; and even when they are intelligible, they are often comparatively useless as authorities, from the circumstance of the Judges and Counsel not being distinguished from one another; a fault noticed by Dugdale, (*see Preface to Orig. Jurid.*) who, probably for the purpose of supplying this deficiency, compiled a short tract which Bishop Nicolson cites as still existing in MS. in the Ashmolean Museum, entitled, *Some Observations upon sundry Persons learned in the Law, extracted from the Year-books.* (*See Nicolson's Eng. Hist. Lib. p. 236.*)

Upon the conclusion of the year-books, a considerable period elapsed before the appearance of any new Reports. "About the end of the reign of Henry VII." says Sir Edward Coke, "it was thought by the sages of the law, that at that time, the Reports of the Law were sufficient; wherefore it may seem both unnecessary and unprofitable to have any more Reports of the Law:

but the same causes which moved the former, do require to have some more added unto them, &c." (*Preface to 3 Rep. xvi. b*) The first Collection of Reports after the Year-Books was that of Plowden, who commenced the study of the law, when twenty years of age, in the thirtieth year of Henry VIII. These Reports were originally compiled for the author's private use; but having resolved to make them public, he expended infinite pains in rendering them correct. They only contained points of law, determined upon demurrers, or special arguments, and they were for the most part revised by the Judges, whose opinions they delivered. They have, therefore, always been deservedly esteemed of the highest authority.

In the year 1585, appeared the Reports of Sir James Dyer, which were published by his executors, "being assailed," as they inform us, "by men of good countenance for that purpose." In fact, these Reports were only a collection of notes, which this eminent Judge had made for his own use, and which he would, doubtless, have rendered much more full and valuable, had he intended them for publication. However, this work has always been held in high estimation, and has been declared by Sir E. Coke to be "less painful, but not less profitable, than more elaborate works."

The next Collection of Cases which appeared, was that of Mr. Keilway, in which many Re-

ports of the time of Henry VII. and Henry VIII. are to be found, not reported in the Year-Books. They were given to the world by Sergeant Croke, (the eldest brother of the reporter Croke,) afterwards created a Judge. In the same year appeared the first volume of Sir Edward Coke's Reports.

In the history of our Law Reports, the labours of Sir Edward Coke, to which *κατ' ἐξοχην* the title of "THE Reports," has been given, claim a more especial notice. Upon the termination of the labours of those official reporters who compiled the Year Books, it appears that the practice of reporting had begun to fall into disuse, and, with the exception of Dyer and Plowden, no Collection of Cases of any importance had appeared between the period when the Year-Books terminated and the commencement of Coke's Reports. "I have," (says he, in the Preface to his first Reports,) "since the 22d year of her Majesty's reign, which is now twenty years complete, observed the true reasons, as near as I could, of such matters in law, wherein I was counsel, and acquainted with the state of the case, as have been adjudged upon mature deliberation." This, indeed, is the distinguishing characteristic of Sir Edward Coke's Reports; they are cases "adjudged upon mature deliberation," and remarkable for the full and complete arguments which

they underwent, both at the bar and on the bench; it is even stated, that one of the cases was argued *twenty-one* times. (*Butler and Baker's Case*, 3 Rep. 35, b.) They assume a character of more importance, when it is considered that they comprise the decisions of our courts of justice at a period when the law was, as it may be said, in a state of *transition*, when the *jus antiquum* was expiring and the *jus novum* about to commence. In the opinion of one eminently calculated to pass such a judgment, Coke performed almost a vital service to the system of our law by the publication of his Reports. "Of this I say no more," observes Lord Bacon, in his Proposal for amending the Laws of England, "but that, (to give every man his due,) had it not been for Sir Edward Coke's Reports, (which, though they may have errors, and some peremptory and extra-judicial resolutions more than warranted, yet they contain infinite good decisions and ruling over of cases,) the law by this time had been almost a ship without ballast; for that the cases of modern experience, are fled from those that are adjudged and ruled in former time." It appears that certain passages in the Reports had excited the King's displeasure, and on Coke's disgrace, he was commanded, "that, during this vacation, whilst he had time to live privately, and dispose himself at home, he take into his consi-

deration and revise his books of Reports, wherein, as his Majesty is informed, be many extravagant and exorbitant opinions set down and published for practice and good law. And if, in revising and reading thereof, he find any thing fit to be altered and amended, the correction is left to his own discretion. Amongst other things, the King was not well pleased with the title of these books, wherein he styled himself Lord Chief Justice of England, whereas he could challenge no more than Lord Chief Justice of the King's Bench." The King had been informed that the Reports contained many things against his Majesty's prerogative, and Sir Edward Coke was accordingly, as we learn from a letter of Lord Ellesmere, then Chancellor, called upon for an explanation of those passages. "According to your Majesty's directions, signified to me by Mr. Solicitor, I called the Lord Chief Justice before me, on Thursday, the 13th instant, in presence of Mr. Attorney, and others of your learned Counsel. I did let him know your Majesty's acceptance of the few animadversions, which, upon review of his own labours, he had sent, though fewer than you had expected, and his excuses other than you expected." It was, probably, upon this occasion that Lord Ellesmere wrote his "Observations on Lord Coke's Reports," which were printed several years ago, from the papers of Mr. Laugh-



ton, of Cambridge, and of which some MS. copies are to be found in the Hargrave Collection, (Nos. 78 and 254.) This inquiry does not appear to have been made with the concurrence of Lord Ellesmere, for Bacon tells us, that the Lord Chancellor wished he might have been spared all service concerning the Chief Justice, as remembering the fifth petition of *Demitte nobis debita nostra, &c.* A Committee of Judges was appointed to examine the Reports, but the matter slept until the Great Seal was delivered to Bacon, by whom it was removed, and two more Judges appointed on the Committee.

It seems, however, that the earlier parts of Coke's Reports met with the King's approbation, for, in the Preface to 4 Report, Sir Edward says, "His Majesty understanding, (as it seemeth,) by reason of my former editions, that I have observed many determinations and judgments of questionable and doubtful cases, which, upon great study, consideration, conference, and deliberation, have been resolved and given by the reverend Judges and Fathers of the Law, *required me to proceed*, and for the general good and quiet of the subject, to publish them."

The first eleven parts of the Reports, being all which appeared in the author's life-time, were published at various periods between the years 1600 and 1615. The Twelfth Part has a certi-

ificate printed before it, signed E. Bulstrode, 1655, attesting its genuineness. The Thirteenth Part was published again at a subsequent period. These two parts contain many highly curious cases of a constitutional nature, which was obviously the reason of their suppression during the life-time of the author.

How far Coke extended the license of a reporter in adding to and illustrating the arguments of the Counsel and the Judges, it is difficult to determine; he has, however, himself adverted to the limits which he thought a Reporter bound to observe. "And now that I have taken upon me to make a report of their arguments, I ought to do the same as fully and truly and sincerely as possibly I can, howbeit, seeing that almost every Judge had, in the course of his arguments, a peculiar method, and I must only hold myself to one, I shall give no just offence to any of them, if I challenge that which of right is due to every Reporter, that is, to reduce the sum and effect of all to such a method as, upon consideration had of all the arguments, the Reporter himself thinketh to be fittest and clearest for the right understanding of the true reasons and causes of their judgment, and resolution of the case in question." (*Calvin's Case*, 7 Rep. 4 a.) In one respect the Reports of Sir Edward Coke are greatly superior to those of his contemporaries, and most espe-

cially to those of succeeding Reporters. Every case is of weight and importance, or as he expresses himself, his labour has been, "that such only as should hereafter be leading cases for the public quiet might be imprinted and published." (*Preface to 9 Rep.* xv. See also the *Preface to 10 Rep.* xii.)

For several years after the publication of the first volume of Sir Edward Coke's Reports no similar work appeared, although, as Coke himself informs us, "he encouraged the lawyers of that age to follow his example, to register in books the sayings and doings which were in their time worthy of note and observation." Sir Henry Hobart, indeed, his successor on the bench of the Common Pleas, left, on his death, a valuable collection of MS. Reports of cases adjudged in that Court, which, several years afterwards, were given to the world. They were subsequently edited by Sir Heneage Finch, who declared that he found them "beautiful, even in confusion." Although many of the cases relate to obsolete law, Hobart's Reports must always be regarded as most valuable, for the accurate and lucid expositions of the law which they contain.

In consequence, probably, of the paucity of reports in the reign of James I. (that is to say, of *published* reports, for many MS. collections were made during that reign, which have been since com-

mitted to the press,) it was thought expedient to revive the office of stipendiary reporters, which, as we have seen, had been discontinued about the conclusion of the reign of Henry VII. This idea appears to have been projected by Lord Bacon, who, in his "Proposal for amending the Laws of England," recommended the King "to appoint some grave and sound lawyers, with some honourable stipend, to be reporters for the time to come." (*Bacon's Law Tracts*, p. 12.) And in a note upon this passage the author adds: "This constitution of reporters I obtained of the King after I was Chancellor, and there are two appointed with 100l. a year a-piece stipend." (*See also Pat. 15 Jac. p. 18. 17 Rym. 26.*) "This wise institution," says Sir William Blackstone, "was soon neglected;" (*1 Com. p. 72,*) and indeed there seems reason to doubt whether the new reporters ever entered upon their task. We learn from the title-page to his Reports, that Sir Thomas Hetley was one of the persons "appointed by the King and Judges for one of the Reporters of the Law," but there is certainly nothing in his Reports to authorise the idea that they were collected with that particular judgment and care which should distinguish the labours of an official reporter. Moreover, they were "taken in the third, fourth, fifth, sixth, and seventh years of the late King Charles," a considerable time after the period when the new appointment of official

reporters took place. This, in addition to the circumstance that many of Hetley's cases are only a translation of those in Littleton's Reports, seems sufficient to prove that Hetley's Reports are not entitled to any authority as official records. To what cause the failure of Lord Bacon's scheme is to be attributed is not known.

On the establishment of the Commonwealth, the reports began to multiply with rapidity. "A flying squadron of thin reports" appeared, of which March is said to have led the van. And although amongst them there were many books of good authority (*see the List; Preface to 5 Mod. p. ix.*) yet "the honoured and revered names of divers grave and learned Justices and Professors were, in some of the said books, abused and invoked, to patronage the indigested crudities of those plagiaries." (*Preface to Cro. Car.*) "Of late," says Bulstrode, (*Epistle Dedicatory to 2 Buls. Rep.*) "we have found so many wandering and masterless reports (like the soldiers of Cadmus) daily rising up and justling each other, that our learned Judges have been forced to provide against their multiplicity, by disallowing of some posthumous reports, well considering that as laws are the anchors of the Republic, so the reports are as the anchors of Laws, and therefore ought well to be *weighed* before put out." Some severe observations on these "flying reports" are also

made by Sir Harbottle Grimstone, in his Preface to Cro. Car. who tells us that, "they tend to the depraving the first grounds and reason of our students at the Common Law, and the young practitioners thereof, who by such false lights are misled, and thereby their clients' causes either delayed or miscarried, and multiplicity of law-suits rather cherished than suppressed."

The reports which have incurred this grave reprehension are chiefly collections of cases made by various Judges for their own use, and neither published by them nor intended for the press. "This I am sure of," says Style, in the Dedication to his Reports, "there is not a father alive to own many of them, and they speak so plain in the language of Ashdod, that a knowing man cannot believe they ever sprung from Israelitish parents." Indeed there seems reason to believe that the names of Judges and other learned men have been very unwarrantably made use of by the publishers of these masterless reports. During this period there were upwards of twenty of these volumes published.

The most signal exception to these "blind and mis-shapen reports" are the three volumes of Sir George Croke's Reports, which were first published in the year 1657, by Sir Harbottle Grimstone, and which have always been regarded as a work of high authority. Being published during the pe-

riod when the Ordinance of the Parliament, respecting the language of the law, was still in force, (of which some account has already been given, (*see ante, vol. i. p. 5.*) the editor was compelled, much against his will, to translate them into English. However, he still retained the consolation of printing them in black-letter, a circumstance which he seems to have considered essential to the authority of his book.\*

Upon the Restoration a check was given to the indiscriminate printing of reports, by the Statute which prohibited the publication of law-books without the licence of certain of the Judges, (*See ante, vol. i. p. 33.*) The character of the reports published during the reign of Charles II. (amongst which we find Rolle, Leonard, T. Jones, and Vaughan, all of them very valuable books,) is certainly superior to that of the "flying-squadron" which had immediately preceded them.

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\* "There be certain legal formalities and ceremonies peculiarly appropriate and anciently continued amongst us, so as they seem now to be *essentials of the law itself*, and ought not, without the supreme authority, to be changed or disused. Such are those which are observed by our author in the creation of Sergeants at Law, &c. And such I conceive are the writing of the orders and records of the Courts in such peculiar hands, the printing of law-books *in their proper letter* and native language." (*Note to Pref. to Cro. Car.*)

In the reign of James II. only seven volumes of reports made their appearance ; but amongst them were those of Sir Edmund Saunders, a work which, however excellent in itself, has been rendered doubly valuable by the learned and judicious annotations of Mr. Sergeant Williams. The Reports of Saunders (of which a new edition has lately appeared, with many additional notes, inserted with great accuracy and judgment,) will always be regarded by the learned Pleader as the best manual to which he can resort. The facility of reference to this book is greatly increased by the excellent and copious index which is added in the last edition.

It is singular that so considerable a portion of the last century should have elapsed before the periodical publication of reports took place. Notwithstanding the desire felt and expressed by the profession, many of the Reports of that æra were not published until after their authors' death, as in the case of Lord Raymond and Sir John Strange. "Late cases," says Sir James Burrow, in his preface, "are most sought after;" and, indeed, the possessors of such in MS. appear to have been much harassed by the importunity of their friends. "I was subject," says Burrow, "to continual interruption, and even persecution, by incessant applications for searches into my notes; for transcript of them; sometimes for the note-



books themselves, (not always returned without trouble and solicitation,) not to mention frequent conversations upon very dry and unentertaining subjects which my consulters were *paid* for considering, but I had no sort of concern in. This inconvenience grew from bad to worse, till it became quite insupportable,"—and Sir James published. —When a person at this period formed a design of becoming a reporter, with a view to the publication of his notes, he waited until he had collected cases sufficient to fill a volume, which he then presented to the profession. The latest collection of cases published in this manner was that of Mr. Douglas, including the decisions of the Court of King's Bench for three years, from 1778 to 1781.

At length, in the year 1786, Messrs. Durnford and East, "in consequence of the desire universally felt for a periodical work of this nature," adopted the plan "of publishing the notes of cases adjudged in the Court of King's Bench within a short time after each term." The success which attended the publication of the Term Reports soon rendered the system fashionable, and instead of the inconvenience which was felt in Sir James Burrow's time, we are now absolutely overwhelmed with periodical Reports. The various reporters in the different Courts, during the reign of George the Third, amount to upwards of

sixty, and their numbers appear to be rapidly increasing. In the King's Bench, in the Common Pleas, and in the Exchequer, we have a double series of reports—and where is the grievance to terminate? Already the volumes of the Reports amount to upwards of 500, and in half a century that number will be doubled. The happy time is long gone by when, according to Fuller, “all the writers of the Common Law, with all the year-books belonging thereto, might be bought for three score pounds or thereabouts,” for now the library of a modern lawyer requires a serious investment of capital. Yet in what manner is the evil to be remedied? The question is a difficult one, and we do not pretend to offer a solution of it.

To the present mode of recording the decisions of our Courts, many weighty objections may undoubtedly be taken. The task is confided to the hands of private individuals, whose capacity for the performance of it is subject to no previous inquiry, to no subsequent sanction. The method of reporting is dependent entirely upon the taste and ability of the reporter, who compresses or enlarges his cases according to his own convenience, or that of his publisher. He is negligent or faithful, pithy or diffuse, as his talents, his fancy, or his interest dictate, and the practiser is sometimes left to gather the opinion of the Court, as best he

may, from the relation of a man who evidently did not understand that opinion.

The consequences of this desultory and irregular system of reporting are highly injurious. The authority of a decision is made to depend upon the character of the reporter, with regard to which the learned Judges are by no means always of the same opinion. Lord Thurlow tells us that "Carthew and Comberbach are equally bad authority." (1 *Br. Ch. Ca.* 97.) While Lord Kenyon, on the other hand, informs us that "Carthew is in general a good Reporter."\* (2 *T. R.* 776.) There are few reporters who have altogether escaped censure from the Bench. "Eighth Modern is a miserably bad book." (1 *Burr.* 386.) "11th Modern is a book of no authority." (*Dougl.* 61.) "12th Modern is not a book of any authority." (*Dougl.* 83.) "The book called Reports in Chancery in Lord Nottingham's time, is a book of no authority." (3 *Atk.* 334, 1 *Wils.* 162) "Fitzgibbon's Reports is a book of no authority." (3 *Atk.* 610.) "Some of the cases in Freeman are well reported, but the book is of no authority." (*Cowp.* 15.) "Keble is a bad Reporter." (3 *T. R.* 17.) "a very inaccurate Reporter" (3 *Wils.* 330.) "The authority of Popham is none." (1

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\* Mr. Selwyn, also, in his N.P. speaks of the "known accuracy" of Carthew.

*Keb.* 676.) “As for the case from Noy’s Reports I wholly reject that authority. It was but an Abridgment of cases by Sergt. Size, who, when he was a student, borrowed Noy’s Reports, and abridged them for his own use.” (*per Twisden J.* 1 *Vent.* 81.) Lord Mansfield has denounced several Reporters. He absolutely forbade the reading of Moseley’s Reports. (5 *Burr.* 2629—3 *Anstr.* 861.) Of Bunbury he said, “Mr. Bunbury never meant those cases should have been published. They are very loose notes.” (5 *Burr.* 2658.) So he forbade the citing of Barnardiston’s Reports in Chancery, as it would only be misleading students to put them upon reading them. “He said it was marvellous, however, to such as knew the Sergeant and his manner of taking notes, that he should so often stumble on what was right, and yet there was not *one* case in his book which was so throughout.” (2 *Burr.* 1142.) Sometimes the Courts are compelled to take two bad reporters instead of one good one. “The case cited,” says Lord Mansfield, “is an express authority, and is reported in two books, each of which states the case in the same way. It is, however, objected that these are books of no authority; but if both the reporters were the worst that ever reported, if they substantially reported a case in the same way, it is demonstration of the truth of what they report, or they could not agree.”

(*R. v. Genge, Cowp.* 16.) The objections to such loose and irregular reports apply with double force to the reports of Nisi Prius decisions, where the matter of the case is often as objectionable as the manner in which it is reported. "Very likely," says Mr. Justice Bayley, "one's first thoughts at Nisi Prius may be wrong, and I am extremely sorry that they are ever reported, and still more so that they are ever mentioned again, at least so far as my nisi prius decisions are concerned, because I think they are entitled to very little weight. What is said by a Judge upon a trial is merely the first impression of his mind on a point coming suddenly before him, and which he had no opportunity of considering before hand." (*Doe v. Staunton*, 1 *Ch. R.* 121.)

"It has somehow or other happened," says Mr. Douglas, in the Preface to his Reports, "that little or no care has been taken, nor any provisions made, to render the evidence of judicial proceedings certain and authentic." Amongst the many evils of the law noticed by Lord Bacon, as calling for amendment, is the state of the Reports, even in his time. "Lastly," he observes, "cases reported with too great prolixity would be drawn into a more compendious report, not in the nature of an abridgment, but tautologies and impertinencies to be cut off; as for misprinting and insensible reporting, which many times confound the

students, that will be *obiter* amended ; but more principally if there be anything in the report which is not well warranted by the record, that is also to be rectified." (*Law Tracts*, p. 11.) Bacon, therefore, contemplated an improved collection of all the reports then published, and as a means to ensure the judicious recording of future decisions, we have seen that he projected the re-establishment of the official reporters. The latter plan has been frequently recommended, and has, we understand, been adopted with success in some of the United States.\* But whether upon the whole such an establishment be desirable may, perhaps, be doubted. The persons upon whom the office is conferred, receiving their appointment from government, might possibly be inclined to consider themselves independent of the pro-

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\* The Americans are in as great a dilemma as ourselves with regard to the rapid increase of their law-reports. "We had no reports," says an American writer, "until Pennsylvania set the example, in the year 1790, in the reports of Alexander James Dallas, esq. From that time until 1803, there were only a few books of reports published ; but from that period to the present, the catalogue has been increasing almost monthly." (*Hoffman's Course of Legal Study*, p. 147.) The same writer gives a catalogue of the American Reports, up to the period when he wrote, which we find amount to about a hundred volumes, in the course of less than a quarter of a century !

fession, whose praise or censure they might equally disregard. Nor, indeed, would it be well to throw any additional patronage into the power of the crown, which already possesses temptations sufficient to corrupt the integrity of the Bar. Perhaps, therefore, it might be most advisable that certain gentlemen of the Bar should be selected and countenanced by the profession at large, whose sanction should be given to their labours, and to theirs alone. By this mode all the advantages attendant on the establishment of official reporters would be gained, and the evils for the most part avoided. Should the present system be suffered to continue, we can anticipate no other fate than that which Mr. Viner contemplated when he regarded his ponderous Abridgment—"like the Tarpeian maid, to be oppressed with our own volumes, as she was with the Helmets of the Sabines."

#### SALARIES OF THE JUDGES.

Although it is difficult to form a correct idea of the professional emoluments of our early lawyers, (*see post*, p. 73,) we have ample means of ascertaining the salaries of the judges in early times, from the Records of the Exchequer. These Records were diligently searched by Sir W. Dugdale, who gives us the following information on the subject.

“ Touching the yearly salaries paid to the King’s justices of his respective courts at Westminster, for their support in his service, I have not seen any thing before the xith year of King Henry the Third’s reign. The *Liberatæ Rolls* before that time being all perisht, but then Will. de Insula and R. Duket had each of them x marks per ann. out of the Exchequer.

“ Howbeit, not long after, these fees were increast, for in 23 Hen. III. Will. de Culeworth, one of the justices of the Common Pleas, had xxi. per ann. fee.

“ In 27 Henry III. Alexander de Severford, a baron of the Exchequer, (and chief as it should seem,) had xl marks per annum, and in 38 of Hen. III. John de Longville, one of the barons of that court, xx marks.

“ In 43 Henry III. Gilbert de Preston, then one of the justices of the King’s Bench, had xl. *l.* per ann. and in 44 Hen. III. Roger de Thurkilby, one of the justices of the Court of Common Pleas, c. marks per ann. But he was then chief justice in that court, as I guess, though there was a *Justiciarius Angliæ* at the same time, (as in my *Chronologick Tables* is evident,) for Robert de Rivers, then also a justice in the said Court of Common Pleas, had no more than xl. *l.* per annum.

“ To Roger de Thurkilby, (for he died in 44



Hen. III.) succeeded Will. de Wilton in the chief justiceship of the Court of Common Pleas, whose fee was advanced to *c l.* per annum; the fee of the other judges in that Court but *xl. l.* apiece.

“ And as the salaries in this Court were thus enlarged, so were those in the Exchequer: for in 49 Hen. III. Roger de la Laye, one of the barons there, has *xl. l.* per annum. But this held not long, for Gilbert de Preston, chief justice of the King’s Bench, in 35 Hen. III, received but a *c* marks per annum. Nor had he more in the beginning of King Edward the First’s time, when he was chief justice of the Court of Common Pleas. And after this, they sunk more, for Thomas de Weyland, chief justice of the Common Pleas, in 7 Edward I. had but *xl. l.* per annum, as long as he lived; and Walter de Wymburne, another justice of the same Court, *xl.* marks, which proportion, viz. *xl. l.* per annum to the chief justices of both Benches, and *xl.* marks apiece to the justices, and barons of the Exchequer, continued till the 25 of Edward III. as may appear by the *Liberatæ* Rolls of those times. And then the salary of the chief justice of the King’s Bench shrunk more: viz. to fifty marks per annum, (which is not more than 33*l.* 6*s.* 6*d.*) the yearly fee of the chief justice of the Common Pleas being augmented to *c* marks per annum;

and the other justices of both Benches and barons of the Exchequer, being then reduced to xx*l.* per annum.

“ Neither in these annual salaries have I seen any direct certainty of a long time after, for in 28 Edw. III. it appears, that Thomas de Seton, then one of the justices of the King’s Bench, had 30 marks per annum.

“ In 36 Edw. III. the chief baron, and other barons of the Exchequer, had all alike, viz. xl. *l.* per annum. In 39 Edw. III. the justices of the Common Pleas, xl. *l.* per annum. The chief justice of the King’s Bench, c marks. The other justices of that Court, xl. *l.* per annum.

“ In 5 Rich. II. the justices of the Common Pleas, no more than xl marks per annum. So also in 8 and 14 Richard II.

“ In 1 H. IV. the chief baron, and other the barons of the Exchequer, but xl marks per annum. The chief justice of the Common Pleas, xl. *l.* the other justices of that Court, xl marks. In 3 H. IV. the chief justice of the King’s Bench, xl. *l.* per annum. And in 9 H. IV. John Colepeper, one of the justices of the Common Pleas, *lv* marks per annum.

“ But I do incline to believe, that there was more of certainty, both in their yearly salaries, and allowances for their robes, after the 18th year of King Henry the Sixth’s reign, in which

year, as well the judges of all the courts of Westminster, King's Attorney and King's Sergeants, exhibited a petition in parliament, a copy whereof I have here added."

Dugdale then gives the petition, and the returns of the revenue officers, as to the amount of the judges' fees and salaries, and then continues thus :

" So that, after this they had, (as it seemeth,) an increase of their salaries ; and likewise an allowance in money for their robes : for it appeareth, that, in 1 Edw. IV. John Markham, then chief justice of the King's Bench, had an yearly pension of clxx. marks granted unto him, and payable by the Clerk of the Hanaper, as also *cvis. xid. qu.* and sixth part of an halfpenny, for his Christmas robe, and *lxvis. vid.* for his robe at Whitsuntide, *juxta formam cujusdam actus in Parlamento an. 18 H. VI.* as are the words of the Record.

" So likewise Sir Will. Huse, Knt. constituted chief justice of the same court in 1 H. VII. had the yearly fee of cxi marks for his better support in that place, granted to him ; and *cvis. xid. farthing*, and the sixth part of an halfpenny, for his winter robe ; as also *lxvis. vid.* for his robe at Whitsuntide.

" After this, viz. in 37 H. VIII. there was a farther increase of their fees, viz. to the lord

chief justice of the King's Bench and his successors, for the time being, of xxxl. per annum. And to every justice of the Common Pleas, and their successors, xx. l. per annum, 17 Nov. 37 Henry VIII." (*Dugdale's Orig. Jurid. p. 104.*)

It should be remembered, that at this early period the duties of the judges were much lighter than at present. "You are to know further," says Fortescue, "that the judges of England do not sit in the King's Courts above three hours in the day, that is, from eight in the morning until eleven. The Courts are not open in the afternoon. The suitors of the court betake themselves to the *Pervise* and other places, to advise with the sergeants at law and other their counsel, about their affairs. The judges, when they have taken their refreshments, spend the rest of the day in the study of the Laws, reading the Holy Scriptures, and other innocent amusements at their pleasure. It seems rather a life of contemplation than of much action. Their time is spent in this manner, free from care and worldly avocations." (*De Laudibus, &c. c. 51.*) The Lord Chancellor's place, however, was by no means so easy a one, as the following account of the manner in which Lord Keeper Williams used to distribute his time, will sufficiently testify. "It is almost incredible what a perfect drudge the Keeper was, especially when he first entered upon his office. \* \* \* His busi-

ness at this time was so great, that he was forced to sit by candle-light in the Court two hours before day, and to remain there till between eight and nine, then to repair to his office in the House of Lords till twelve or one every day. After a short repast at home, he returned to hear the causes in Chancery, which he could not dispatch in the morning; or if he attended at council at Whitehall, he came back towards evening, and followed his employment in Chancery till eight at night, or later. After this, when he came home, he perused what papers his secretaries brought to him, and when that was done, though late in the night, he prepared himself for the Lords' House next morning. And all that lived in his family knew, that it was ordinary with him to begin his studies at six at night, and continue them till three in the morning, and be ready again by seven to attend his employment." (*Philips's Life of Williams*, p. 80.)

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"Pray, Mr. ———," said his Lordship, "are you concerned for the prosecutor?" "No, my Lord, I am employed for the prosecutor; but I am concerned for the prisoner."

## SIR JULIUS CÆSAR.

“ Sir JULIUS CÆSAR, Knight, was born in this county, his father having a house nigh unto Tottenham. His father was a Doctor of Physick to Queen Elizabeth, and descended from the ancient family of the *Dalmarii*, in Italy. This, his son, was bred in Oxford; and, after other intermediate preferments, was advanced Chancelour of the dutchy of Lancaster, and sworn a Privie Counsellor, on Sunday, the sixth of July, 1607, and afterwards was preferred Master of the Roults.

“ A person of prodigious bounty to all of worth or want, so that he might seem to be *Almoner* General of the Nation. The story is well known of a gentleman, who once borrowing his coach (which was as well known to poor people as any hospital in England,) was so *rendevouzed* about with beggars, in London, that it cost him all the money in his purse to satisfy their importunity; so that he might have hired *twenty* coaches on the same terms. Sir Francis Bacon, Lord Verulam, was *judicious* in his *election*, when, perceiving his dissolution to approach, he made his *last bed* in effect in the house of Sir Julius.

“ He continued more than 20 years Master of the Rolles; and, though heaved at by some expectants, sate still in his place, well poyzed therein with his gravity and integrity. *Vir tantarum*

*Elemosynarum non movebitur*, 'a man of so great alms and prayers (made by him and for him) shall not be removed.' Nor was it without a prosperous omen, that his chief house in Hartfordshire was called *Benington*, that is, *Villa benigna*, 'the bountiful Village,' as one author will have it; or, as another, *Villa beneficii*, 'The Town of Good Turns,' from the river so named, running by it. What shall I speak of his Arms, viz. Gules, three roses, Argent: on a chief of the first, so many roses of the second, embleming the *fragrancy of the memory* he hath left behind him.

"His Monument, in Great St. Helen's, London, being out of the road of ordinary fancies, was thus designed by himself.

"The ensuing description is contrived in form of a Deed, and imitateth *ruffled Parchment*, in allusion to his Office, as Master of the *Rolles*:—

"*Omnibus Christi Fidelibus ad quos hoc præsens Scriptum pervenerit. Sciatis, me Julium Dalmare, alias Cæsarem, Militem; utriusque Doctorem; Elizabethæ Reginae Supremæ Curie Admiralitatis Judicem; et unum e Magistris Libellorum, Jacobo Regi à Privatis Concilliis, Cancellarium Scaccarii, Scriniorum Magistrum, hac præsentis Charta mea confirmasse me, annuente Divino Numine, Naturæ debitum libenter solviturum, quamprimum Deo placuerit. In cujus rei memo-*

*riam manum meam et Sigillum apposui Datum 27 Februarii, 1635.*



“ Here his *seal* or *Coat of Arms* is affixed, and beneath them is written

“ *Irrotulatur Cœlo.*”

“ He dyed the twenty-eighth day of April, anno Domini 1636, in the seventy-ninth year of his age.” (*Fuller's Worthies—Middlesex.*)

The following anecdote of Sir Julius is told by Clarendon, in his History of the Rebellion.

“ There was a very ridiculous story at that time in the mouths of many, which, being a known truth, may not be unfitly mentioned in this place, as a kind of illustration of the humour and nature of the man.\* Sir *Julius Cæsar* was then Master

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\* The Lord Treasurer Weston, Earl of Portland.



of the Rolls, and had, inherent in his office, the indubitable right and disposition of the Six Clerks' places ; all which he had, for many years, upon any vacancy, bestowed to such persons as he thought fit. One of those places was become void, and designed by the old man to his son, Robert Cæsar, a lawyer of a good name, and exceedingly beloved. The Lord Treasurer, (as he was vigilant in such cases,) had notice of the clerk's expiration so soon, that he procured the King to send a messenger to the Master of the Rolls, expressly forbidding him to dispose of that Six Clerks' place, till his Majesty's pleasure should be further made known to him. It was the first command of that kind that had been heard of, and was felt by the old man very sensibly. He was, indeed, very old, and had outlived most of his friends ; so that his age was an objection against him ; many persons of quality being dead, who had, for recompence of services, procured the reversion of his office. The Treasurer found it no hard matter so far to terrify him, that (for the King's service, as was pretended,) he admitted for a Six Clerk a person recommended by him, (Mr. Fern, a dependent upon him,) who paid six thousand pounds ready money ; which, poor man ! he lived to repent in a jail. This work being done at the charge of the poor old man, who had been a Privy Counsellor from the en-

trance of King James, had been Chancellor of the Exchequer, and served in other offices; the depriving him of his right made a great noise; and the condition of his son (his father being not likely to live to have the disposal of another office in his power) who, as was said before, was generally beloved and esteemed, was argument of great compassion; and was lively and successfully represented to the king himself; who was graciously pleased to promise, that, if the old man chanced to die before any other of the Six Clerks, that office, when it should fall, should be conferred on his son, whosoever should succeed him as Master of the Rolls: which might well be provided for, and the Lord Treasurer obliged himself (to expiate the injury,) to procure some declaration to that purpose, under his Majesty's Sign Manual; which, however easy to be done, he long forgot, or neglected.

One day the Earl of Tullibardine, who was nearly allied to Mr. Cæsar, and much his friend, being with the Treasurer, passionately asked him, whether he had done that business? To whom he answered, with a seeming trouble, "That he had forgotten it, for which he was heartily sorry; and if he would give him a little note in writing, for a memorial, he would put it amongst those which he would dispatch with the King that afternoon." The Earl presently writ on a little paper,

*Remember Cæsar!* and gave it to him; and he put it into that little pocket, where, he said, he kept all his memorials which were first to be transacted.

Many days passed, and Cæsar never thought of. At length, when he changed his clothes, and he who waited on him in his chamber, according to custom, brought him all the notes and papers which were left in those he had left off, which he then commonly perused; when he found this little billet, in which was only written, *Remember Cæsar!* and which he had never read before, he was exceedingly confounded, and knew not what to make, or think of it. He sent for his bosom friends, with whom he most confidently consulted, and shewed the paper to them, the contents whereof he could not conceive: but that it might probably have been put into his hands, (because it was found in that inclosure wherein he put all things of moment which were given him when he was in motion, and in the privy lodgings in the court.) After a serious and melancholy deliberation, it was agreed, that it was the advertisement from some friend, who durst not own the discovery: that it could signify nothing but that there was a conspiracy against his life, by his many and mighty enemies: and they all knew Cæsar's fate, by contemning or neglecting such animadversions. And therefore they concluded

that he should pretend to be indisposed, that he might not stir abroad all that day ; nor that any might be admitted to him, but persons of undoubted affections : that at night, the gates should be shut early, and the porter enjoined to open them to nobody, nor to go himself to bed till the morning ; and that some servants should watch with him, lest violence might be used at the door ; and that they themselves, *and some other gentlemen*, will sit up all the night, and attend the event. Such houses are always in the morning haunted by early suitors ; but it was very late before any could now get admittance into the house, the porter having quitted some of that arrear of sleep which he owed to himself for his night's watching, which he excused to his acquaintance, by whispering to them, " That his Lord should have been killed that night, which had kept all the house from going to bed." And shortly after, the Earl of Tullibardine asking him, whether he had remembered Cæsar ? the Treasurer quickly recollected the ground of his perturbation, and could not forbear imparting it to his friends, who likewise affected the communication, and so the whole jest came to be discovered."

## LORD CHANCELLOR SHAFTESBURY.

" Lord Chancellor Shaftesbury," says Mr. Seward, in his anecdotes, (*vol. ii. p. 58.*) " was a man

of such talents and sagacity, that at twenty years of age, he carried a proposal of his own for settling the differences between the king (Charles I.) and his parliament to his majesty, who told him that he was a very young man for such an undertaking." "Sir," said he, "that will not be the worse for your affairs, provided I do the business." It met, however, with no success, nor would perhaps a proposal made by Machiavel himself have succeeded better, when the sword was once drawn.

"In the reign of Charles II. after having filled some great offices, he was appointed to that very dignified and illustrious one of Lord Chancellor, though he had never studied the law, and had never been called to the bar. On that account he used to preside in the Court of Chancery in a brown silk instead of a black silk gown. Dryden himself praises his conduct while he administered that great office, saying of him,—

"Yet fame deserved, no enemy can grudge,  
The Statesman we abhor, but praise the Judge ;  
In Israel's Courts ne'er sat an Abethdin  
With more discerning eyes, or hands more clean ;  
Unbribed, unsought, the wretched to redress,  
Swift of dispatch, and easy of access."

"Yet in another place he calls him—  
"For close designs and crooked counsels fit,  
Sagacious, bold, and turbulent of wit ;

Restless, unfix'd in principles and place,  
 In power unpleas'd, impatient of disgrace ;  
 A fiery soul, which, working out its way,  
 Fretted the pigmy body to decay,  
 And o'er-inform'd the tenement of clay."

(*Absalom and Achitophel.*)

"The discrepancy in the two characters noticed by Mr. Seward is thus accounted for by Dr. Keppis, in his notes to the *Biographia Britannica*, 'It is well known with what severity the Earl of Shaftesbury's character is treated by Dryden in his *Absalom and Achitophel*. Nevertheless, soon after that fine satire appeared, his Lordship, having the nomination of a scholar, as Governor of the Charter-house, gave it to one of the Poet's sons, without any solicitation on the part of the father, or of any other person. This act of generosity had such an effect on Dryden that, to testify his gratitude, he added, in the second edition of the poem, the four lines in celebration of the Earl's conduct as Lord Chancellor :

' In Israel's Courts, &c.'

"When King Charles II. read these lines, he told Dryden that he had spoiled by them all which he had before said of Shaftesbury." (*See Article "Cooper, Ant. Ashley."*)

Lord Shaftesbury was the last layman raised to the dignity of the woolsack. In the reign of

James I. a singular resolution was entered into of excluding the common lawyers from this, the highest professional honour. "For my calling into this office (said Lord Keeper Williams, in his inaugural address,) it was, as most here present cannot but know, not the cause, but the effect of a resolution in the state to change or reduce the governor of this Court from a professor of our municipal laws to some one of the nobility, gentry, or clergy, of this kingdom." (*Hacket's Life of Williams, Part i. p. 72.*) In the preceding reign a disposition to the same proceeding had manifested itself. On the death of the Lord Chancellor Bromley, the Queen had resolved to appoint as his successor, the Earl of Rutland, a nobleman only in the thirtieth year of his age; but, on the Earl's sudden death, shortly after the decease of Bromley, Sir Christopher Hatton, her Majesty's Vice-Chamberlain, was appointed to the office. It is singular that the administration of the three Chancellors, who were not educated to the profession of the law, should have afforded so little cause of complaint to the suitors of the Court of Chancery. Hatton, indeed, had formerly been a member of one of the Inns of Court, but had never prosecuted his legal studies. Shaftesbury appears to have been a perfect stranger to the law. Perhaps, of the three, Williams was best fitted, by his previous studies, for the high situa-

tion to which he was raised. He had paid considerable attention, while Chaplain to Lord Ellesmere, by a happy anticipation, to the study of the common law, as we learn from the relation of his biographer. "The third step of felicity upon which he climbed εις κολπον της ψυχης, as it is Athanasius his metaphor, into the bosom of his master's soul, was that he had picked up in a short space, some gleanings, in his own modest words, in the knowledge of the Common Laws of the Realm; but, indeed, full sheaves, if his acquaintance may be believed. He remitted not the studies of his own science and profession; but, having read the Tenures, the Doctor and Student, and somewhat else like unto them, at hours of relaxation, he furnished himself with no little quantity of that learning, by discourse and conference, and enquiring after some cases how they sped in Courts of Justice. When he was at a nonplus, he respited that difficulty till he met with Sir John Walker, (afterwards Lord Chief Baron,) whose judgment was most agreeable to his genius. This was his practice, not now, but all along, to gather up more at the interspaces of leisure than others do at their study." (*Hacket's Life of Williams, Part i. p. 27.*)

#### THE REVELS OF THE INNS OF COURT.

The Revels or solemn dances which used for-



merly to take place at the Inns of Court, are a very perplexing subject of speculation. That the grave ministers and professors of the law should have conceived it to be consistent with their dignity to exhibit their persons in the mazes of a dance, seems altogether inexplicable. Let us just suppose that, under "The Mirror of Fashion," in the Morning Chronicle, we read the following paragraph:—"Yesterday, being the Feast of St. Erkenwald, the Honourable Society of the Middle Temple gave their usual entertainment. After dinner the Solemn Revels commenced, by the Lord Chancellor walking a minuet with Mr. Justice Gaselee, as the youngest Judge. A quadrille succeeded, in which the Judges of the King's Bench and Common Pleas were to have taken part, but, as Lord Chief Justice Best was severely afflicted with the gout, and as Mr. Justice Littledale was not yet perfect in the figure of the dance, their places were supplied from amongst the King's Counsel, Mr. Marryat and Mr. Hart being selected for that purpose. 'The Lancers' succeeded; the Justices of the C. P. (with the exception of the C. J.) and the Barons of the Exchequer making up the set. We were sorry to observe that Mr. Baron Graham seemed fatigued with the exertion. Some waltzing now took place, the couples being led by Mr. Attorney and Mr. Solicitor.—The grace and vigour displayed by Sir Charles Wether-

ell in this dance excited universal admiration.—The Chancellor observed that he had seen nothing like it since Dunning's time. The Sergeants next advanced and danced several Scotch reels. Mr. Sergeant Vaughan distinguished himself particularly. The Solemn Revels being concluded, a gentleman of the Outer Bar (Mr. Charles Phillips) was called upon for a song.—He gave the favourite Air 'Oh I am the Boy for bewitching them,' with great effect. The Judges and Benchers being now seated, the Post Revels commenced with a country dance in which all the utter Barristers took part. Mr. Rose of the Chancery Bar observed that learned gentlemen seemed particularly expert at one part of the figure—change sides and back again. The whole concluded with a *Pas de deux* between the Vice-Chancellor and Lord Stowell."

The professors of Divinity and Medicine do not appear to have indulged at any period in these salutary recreations. The solemnity of the College of Physicians was never disturbed by a *Coranto*. It is possible that the practice may have crept into our Inns of Court from the circumstance of their being formerly a sort of University for the education of our young nobility, with whom the art of dancing was an essential accomplishment. Fortescue tells us that in the Inns of Court the Students were taught.

The Revels of the Inns of Court appear to

have been of two kinds, the *Solemn Revels* and the *Post Revels*. They principally took place on holidays and festivals, when the Inn was honoured with the presence of the Judges or other distinguished personages. When dinner was over, the Judges and Sergeants were conducted either into the garden or some other place, until the hall was "cleansed and prepared" for the solemnities. This being done, and the Judges being again seated, "the ancient of the two (pleaders,) who hath the staff in his hand, stands at the upper end of the bar-table; and the other, with the white rod, places himself at the cupboard, in the middle of the hall opposite to the Judges, where, the music being begun, he calleth twice the Master of the Revels; and at the second call, the ancient, with his white staff, advanceth forward, and begins to lead the measures, followed first by the barristers, and then the gentlemen under the bar, all according to their several antiquities; and when one measure is ended, the reader at the cupboard calls for another, and so in order." (*Dug. Orig. p. 234.*) At the conclusion of these, which were the *Solemn Revels*, a curious ceremony takes place, which is thus described by Dugdale.

"When the last measure is dancing, the reader at the cupboard calls to one of the gentlemen of the bar, as he is walking, or dancing with the

rest, to give the Judges a song: who forthwith begins the first line of any psalm, as he thinks fittest; after which, all the rest of the company follow, and sing with him. Whilst they are thus walking and singing, the reader with the white rod departs from the cupboard, and makes his choice of a competent number of utter barristers, and as many under the bar, whom he takes into the buttery; where there is delivered unto every barrister, a towel with wafers in it, and unto every gentleman under the bar, a wooden bowl, filled with ipocras, with which they march in order into the hall, the reader, with his white rod, going foremost. And when they come near to the halfpace, opposite to the Judges, the company divide themselves, one half (as well barristers as those under the bar,) standing on the one side of the reader, the other on the other side; and then, after a low solemn congee made, the gentlemen of the bar first carry the wafers; the rest, with the new reader, standing in their places. At their return, they all make one another solemn low congees, and then the gentlemen under the bar carry their bowls of ipocras to the Judges; and returning, when the Judges have drank, they make the like solemn congee, and so all depart, saving the new readers elect, who wait upon the Judges until their departure, and then usher them down the

hall unto the court-gate, where they take their leaves of them."

The Post Revels, as their name imports, took place after the Solemn Revels, and were performed "by the better sort of the young gentlemen of the Society, with galleards, corrantos, and other dances, or else with stage plays." (*Dugd. Orig. p. 205.*) In Dugdale's time the Post Revels had been much disused.

The foregoing is a description of the Revels which took place in the Middle Temple. They were much of the same nature at the other Societies.

"Lincoln's Inn had anciently its dancing, or revels, allowed on particular seasons, as well as the Temple, and that by the special order of the Society. For it appears that, in 9 Henry VI. it was ordered, 'That there should be four Revels that year, and no more; one at the Feast of All Hallown, another at the Feast of Saint Erkenwald, the third at the Feast of the Purification of our Lady, and the fourth on Midsummer Day;' one person yearly elected of the Society, being made choice of for the director of these pastimes, called the Master of the Revels. But these sports were used long before that time, as appears by an Order of Council, made on Allhallown Day, 8 Eliz. that the musicians, at the Ancient and Solemn Revels, (for so they were then called,)

should have their stipend increased, for their service on the two principal Feasts, Allhallown-tide and Candlemass ; that is to say, where they were wont to have for their service done, for Allhallown even, Allhallown-day at noon, and Allhallown-day at night, 3s. 4d. that thenceforth they should have for their said service at that time, 6s. 8d. and the like sum at Candlemas, having had but 3s. 4d. before.

“ Nor were these exercises of dancing merely permitted, but insisted on. For, by an order made 6th February, 7 Jac. I. it appears, ‘ that the under barristers were by decimation put out of commons, for example’s sake, because the whole bar were offended by not dancing on the Candlemas-day preceding, according to the ancient order of this Society, when the Judges were present ;’ with a threat, that if the like fault were committed afterwards, they should be fined or disbarred.” (*Herbert’s Inns of Court*, p. 314.)

The following account of the Lincoln’s Inn Revels is given by a contemporary writer.

“ When I was of Lincoln’s Inn, the fashion was, (and I think is still,) after dinner, upon grand and festive days, some young gentlemen of the house would take the best guest by the hand, and he the next, and so hand-in-hand they did solemnly pass about the fire, the whole company, each after other in order ; to every staff a song,

(which I could never sing,) the whole company did, with a joined voice, sing this burthen :

“ Some mirth and solace now let us take,  
To cheer our hearts, and sorrows slake.

“ Upon this kind of commencement of these Revels, I conceited thus :

“ When wise rich lawyers dance about the fire,  
Making grave needless mirth sorrows to slack,  
If clients, (who do them too dearly hire,)  
Who want their money and their comforts back,  
Should for their solace dance about the hall,  
I judge their dance were more methodical.”

*(Hayman's Quodlibet.)*

The shadow of these singular ceremonies remained till towards the middle of the last century, as we learn from Mr. Sergeant Wynn, who gives the following entertaining account of the lawyers' “ last Revel,” in the notes to his *Eunomus*.

“ The last Revel in any of the Inns of Court, was in the Inner Temple, held in honour of Mr. Talbot, when he took leave of that house, of which he was a bencher, on having the Great Seal delivered to him.

“ A friend, who was present during the whole entertainment, obliged me with the following account, which, with some circumstances supplied by another gentleman, then likewise present, seemed worth adding here, by way of comparison

with those in former times, and as it may probably be the last of the kind.

“ On the 2d of February, 1733, the Lord Chancellor came into the Inner Temple Hall, about two of the clock, preceded by the Master of the Revels, (Mr. Wollaston,) and followed by the Master of the Temple, (Dr. Sherlock,) then Bishop of Bangor, and by the Judges and Sergeants who had been members of that house. There was a very elegant dinner provided for them and the Lord Chancellor's officers ; but the barristers and students of the house had no other dinner got for them than what is usual on all grand days, but each mess had a flask of claret, besides the common allowance of port and sack. Fourteen students waited at the bench-table, among whom was Mr. Talbot, the Lord Chancellor's eldest son ; and by their means any sort of provision was easily obtained from the upper table by those at the rest. A large gallery was built over the skreen, and was filled with ladies, who came for the most part a considerable time before the dinner began ; and the music was placed in the little gallery at the upper end of the hall, and played all dinner-time.

“ As soon as dinner was ended, the play began, which was Love for Love, with the farce of the Devil to Pay. The actors who performed in them all came from the Haymarket in chairs, ready dress-



ed; and as it was said, refused any gratuity for their trouble, looking upon the honour of distinguishing themselves on this occasion as sufficient.

“ After the play, the Lord Chancellor, Master of the Temple, Judges, and Benchers, retired into their Parliament-chamber, and in about half an hour afterwards came into the Hall again, and a large ring was formed around the fire-place, (but no fire or embers were in it.) Then the Master of the Revels, who went first, took the Lord Chancellor by the right hand, and he, with his left, took Mr. J. Page, who joined to the other Judges, Sergeants, and Benchers present, danced, or rather walked, round about the coal-fire, according to the old ceremony, three times, during which they were aided in the figure of the dance by Mr. George Cooke, the Prothonotary, then of sixty : and all the time of the dance, the ancient song, accompanied with music, was sung by one Toby Aston, dressed in a bar-gown, whose father had been formerly Master of the Plea-office, in the King's Bench.

“ When this was over, the ladies came down from the gallery, went into the Parliament-chamber, and stayed about a quarter of an hour, while the Hall was putting in order; then they went into the Hall, and danced a few minuets. Country-dances began about ten, and at twelve, a very fine collation was provided for the whole company;

from which they returned to dancing, which they continued as long as they pleased ; and the whole day's entertainment was generally thought to be very genteelly and liberally conducted. The Prince of Wales honoured the performance with his company part of the time : he came into the music-gallery incog. about the middle of the play, and went away as soon as the farce of walking round the coal-fire was over." (*Notes to Eunomus*, vol. ii. p. 288.)

DID SIR THOMAS MORE PERSECUTE HERETICS ?

Sir Thomas More has been accused of having caused corporal punishment to be inflicted upon heretics. It is said by Mr. Butler, (*Memoirs of the Catholics*, vol. i. p. 68,) that the truth of this accusation seems to rest entirely on the credit of Fox, the Martyrologist, a writer, he observes, equally bigotted and credulous. In his anxiety to exonerate More from this charge, Mr. Butler appears to have overlooked the fact of More having certainly been during his life-time *accused* of cruelty towards the Protestants,—a fact sufficiently proved by his own denial of the charge, which denial is at the same time noticed by Mr. Butler. Fox was not, therefore, at all events, the first to make the accusation. Nor are there wanting other authorities to the same effect. It is said, in *Luther's Table-talk*, that Luther being

asked whether Thomas More was executed for the Gospel's sake? answered, "No, in no wise, for he was a notable tyrant. He was the King's chiefest counsellor, a very learned, and a wise man. He shed the blood of many innocent Christians that confessed the Gospel; those he plagued and tormented with strange instruments, like an hangman, &c." (*Colloq. Mensal. p. 464.*) This statement is, indeed, at variance with another, which depends upon the authority of Erasmus, who asserts, that no one was put to death for his opinions whilst More was Chancellor. Erasmus, however, is mistaken in this assertion, for Bainham suffered while More held the Seals. The following is Burnet's account of the transaction: "James Bainham, a gentleman of the Temple, was carried to the Chancellor's house, where much pains was taken to persuade him to discover such as he knew in the Temple who favoured the new opinions; but fair means not prevailing, More made him be whipt in his presence, and after that sent him to the Tower, where he looked on and saw him put to the rack. He was burnt in Smithfield, and with him More's persecution ended; for soon after he laid down the Great Seal, which set the poor preachers at ease." (*Burnet's History of the Reformation, vol. i. p. 158.*)

If we were to judge of More's severity to others by the austerities which he practised to-

wards himself, there would be some colour for the accusations against him ; or if we measured the violence of his actions by the vehemence of his words, we might, perhaps, arrive at the same conclusion.

“ It is,” says Burnet, “ remarked by Atterbury, that More, in his Answer to Luther, forgot himself so, as to throw out the greatest heap of nasty language that, perhaps, ever was put together; and that the book throughout is nothing but downright ribaldry, without a grain of reason to support it, and gave the author no other reputation, but that of having the best knack of any man in Europe at calling bad names in good Latin. The like censure do his English Tracts against Tindal, Barns, &c. deserve.”

On the other hand, to oppose this evidence, we have the solemn denial of More himself, in the 36th Chapter of his Apology, where he appeals to God for the truth of the denial. His conduct also towards his son-in-law, Roper, as related by one of his biographers, discountenances the idea of his cruelties. “ More frequently and seriously conversed with him on the subject of his religion ; (Roper was at this time a Lutheran,) but finding his arguments ineffectual, said to him, ‘ I will no longer *dispute* with you,—I will pray to God for you !’ The consequence was, that, within a few days afterwards, Roper voluntarily confessed

to his wife, that he was become a convert to the Catholic religion." (*Stapleton, vita Mori, p. 89.*)

It is very difficult to believe, that the same man who had once entertained the rational opinions on religious toleration, which are promulgated in the Utopia, should become the violent persecutor, which More is represented to have been. King Utopus "made a decree, that it should be lawful for every man to favour and follow what religion he would; and that he might do the best he could to bring others to his opinion, so that he did it peaceably, gently, quietly, and soberly, without hasty and contentious rebuking and inveighing against others. If he could not by fair and gentle speech induce them into his opinion, yet he should use no kind of violence, and refrain from displeasing and seditious words." (*Utopia, Dibdin's Edit. vol. ii. p. 201.*)

Upon the whole, the evidence against More does not seem sufficient to justify us in stigmatizing him as a persecutor.

#### JUDICIAL POLITENESS.

Sir James Dyer, in his Reports, after stating the opinions of himself and some of his brothers, adds, not very urbanely, "but Baldwin was of a contrary opinion, though neither I nor any one else, I believe, understood his refutation." (*Dyer, 43. a.*)

## CALLING TO THE BAR.

It is singular that so long a noviciate should have been required in early times before a student was allowed to be called to the bar. At present a person who does not possess a Master of Arts' degree cannot be called until his name has been on the books of the society for five years, during three of which he must keep terms. In very early times, by the orders of the Inner Temple, no one could have been called to the bar under eight years, which had been reduced in Dugdale's time to seven. During this period, the student (unless he were called *ex gratiâ*,) was to perform twelve grand moots, and twenty-four petty moots at some Inn of Chancery. (*Dugd. Orig. p. 159.*) In the Middle Temple there was a similar order made 11 James I. that no one should be called to the bar under seven years' standing. (*Ibid. p. 191.*) So in Gray's Inn, by an order made 5 Charles I., no gentleman could be called to the bar unless he had been seven years usually in commons in this society; or, of two years' continuance usually in commons in an Inn of Chancery, and five years at least in usual commons in this house. (*Ibid. p. 281.*)

Not satisfied with requiring this tedious probation, it was thought fit, by the Benchers of the Middle Temple, in 1 Eliz. to prohibit the Utter

Barristers from pleading at any bar until they were of twelve years' standing. This prohibition issued by command of the Judges, (*Dugd. Orig.* p. 191,) but it was probably soon forgotten, for, in the year 1635, we find the following order, amongst others, proceeding from the same Society.

“ That whereas there have been heretofore, anciently, divers acts made by the preceding Benchers, govenours of this house, to restrain the too early practice of young Barristers, which suit not so well unto these times: the Masters of the Bench have therefore ordered, that no young Barrister presume to take upon him to practise, in any of the Courts at Westm. before he have been full three years at the Barr, at least, upon pain to be corrected before the Bench, and fined, or otherwise dealt with, as to them in their discretions shall seem meet. Neither do they intend to call any to the Barr hereafter, other than such as have their full time and are otherwise qualified thereunto, as the orders of the house do require: and therefore they enjoin the gentlemen under the barr to apply and follow their studies to keep the case, to perform their exercises, to order their habits and hair to decency and formality, according to the orders of the House; and to yield due respect and observance to the Benchers and ancients, their govenours, as they expect and desire the preferment to the degree of the Barr, or other-

wise care to be lyable to the censure of the Bench; or (as the cause shall require) to be cut off from the Society."

CHARACTER OF LORD HARDWICKE, BY LORD  
CHESTERFIELD.

"Lord Hardwicke was, perhaps, the greatest magistrate this country ever had. He presided in the Court of Chancery above twenty years, and in all that time none of his decrees were ever reversed, nor the justness of them questioned. Though avarice was his ruling passion, he was never in the least suspected of any kind of corruption—a rare and meritorious instance of virtue and self-denial, under the influence of such a craving, insatiable, and increasing passion.

"He had great and clear parts; understood, loved, and cultivated the belles lettres.

"He was an agreeable, eloquent, speaker in parliament, but not without some little tincture of the pleader.

"Men are apt to mistake, or at least seem to mistake their own talents, in hopes, perhaps, of misleading others, to allow them that which they are conscious they do not possess. Thus Lord Hardwicke valued himself more upon being a great minister of state, which he certainly was not, than upon being a great Chancellor, which he certainly was; all his notions were clear, but none of them



great. Good order and domestic details were his proper department. The great shining parts of government, though not above his parts to conceive, were above his timidity to undertake. By great and lucrative employments, during the course of thirty years, and still greater parsimony, he acquired an immense fortune, and established his numerous family in profitable posts and advantageous alliances.

“Though he had been Solicitor and Attorney General, he was by no means, what is called a prerogative lawyer—he loved the constitution, and maintained the just prerogative of the crown, but without stretching it to the oppression of the people.

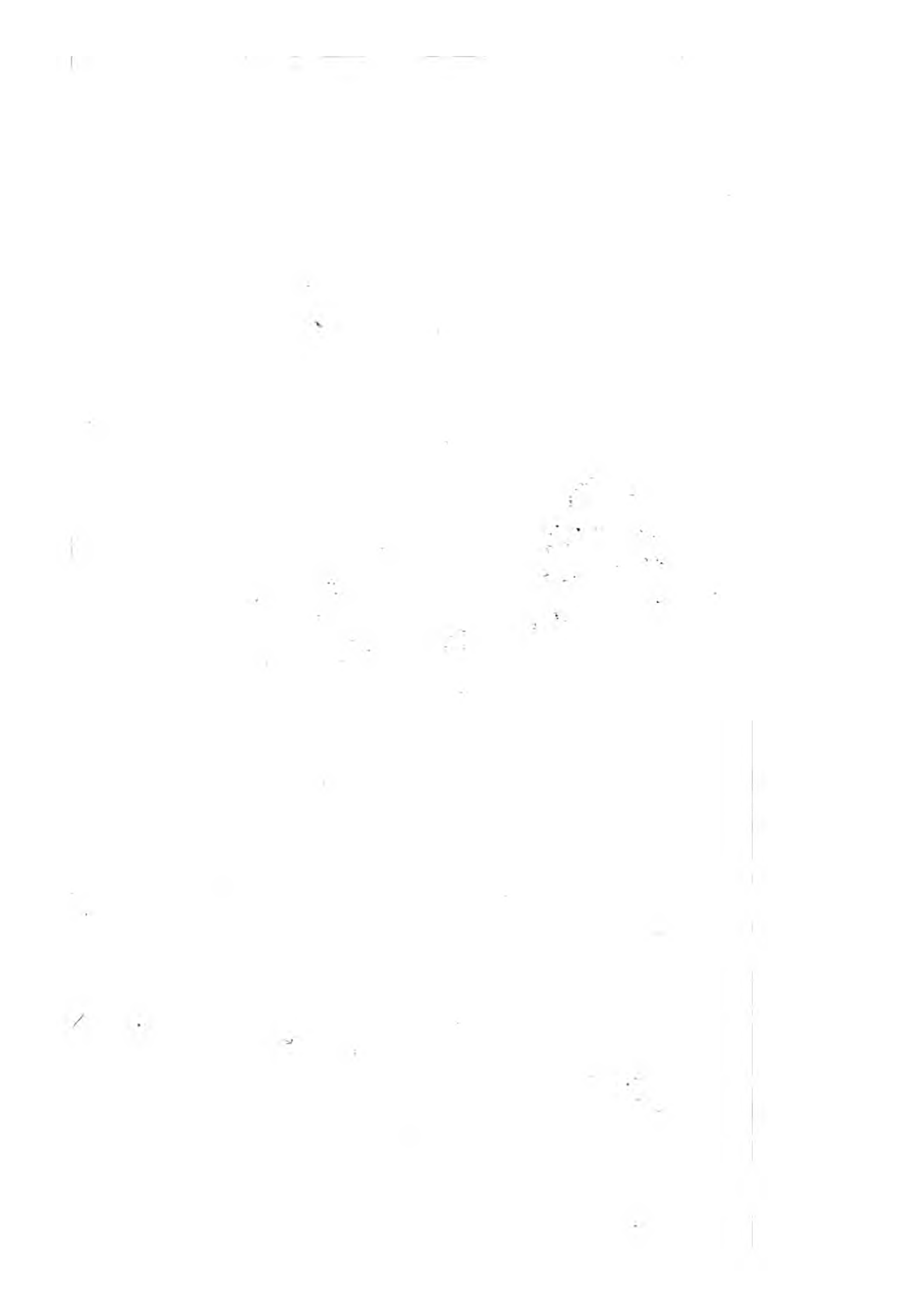
“He was naturally humane, moderate, and decent; and when by his former employments he was obliged to prosecute state criminals, he discharged that duty in a very different manner from most of his predecessors, who were too justly called the blood-hounds of the crown.

“He was a cheerful, instructive companion; humane in his nature, decent in his manners, unstained with any vice (avarice excepted); a very great magistrate, but by no means a great minister.

“But I cannot give a better or more proper account of the close of his life than as the matter of fact was given the public, in the narration of it, in the chronicles of those times.—‘On



**LORD HARDWICKE.**



Tuesday, March 6, 1764, died, at his house in Grosvenor-square, in his seventy-fourth year, Philip, Earl of Hardwicke, whose character and conduct will adorn the most interesting period in the history of this age and country. At present it may suffice to pay this small tribute to his memory. After a well-grounded education in classical learning, which he retained and cultivated amidst his most laborious and highest employments, he applied himself to the study of the law, in the Middle Temple, with uncommon success; and soon became so eminent in his profession, that, at the age of twenty-nine, on the 23rd of March, 1719-20, he was promoted to the office of Solicitor-General, being honoured with Knight-hood the June following. In February, 1723-4, he was made Attorney-General. Upon the resignation of the great seal, by Peter, Lord King, in October, 1723, Sir Philip Yorke waived his own pretensions, founded on both merit and priority of rank, in favour of his friend, Charles Talbot, esq. then Solicitor-General, and accepted the important place of Lord Chief Justice of the King's Bench, being soon after raised to the dignity of a Baron of this kingdom. The reputation with which he filled that seat of judicature could only be equalled by that with which he afterwards discharged the office of Lord High Chancellor, when called to it on the decease of Lord Talbot, in

February, 1736-7. And it is no small evidence of the acknowledged abilities and integrity with which he presided in the Court of Chancery, that, during the space of twenty years, in which he sat there, only three of his decrees were appealed from, and those afterwards confirmed by the House of Lords. After he had executed that high office many years, he was, in April, 1754, advanced by his late Majesty, as a mark of his royal approbation of his Lordship's long and eminent services, to the rank of an Earl of Great Britain. His resignation of the Great Seal, in November, 1756, gave an universal concern to the nation, however divided at that time in other respects, but he still continued to serve the public in a more private station, with an unimpaired vigour of mind, which he enjoyed even under a long and severe indisposition, till his latest moments.

‘ His talents as a speaker in the Senate, as well as on the Bench, have left too strong an impression to need being dilated upon, and those as a writer were such as might be expected from one who had early distinguished himself in that character in the Spectator.

‘ His private virtues, amiableness of manners, and extent and variety of knowledge, were as much esteemed and admired by those who had the honour and happiness of his acquaintance, as

his superior abilities were by the nation in general. In his public character, wisdom, experience, probity, temper, candour, and moderation, were so happily united, that his death, in the present situation of affairs, is a loss to his country, as unseasonable as it is important.'

"I might add to this account of the close of his life and summary of his character, some strictures, published about the same time, by a very respectable author, who styled himself, The Father of Candour, in a very ingenious and learned tract, entitled, A Letter concerning Libels, Warrants, and Seizures of Papers, which contain charges, tending to depreciate the acknowledged merits and high reputation of the Earl of Hardwicke. But these I forbear to exhibit till I may be furnished, as I hope to be, with materials for refuting such charges, that the antidote may attend the poison of malignity, and that I may be able to represent the good qualities of this truly great man without impurity or alloy." (*Sketches of the Life of Philip, Earl of Hardwicke*, p. 46.)

#### CHARLES THE SECOND'S VISIT TO THE TEMPLE.

"On Thursday, Aug. 15, An. 1661, 13 Car. 2. Sir Heneage Finch, Knight and Baronet, Solicitor-General to the King, being reader, kept his feast in the great Hall of the Inner Temple.

"To the honour of whom, and of the whole

Society, the King came in his barge from Whitehall, accompanied by the Duke of York; and attended by the Lord Chancellor, Lord Treasurer, Lord Privy Seal; the Dukes of Buckingham, Richmond, and Ormond; Lord Chamberlain of his Household; the Earles of Ossory, Bristol, Berks. Portland, Strafford, Anglesey, Essex, Bathe, and Carlisle, The Lords Wentworth, Cornbury, De la Warre, Gerard of Brandon, Berkley of Stratton and Cornwallis, the Comptroller and Vice-Chamberlain of his Majesty's Household, Sir Will. Morice, one of his principal Secretaries of State, The Earle of Middleton, Lord Commissioners of Scotland, the Earle of Glencairne, Lord Chancellor of Scotland, The Earles of Lauderdale and Newburgh, and other the Commissioners of that Kingdome, with the Earle of Kildare and other Commissioners of Ireland.

“ At the Staires, where his Majesty landed, stood to receive him, the reader, and the Lord Chief Justice of the Common Pleas, in his scarlet robe and collar of SS.

“ On each side, as his Majesty passed, stood the reader's servants, in scarlet cloaks and white tabba doublets; there being a way made through the wall into the Temple Garden; and above them, on each side, the Benchers, Barristers, and other gentlemen of the Society, all in their gowns and formalities, the loud music playing from the

time of his landing till he entered the Hall; where he was received with 20 violins, which continued as long as his Majesty stayed.

“Dinner was brought up by fifty select gentlemen of the society, in their gowns, who gave their attention all dinner while, none other appearing in the Hall but themselves; the King and the Duke of York sitting under a canopy of state, at a table set at the upper end of the Hall, advanced three steps above the rest. The Lord Chancellor, with the rest of the noblemen, sitting at a long table on the right side of the Hall, and the Reader, with those at the Society, on the other side.

“On the third of November following, to the farther honour of this Society, his royal highness the Duke of York, the Duke of Buckingham, the Earl of Dorset, and Sir William Morice, Knight, one of his Majesty’s principal Secretaries of State, were admitted of this House; the Duke of York being then called to the Bar and Bench.

“And on the 4th of Nov. 14 Charles II. his Highness Rupert, Prince Palatine, Thomas Earl of Cleveland, Jocelyn Lord Percy, John Lord Berkley, of Stratton, with Henry and Bernard Howard, of Norfolk, were admitted of this Society.” (*Dugd. Orig. Jurid. p. 157.*)



## THE LAWYER AND SAWYER.

## 1.

To fit up a village with tackle for tillage  
Jack Carter he took to the saw ;  
To pluck and to pillage the same little village  
Tim Gordon he took to the law ;  
Thus angled so pliant for gull and for client,  
As sharp as a weasel for rats ;  
Till, what with their saw-dust and what with  
their law-dust,  
They blinded the eyes of the flats.  
Then hey for the sawyer, and hey for the lawyer,  
Make hay for it's going to rain ;  
And saw'em and law'em, and work'em and quirk'em,  
And at 'em again and again.

## 2.

Jack brought to the people a bill for the steeple,  
They swore that they would not be bit ;  
But out of a saw-pit is into a law-pit,  
Tim tickled them up with a writ.  
Cried Jack, the saw rasper, "I say, neighbour  
Grasper,  
We both of us buy in the stocks,  
While I for my savings, turn blocks into shavings,  
You lawyers are shaving the blocks."  
Then hey, &c. &c.

## 3.

Jack frolick'd in clover, and, when work was over,  
Got drunk at the George for a freak ;  
But Timothy Gordon, he stood for churchwarden,  
And ate himself dead in a week.  
Jack made him a coffin, but Timothy off in  
A loud clap of thunder had flown ;  
When lawyers lie level, be sure that the devil  
Looks sharp enough after his own.  
Then hey for the sawyer, &c. &c.

## LORD HARDWICKE.

The following account of the personal appearance and character of Lord Hardwicke will be found in a letter addressed to Mr. Cooksey, and published by him in his Sketches, &c. of Lord H. The letter appears to have been written by some one who had an antipathy to his Lordship.

“ He was one of the handsomest men of the age, and bestowed great attention on his appearance and dress. By this he attracted the approbation of his lady, the niece of Sir Joseph Jekyl, whom he occasionally met with at the Rolls, to whome he proved most properly and affectionately attached, nor was ever guilty of playing the fool (which was always his term for intriguing) with any other woman. The reports, circulated in these times, relative to Lady B— and Mrs. Wells,

I consider as idle tales, without the least foundation in truth. He was a perfect pattern of temperance and sobriety. His meals were not even convivial. After his dinner, which was generally late, he latterly dosed for some minutes, during which his lady kept up some degree of cheerful conversation. On recovering, and her retiring, a stiff and ceremonious talk took place, in which to involve his son, Heathcote, when he was of the party, he would observe, that Rutlandshire, being the least county in England, his father, Sir Gilbert, was supposed to be in possession of one half of it ; and if he goes on to accumulate as he has done, bids fair to be the proprietor of a whole county, a point at which no one in England ever yet arrived. On this, some sycophant would observe, that his lordship might perhaps be charged with a similar view, in regard to the county of Cambridge ; for though Wimple as yet bore no proportion to the whole, yet the title deeds of a full moiety of it might already be found there :—(a smile.)—The stately and ceremonious reception of his visitors, on a Sunday evening, was insipid and disgusting in the highest degree. For the vanity displayed in the painted windows of the Chapel at Wimple, his family offer in excuse, that the several arms of the illustrious names, connected with the house of Yorke, were collected, blazoned, and presented to him by Mr.

Prouse, member for the county of Somerset. Stranger as he was to the life and habits of country gentlemen, he treated them with insulting inattention and hauteur. Came they from never so distant a part of the county, either to visit his lordship, or see his place, their horses were sent for refreshment to the Tiger, a vile inn, near half a mile distant, as I have experienced more than once. He had no love for the country, or peculiar taste for improvement. Wimple exhibited scenes magnificent and vast, without being pleasing to the eye. He submitted, indeed, like other Lords, sometimes to entertain the natives, but with a visible and contemptuous superiority that disgusted rather than obliged them. When in high good humour, he had two or three stock stories to make his company laugh, which they were prepared, and expected to do. One was of his bailiff, Woodcock, who, having been ordered by his lady to procure a sow she particularly described to him, came one day into the dining room, when full of great company, proclaiming, with a burst of joy he could not suppress, 'I have been at Royston fair, my Lady, and got a sow exactly of your Ladyship's size.' "

## LADY HARDWICKE.

Lord Hardwicke was frequently accused of parsimony, and from the following passage it would

appear that his lady was not altogether exempt from similar charges. This failing has been imputed to the ladies of more than one of our Chancellors.

“ Wimple possesses, and will long possess, a signal, and literally, a shining proof of the good management, sagacity, and foresight, of this most excellent lady. The purse in which the Lord Chancellor carries with him the great seal of England, is decorated with the king's arms and other devices, curiously embroidered, by the most ingenious artists, in that way, possible to be procured. This purse and embroidery, by ancient custom, is annually renewed, and that of the former year, not at all the worse for wear, usually remained a perquisite, of no considerable value, to some one or other, into whose hands it happened to come. Lady Hardwicke, observing and availing herself of this custom, caused the new annual decorations of the purse to be embroidered, in its usual form, on a large piece of rich crimson velvet, of a dimension corresponding to the height of one of the state rooms of Wimple, as if she had foreseen the number of years her lord would enjoy the post of Chancellor. The purses, just twenty in number, complete the hangings of the room, and the curtains of a bed singularly magnificent; the rich embroidery on each piece, like trophies, unwarlike indeed, but bearing honourable memorial of

the number of years that high and important post was held by the founder of the family, with the most irreproachable character for justice and integrity. Nor is it less to the honour of the economy and foresight of Lady Hardwicke, that without the least injury to any one, she contrived, at a trifling expense, to put that family in possession of such memorial, so unique in its kind, and so superior to any magnificence in furniture, and display of grandeur, that the most lavish expenditure could supply. With a just abhorrence of the abuse and misapplication of riches, no one ever knew better their use, or applied them with more propriety in the supply of every expense becoming her lord's rank and station in life. She would often smile at hearing the idle and malevolent tales of the cold chine being turned and found bare, the potted saw-dust to represent lamprey, and the want of Dr. Mead's kitchen to be added to Powis house; and only observe, that uncertain as was the time of the Lord Chancellor's dining, and the company that would attend him, yet if it should happen that he brought with him an ambassador, or person of the highest rank, he never found a dinner or supper to be ashamed of." (*Cooksey's Sketches of the Life of Lord Hardwicke*, p. 39.)

## PARLIAMENTUM INDOCTUM.

It is said by Hume, (*v. ii. p. 233, 4to. Edit.*) that lawyers were totally excluded the House of Commons during several parliaments in Edward the Third's time, and Cotton's Abridgment, p. 18, is cited in support of the assertion, but as Mr. Wynn has remarked, the page cited does not support the statement. (*Eunomus, v. ii. p. 247.*) However, in the reign of Henry IV. this exclusion certainly took place. "Rex brevia direxit vicecomitibus, ne quosdam pro comitatibus eligerent qui in jure regni docti fuissent." (*Tho. Walsingham, p. 37.*) Some curious information has been collected on this subject by Mr. Barrington. (*Observations on Ancient Statutes, p. 373.*) Carte, the historian, supposes that the great reason for the lawyers pushing in shoals to become members of parliament arose from their desire to receive the wages then paid them by their Constituents, whilst from their profession they were obliged to be resident in London; whereas, often members could not attend but with considerable expense, (*vol. ii. p. 481.*) Whitelocke says that the lawyers were excluded by the Crown, who apprehended opposition from them. Mr. Barrington imagines that the exclusion arose not from contempt of the common law itself, but the professors of it, who being at this time *Auditors* to men of property,

received an annual stipend *pro consilio impenso et impendendo*, and were treated as retainers. Chaucer, in his Character of the Temple Manciple, says,—

“Of Masters had he more than thryis ten  
That were of Law expert and curious,  
Of which there were a dozin in that house  
Worthy to ben Stuards of house and londe  
Of any Lord that is in Englonde.”

It should seem from hence, continues Mr. Barrington, that the great preferment which advocates at this time chiefly aspired to was, to become steward to some great man.

In the reign of James I. a proclamation issued directing voters “not to choose curious and wrangling lawyers, who may seek reputation by stirring needless questions.”

#### PROFESSIONAL EMOLUMENTS.

It is difficult to ascertain what were the emoluments of our lawyers in early times. The following entry is said to exist in the churchwarden's accounts of St. Margaret, Westminster, for the year 1476. “Also, paid to Roger Fylpott, learned in the Law, for his Counsel, giving 3s. 8d. with 4d. for his dinner.” The income of Sir Thomas More, in the reign of Henry VIII. (the earliest case with which we are acquainted) was 400l. He told his son-in-law, Mr. Roper, that he acquired



by his profession about this sum annually, "with a good conscience." "This," observes More, in his *Life of his Grandfather*, "was a large gain, in those days, when lawyers sped not so well as now," (Charles the First's time.) (*More's Life of More*, p. 30.) In the reign of James I. the profits of the Lawyers had probably increased considerably. "There is a common tradition in Westminster Hall," says Mr. Barrington, "that Sir Edward Coke's gains equalled those of a modern Attorney-General." This is probably exaggerated, although Bacon, in the same reign, appears to have made 6000l. a year, as Attorney-General. "Brownlow's profits likewise, one of the Prothonotaries, during the reign of Queen Elizabeth, were 6000l. per ann. I received this account," continues Mr. Barrington, "from one who had examined Brownlow's Books, and who also informed me that Brownlow used to close the profits of the year with *Laus Deo*, and when they happened to be extraordinary, with *Maxima Laus Deo*." (*Observations on the Anc. Stat.* p. 509.)

In the reign of Charles II. we learn the value of the Attorney's place, from the *Life of Lord Keeper Guilford*. "The Attorney's place was (with his practice) near seven thousand pounds per annum, and the Cushion of the Common Pleas (the place of L. C. J.) not above four thousand pounds." (*vol. i.* p. 183.) The gains of a man in first-rate

practice at the bar, at this period, scarcely seem to have been proportionably great.

“ My lord (Sir Matthew Hale) said, that 1000l. a year was a great deal for any common lawyer to get; and Mr. B. said that Mr. Winnington did make 2000l. per year by it. My lord answered, that Mr. W. made great advantage by his city practice, but did not believe he made so much of it.” (*Seward's Anecdotes, vol. iv. p. 418.*)

Some idea of the amount of Counsel's fees in the reign of James II. may be formed from the “ Account of the Expenses sustained by the seven Bishops, on their Prosecution, &c.” (*See 12 State Trials, p. 516.*) The largest fee given on this occasion was 20 guineas, and the total amount paid to Counsel, 240l. 16s.

#### THE CHARACTER OF AN HONEST LAWYER.

BY H. G.

The following “ Character ” is appended to the *Strictures on the Lives and Characters of the most Eminent Lawyers of the present Day*, (1790,) and is there stated to be from an old writer. The Editor of the present volumes is not acquainted with the source from which it is derived.

“ An Honest Lawyer is the life-guard of our fortunes, the best collateral security for our estate: a trusty pilot to steer one through the dangerous (and oftentimes inevitable,) ocean of

contention : a true priest of justice, that neither sacrifices to fraud nor covetousness, and in this outdoes those of higher function ; that he can make people honest that are sermon-proof.—He is an infallible anatomist of *Meum* and *Tuum*, that will presently search a cause to the quick, and find out the peccant humour, the little humour, the little lurking cheat, though masked in never so fair pretences ; one that practises Law, so as not to forget the Gospel ; but always wears a conscience as well as a gown ; he weighs the cause more than gold ; and if that will not bear the touch, in a generous scorn puts back the fee.

“ Though he knows all the criticisms of his faculty, and the nice snapperadoes of practice, yet he never useth them, unless in a defensive way, to countermine the plots of knavery, for he affects not the devilish skill of out-baffling right, nor aims at the shameful glory of making a bad cause good, but with equal contempt hates the wolf’s study, and the dog’s eloquence, and disdains to grow great by crimes, or build himself a fortune on the spoils of the oppressed, or the ruin of the widow and orphan. He has more reverence for his profession, than to debauch it to unrighteous purposes, and had rather be dumb than suffer his tongue to pimp for injustice, or club his parts to bolster up a cheat with the legerdemain of law-craft.

“ He is not faced like Janus, to take a retaining fee from plaintiff, and afterwards a back-handed bribe from the defendant, nor so double-tongued, that one may purchase his pleading, and the other, at the same, or a larger price, his silence; but when he undertakes a business, he espouses it in earnest, and does not follow a cause, but manages it. A mollifying letter from the adversary’s potent friend, a noble treat, or the remora of a lusty present from the great, have no influence to make him slacken his proceedings; for he is so zealous for his client’s interest, that you may sooner divorce the sun from the ecliptic, than warp him from his integrity, yet still is his patron only *usque ad aras*, (as far as just,) for if once he finds the business smells rank, St. Mark’s treasure, or the mines of Potosi, are too small a fee to engage him one step further.

“ As his profession is honourable, so his education has been liberal and ingenuous, far different from that of some jilting pettifoggers and purse-milking law drivers, whose breeding, like the cuckoo’s, is in the nest of another trade, where they learn wrangling and knavery in their own causes, to spoil other men, and, with sweetened ingredients of mechanic fraud, compound themselves (though simple enough,) fit instruments for villany. But his greener years were seasoned with literature, and can give better proofs of his

university learning, than his reckoning up the colleges, and boasting his name in the buttery-book : he understands logic, (the method of right reasoning,) and rhetoric, (the art of persuasion,) is well seen in history, (the free-school of prudence,) and no stranger to the ethics and politics of the ancients. He is skilled in other languages besides declaration, Latin and Norman gibberish : he read Plato and Tully before he saw either Littleton or the Statute-book, and grounded in the principles of nature, and customs of nations, came (*lotis manibus*,) to the study of our common municipal law, which he found to be *multorum annorum opus*, a task that requires all the nerves of industry, and therefore employed his time at the Inns of Court, better than in hunting after new fashions, starting fresh mistresses, haunting the playhouses, or acquiring the other little town accomplishments, which render their admirers fine men in the opinion of fools, but egregious fops in the judgment of the wise.

“ In his study, he traffics not only with the infancy of epitomes, abridgments, and diminutive collectors in decimo-sexto, but draws his knowledge from the original springs, digesting the whole body of the law, in a laborious and regular method, but especially aims to be well versed in the practice of every court, and rightly to understand the art of good pleading, as knowing them

to be the most useful to unravel the knotty intrigues of the cause, and reduce it to an issue, yet hates to pester the court with circuities, negative pregnant, departures, and multiplied inconveniencies.

“ He never goes about with feigned allegations to cast a mist before the eyes of Justice, that she may mistake her road, and assign the child to the wrong mother: endeavours not to pack a jury by his interest to the under-sheriff; nor to balk an evidence with a multitude of sudden ensnaring interrogatories; nor maintains any correspondence with the Knights of Alsatia, or Ram-alley vouchers. He can prosecute a suit in equity, without seeking to create a whirlpool, where one order shall beget another, and the poor client be swung round (like a cat before execution,) from decree to rehearsing, from report to exception, and *vice versa*, till his fortunes are ship-wrecked, and himself drowned, for want of white and yellow earth to wade through on. He never studies delays, to the ruin of a family, for the lucre of ten groats, nor by drilling quirks, spins out a suit more lasting than buff, depending a whole revolution of Saturn, and entailed on the third and fourth generation. He does not play the empiric with his client, and put him on the rack to make him bleed more freely, casting him into a swoon with frights of a judgment, and then reviving him again with

a cordial of writ of error, or the dear elixir of an injunction, to keep the brangle alive as long as there are any vital spirits in the pouch. He can suffer his neighbours to live quiet about him, without perpetual alarms of actions and indictments, or conjuring up dormant titles to every commodious seat, and making the land fall five years' purchase, merely for lying within ten miles of him.

“ He delights to be an arbitrator, not an incendiary, and has *beatus pacificus* oftener in his mouth than *currat lex*. He never wheedles any into endless suits for trifles, nor animates them to undo themselves and others, for damage feasant, or insignificant trespasses, *pedibus ambulando*, but (as Telephus' sword was the best cure for the wounds it made,) advises people to compose their assaults and slanders over the same ale that begot them; nor does he, in weightier cases, extort unreasonable fees; for, whatever the foul-chapped rabble may suggest, a lawyer's profession is not mercenary; the money given him is only an honorary gratuity for his advice and trouble, or a grateful acknowledgement of our obligations for his well intended endeavours, and the old emblem, of the bramble's tearing the sheep's fleece that run to it for shelter in a storm, can have no reflection upon him, whose brain is as active, and his tongue as volatile, for a pennyless

pauper, as when oiled with the *aurum potabile* of a dozen guineas.

“ In a word, whilst he lives he is the delight of the court, the ornament of the bar, the glory of his profession, the patron of innocency, the upholder of right, the scourge of oppression, the terror of deceit, and the oracle of his country ; and when death calls him to the bar of heaven, by a *habeas corpus cum causis*, he finds his judge his advocate, nonsuits the devil, obtains a *liberate* from all his infirmities, and continues still one of the Long Robe in Glory.”

## MR. JUSTICE POWIS.

“ It was Powis’s misfortune to be so addicted to blunders, that the late Duke of Wharton, who was the brightest genius, perhaps, of the age wherein he lived, though, unhappily for himself and his country, he was at the same time the most profligate of mankind, took occasion to introduce Judge Powis into a lampoon ; wherein the Duke was very severe on several of the Judges of that time : he was, however, not wanting in doing justice to the character of such of them as were deserving.

“ When York\* to heaven shall lift one solemn eye,  
And love his wife above adultery ;

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\* Blackburne, Archbishop of York.



When godliness to gain shall be preferr'd  
 By more than one of the right reverend herd ;  
 When Parker shall pronounce one right decree,  
 And Hungerford refuse his double fee ;  
 When Pratt with justice shall dispense the laws,  
 And King impartially decide a cause ;  
 When Tracey's generous soul shall swell with pride,  
 And Eyre his haughtiness shall lay aside ;  
 When honest Price shall trim and truckle under,  
 And Powis sum a cause without a blunder ;  
 When Page one uncorrupted finger shows,  
 And Fortescue deserve another nose ;  
 Then shall I cease my charmer to adore,  
 And think of love and politics no more."

*(See Cooksey's Sketch of the Life of Lord Hardwicke, pp. 58. 66.)*

#### EXAMINATION OF A LEARNED APOTHECARY.

At the Staffordshire Lent Assizes, 1819, an action was tried for the recovery of the penalties under the new Apothecaries' Act, in which a man of the name of Warburton, was defendant. It was attempted to be proved for the defence, that Warburton had practised as an apothecary before the passing of the Act; and to establish this, the father of the defendant, who had originally been a gardener, but afterwards became a cow-leech, was called, when the following examination took place.

Mr. *Dauncey*. Mr. Warburton, have you always been a surgeon ?

Witness appealed to the Judge whether this was a *proper answer*.

*Judge*. I have not heard any answer : Mr. *Dauncey* has put a question.

*Witness*. Must I answer it ?

*Judge*. Yes : why do you object ?

*Witness*. I don't think it a *proper answer*.

*Judge*. I presume, you mean question ; but I differ from you in opinion.

The Witness not answering, Mr. *Dauncey* repeated,—have you always been a surgeon ?

*Witness*. I am a *surjent*.

*Dauncey*. Can you spell the word you have mentioned ?

*Witness*. My Lord, is that a fair answer ?

*Judge*. I think it a fair question.

*Witness*. S y u r g u n t.

*Dauncey*. I am unfortunately hard of hearing ; have the goodness to repeat what you have said, Sir.

*Witness*. S u r g e n d.

*Dauncey*. S --, what did you say next to S, Sir ?

*Witness*. S y u r g u n d.

*Dauncey*. Very well, Sir, I am perfectly satisfied.

*Judge*. As I take down the word *Sur—*, please to favour me with it once more.

*Witness*. S u r g u n t.

*Judge.* How, Sir?

*Witness.* S e r g u n d.

*Judge.* Very well.

*Dauncey.* Sir, have you always been what you say? that word, I mean, which you have just spelt? [A long pause.]

*Dauncey.* I am afraid, Sir, you do not often take so much time to study the cases which come before you, as you do to answer my question."—" I do not, Sir."—" Well, Sir, will you please to answer it?" [A long pause, but no reply.] " Well, what were you originally, Doctor Warburton?"

*Witness.* " S y u r g e n d."—"When you first took to business, what was that business?"—" S u r g u n t."—" I do not ask you to spell that word again; but before you were of that profession, what were you?"—" S e r g u n t."

*Dauncey.* My Lord, I fear I have thrown a *spell* over this poor man, which he cannot get rid of.

*Judge.* Attend, Witness; you are now to answer the questions put to you. You need not spell that word any more.

*Dauncey.* When was you a gardener?

*Witness.* I never was." The Witness then stated, that he never employed himself in gardening, he was a farmer. His father was a farmer. He (witness,) ceased to be a farmer fifteen or sixteen years ago; he ceased, because he had then learnt

that business which he is. "Who did you learn it of?"—"Is that a proper question, my Lord?"—"I see no objection to it."—"Then, I will answer it; I learnt of Dr. Hulme, my brother-in-law; he practised the same as the Whitworth doctors, and they were regular physicians."

*Dauncey.* Where did they take their degrees?

*Witness.* "I don't believe they ever took a degree."—"Then, were they regular physicians?"—"No! I believe they were not, they were only doctors."—"Only doctors! were they doctors in law, physic, or divinity?"—"They doctored cows and other things, and human as well."—"Doubtless, *as well*: and you, I doubt not, have doctored brute animals *as well* as human creatures?"—"I have."

*Judge to Witness.* "Did you ever make up any medicine by the prescription of a physician?"—"I never did."—"Do you understand the characters they use for ounces, scruples, and drachms?"—"I do not."—"Then you cannot make up their prescriptions from reading them?"—"I cannot; but I can make up as good medicines in my way as they can in theirs." "What proportion does an ounce bear to a pound?" [A pause.] "There are sixteen ounces to the pound; but we do not go by any regular weight; we mix ours by the hand." "Do you bleed?" "Yes." "With a fleam or with a lancet?" "With a lancet."

“ Do you bleed from the vein or from the artery ?”  
“ From the vein.” “ There is an artery somewhere about the temple; what is the name of that artery ?” “ I do not pretend to have so much learning as some have.” “ Can you tell me the name of that artery ?” “ I do not know which you mean.” “ Suppose, then, I was to direct you to bleed my servants, or my horse, (which God forbid,) in a vein, say, for instance, in the jugular vein, where would you bleed him ?” “ In the neck, to be sure.”

*Judge.* I would take every thing as favourably for the young man as I properly can; but here we have ignorance greater, perhaps, than ever appeared in a court before, as the only medium of education which this defendant can possibly have received in his profession.

Several other witnesses were examined for the defence.

*Baron Garrow*, in summing up, observed, that this was a question of considerable importance to the defendant in the cause, on whose future prospects it must necessarily have great influence, and it was of the last importance to the public. The learned Judge commented strongly on the ignorance of the defendant's father, a man more ignorant than the most ignorant they had ever before heard in any court. Was this man qualified for professing any science, particularly one in which

the health, and even the lives, of the public were involved? Yet, through such an impure medium alone, had the defendant received his knowledge of this profession. There was not the least proof of the defendant having, for a single minute, been in a situation to receive instruction from any one really acting as an apothecary. If the Jury thought that the defendant has acted *as an apothecary* before the time mentioned in the act, they would find a verdict for him; but otherwise, they would find for the plaintiffs in one penalty. The Jury almost immediately returned a verdict for the plaintiffs.

#### THE PROFESSION OF THE LAW.

It is with sincere pleasure, and with the most unaffected admiration for the genius of the writer, that we insert the following powerful passage from a work, which, in every point of view, presents the most pleasing specimen of Legal Biography with which we are acquainted,—the Life of Mr. Curran, by his Son, Mr. W. H. Curran.

“ It may, too, be here observed, that had he (Curran,) been originally more favoured by fortune, his prospect of distinguished success in his profession might not have been so great. There is, perhaps, fully as much truth as humour in the assertion of an English Judge, that a barrister’s first requisite for attaining eminence, is, ‘ not to

be worth a shilling.\* The attractions of the bar, when viewed from a distance, will dazzle and seduce for a while. To a young and generous spirit it seems, no doubt, a proud thing to mix in a scene where merit and talent alone are honoured, where he can emulate the example, and, perhaps, reach the distinctions of our Hales, and Holts, and Mansfields. But all this fancied loveliness of the prospect vanishes the moment you approach and attempt to ascend. As a calling, the bar is, perhaps, the most difficult, and, after the first glow of enthusiasm has gone by, the most repelling. To say nothing of the violence of the competition, which alone renders it the most hazardous of professions, the intellectual drudgery that it involves, is such as few have the capacity, or without the strongest incitements, the patience to endure. To an active and philosophic mind, the mere act of reasoning, the simple perception of relations, whatever the subject matter may be, is an exercise in which a mind so constituted may delight; but to such a one the study of the law has but little to offer. If the body of English law

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\* The learned Judge alluded to, upon being asked, "What conduced most to a barrister's success?" is said to have replied, "That barristers succeeded by many methods; some by great talents, some by high connexions, some by a miracle, but the majority by commencing without a shilling."

be a scientific system : it is a long time a secret to the student ; it has few immutable truths, few master maxims, few regular series of necessary and nicely adapted inferences. In vain will the student look for a few general principles, to whose friendly guidance he may trust, to conduct him unerringly to his object ; to him it is all perplexity, caprice, and contradiction,\* arbitrary and mysterious rules, of which to trace and comprehend the reasons, is the work of years,—forced constructions, to which no equity of intention can reconcile,—logical evasions, from which the mind's pride-indignantly revolts,—of all these the young lawyer meets abundance in his books ; and to encounter and tolerate them, he must have some stronger inducement than a mere liberal ambition of learning or of fame. We consequently find that there is no other profession supplying so many members, who never advance a single step ; no other which so many abandon, disgusted and dis-

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\* This was at least what Mr. Canning found it. In his Poem on Friendship, already mentioned, he says,

“ Oft when condemn'd 'midst Gothic tomes to pore,  
And dubious, con th' embarrass'd sentence o'er,  
While meteor meaning sheds a sickly ray  
Through the thick gloom, then vanishes away,  
With the dull toil tired out, th' indignant mind  
Bursts from the yoke, and wanders unconfined.”



heartened by the sacrifices that it exacts." (*Life of Curran, vol. i. p. 92.*)

A SPECIAL PLEADER.

The following admirable portrait of an incipient Special Pleader will be immediately recognized by all who are familiar with that most humorous production, *The Pleader's Guide*.

Whoe'er has drawn a Special Plea,  
Has heard of old Tom Tewkesbury,  
Deaf as a post, and thick as mustard,  
He aim'd at wit, and bawl'd and bluster'd,  
And died a Nisi Prius leader,—  
That genius was my Special Pleader.—  
That great man's office I attended,  
By Hawk and Buzzard recommended,  
Attorneys both, of wondrous skill  
To pluck the Goose and drive the quill ;  
Three years I sat his smoky room in,  
Pens, paper, ink, and pounce consuming,  
The fourth, when Essoign-day begun,  
Joyful I hail'd th' auspicious sun,  
Bade Tewkesbury and Clerk adieu,  
(Purification, eighty-two,)  
Of both I wash'd my hands ; and though  
With nothing for my cash to show,  
But Precedents, so scrawl'd and blurr'd,  
I scarce could read one single word,

Nor in my books of Common Place,  
One feature of the law could trace,  
Save Buzzard's nose and visage thin,  
And Hawk's deficiency of chin,  
Which I, while lolling at my ease,  
Was wont to draw instead of Pleas ;  
My chambers I equipp'd complete,  
Made friends, hired books, and gave to eat ;  
If haply to regale my friends on,  
My mother sent a haunch of ven'son,  
I most respectfully entreated  
The choicest company to eat it,  
To wit, old Buzzard, Hawk, and Crow,  
Item, Tom Thornback, Shark, and Co.  
Attorneys all, as keen and staunch,  
As e'er devour'd a client's haunch ;  
Nor did I not their clerks invite,  
To taste said ven'son hash'd at night,  
For well I knew that hopeful fry,  
My rising merit would descry,  
The same litigious course pursue,  
And when to fish of prey they grew,  
By love of food and contest led,  
Would haunt the spot where once they fed.  
Thus having, with due circumspection,  
Form'd my professional connexion,  
My desk with precedents I strew'd,  
Turn'd writer, danc'd, or penn'd an ode,

Studied the Ton, became a free  
And easy man of gallantry :  
But if, while capering at my glass,  
Or toying with some favourite lass,  
I heard th' aforesaid Hawk a-coming,  
Or Buzzard on the staircase humming,  
At once the fair angelic maid,  
Into my coal-hole I convey'd ;  
At once, with serious look profound,  
Mine eyes commercing with the ground,  
I seem'd like one estranged to sleep,  
“ And fix'd in cogitation deep,”  
Sat motionless, and in my hand I  
Held my *Doctrina Placitandi*,  
And though I never read a page in't,  
Thanks to that shrewd well-judging agent,  
My sister's husband, Mr. Shark,  
Soon got six pupils, and a clerk,  
Five pupils were my stint, the other  
I took to compliment his mother ;  
All round me came with ready money,  
Like Hybla bees surcharged with honey,  
Which, as they press'd it so genteelly,  
And begg'd me to accept so freely,  
Seem'd all so fond of *Special Pleading*,  
And all so certain of succeeding,  
I, whom am always all compliance,  
As well to pupils as to clients,

Took as genteelly as they paid it,  
And freely to my purse convey'd it ;  
That I might practically show,  
And they in special manner know,  
Ere they begin their Pleas to draw,  
What an Assumpsit meant in law,—  
To wit, for divers weighty sums  
Of lawful cash, at Pleader's rooms,  
By me, said Pleader, as was prudent,  
Had and received to use of Student :  
In short, I acted as became me,  
And where's the Pleader that can blame me ?  
Not one of all the trade that I know,  
E'er fails to take the ready rino,  
Which, haply, if his purse receive,  
No human art can e'er retrieve.  
Sooner when Gallia's credit's flown  
To some Utopian world unknown,  
Astræa shall on earth remain,  
The last of the celestial train,  
To tender assignats at par,  
Triumphant in the Champ de Mars,  
And when their deep-laid projects fail,  
And guillotines no more avail,  
Her baffled Statesmen shall excise  
Some new-found region in the skies,  
And towering in an air balloon,  
Pluck Requisitions from the moon ;

Sooner the daring wights who go  
Down to the watery world below,  
Shall force old Neptune to disgorge,  
And vomit up the Royal George,  
Than he who has his bargain made,  
And legally his cash convey'd,  
Shall e'er his pocket reimburse,  
By diving in a lawyer's purse.

MR. FEARNE.

“ Mr. Fearne was a general scholar, he was profoundly versed in mathematics, chemistry, and mechanics. He had obtained a patent for dyeing scarlet, and had solicited one for a preparation of porcelain. A friend of the Reminiscent having communicated to an eminent gunsmith, a project of a musket, of greater power and much less size than that in ordinary use, the gunsmith pointed out to him its defects, and observed, that ‘ a Mr. Fearne, an obscure law-man, in Breame's Buildings, Chancery Lane, had invented a musket, which, although defective, was much nearer to the attainment of the object.’

“ Mr. Fearne had composed a Treatise in the Greek Language, on the Greek Accents : another on the Retreat of the Ten Thousand. He mentioned to the Reminiscent, that, when he resolved to dedicate himself to the study of the law, he burned all his profane library, and wept over its

flames, and that the works which he most regretted, were, the Homilies of St. John Chrysostom to the People of Antioch, and the Comedies of Aristophanes." (*Butler's Reminiscences*, p. 126.)

Of the authenticity of the following anecdotes we have no means of assuring ourselves.

Fearne was so little ambitious of the favours of fortune, that when he could have commanded from 3000l. to 4000l. a year, by practice as a chamber counsel, he contracted his business within such a compass, that it might just yield him as much as might be sufficient for his wants, and no more. Amidst his professional pursuits, he had always a strong attachment to experimental philosophy, and to this he devoted the time which he denied to increase of business. He made some optical glasses upon a new construction, which have been reckoned improvements; he likewise constructed a machine for transposing the keys in music, and gave many useful hints in the dyeing of cottons and other stuffs. These he called his dissipations, and with some degree of truth, for they too often broke in upon his professional pursuits, and tempted him to give up more hours to laborious employments than his more beneficial prospects demanded, or was consistent with the natural strength of his constitution.

A very pleasing story is related of Fearne's

youth : it may be looked upon as the blossom of that independence and generosity which distinguished him through life. His father, besides being at great expense for his education, presented him on his entrance into the Temple, with a few hundred pounds, to purchase chambers and books. Yet generously overlooking these circumstances, he left his fortune, which was inconsiderable, to be equally partitioned between Fearne and a younger brother and sister. Fearne, sensible how much the family property had been wasted on his account, nobly refused to take advantage of the will, and gave up the whole residue to the other children. "My father," said he, "by taking such uncommon pains with my education, no doubt meant it should be my whole dependence, and if that won't bring me through, a few hundred pounds will be a matter of no consequence."

CHARLES THE SECOND'S VISIT TO LINCOLN'S INN.

We have already given an account of the Royal Visit to the Temple, (*Ante*, p. 63,) and we now present a narrative of his Majesty's reception and entertainment at Lincoln's Inn," extracted from

*"The Admittance Booke of  
"Lincolne's Inne.*

"Wherein his most excellent Majestie, his Royall Highnesse the Duke of Yorke, his Highnesse Prince Rupert, and many Lords and honour-

able Persons, have entered their names with their own hands, the nine and twentieth Day of February, Anno Dom. 1671.

“ A Narrative of the King's Majesties Reception and Entertaynment at Lincolne's Inne, the Nynne and Twentieth Day of February, One Thousand Six Hundred Seventy One.

“ Sir Francis Goodericke, Knt. one of his Maties. learned Councill at Law, and Sollicitor Generall to his Royall Highnesse the Duke of Yorke, being Reader of this Society of Lincolne's Inne for the Lent Reading, in the yeare One Thousand Six Hundred Seventy One, having invited the King, his Royall Highnesse, and Prince Rupert, and diverse of the nobilitie to dine in Lincolne's Inne Hall, on such day of his reading, as his Majestie shall make choise off; his Majestie was pleased to appoint Thursday, the Nynne and Twentieth of February, One Thousand Six Hundred Seventy One. And accordingly, that day his Majestie, together with his said Royall Highnesse, and his Highnesse Prince Rupert, being also attended by the Duke of Monmouth, the Duke of Richmond, the Earles of Manchester, Bath, and Anglesey, the Lord Viscount Halifax, the Lord Bishop of Ely, Lord Newport, Lord Henry Howard, and diverse others of great qualitye, came to Lincolne's Inne. His Majestie made his entrance through the garden, at the greates



gate opening into Chancery Lane, next Holborne, where Mr. Reader and the rest of the Benchers and Associates, waited his comeing, and attended his Majestie up to the Tarras Walke, next the field, and soe through the garden, the trumpets and kettle-drums from the leads over the highest bay-window in the middle of the garden building sounding all the while; and from the garden his Matie. went to the new councill chamber, the Barristers and Students in their gownes, standing in a rowe on each side between the garden and the councill chamber; after a little rest, his Majestie viewed the chappell, returning agayne to the councill chamber, from thence, as soon as his table (being placed upon the ascent att the upper end of the hall, and railed in,) was furnished, his Majestie was brought into the hall, where his Majestie sate under his canopy of state, being served by the Reader, as server, upon his knee, with the towell, before he did eate, his Royall Highnesse sitting at the end of the table on his right hand, and Prince Rupert at the other end. The Dukes and Lords and other his Majestie's attendants of qualitie, after some short tyme of waiting, had leave from his Majestie to sitt downe to dinner att tables prepared for them on each side of the hall. The Reader and some of the Benchers, to witt, Sir Thomas Beverley, Master of Requests to his Majestie, Sir Robert Atkins,

**Knt. of the Bath**, all the tyme of his Majestie's dining, waiteing neere his Majestie's chaire, and four other of the Benchers, Mr. Day, Mr. Pedley, Mr. Stote, and Mr. Manby, with white staffes, waited as controlers of the hall, to keepe good order, and above fifty of the Barristers and Students, the most parte of them attending as waiters, and carrying up his Majestie's meate, which was served upon the knee: the rest of the Barristers and Students waiteing upon the Lords at their table. The three courses, wherein were exceeding great plenty and variety of dishes, and after them a most liberall banquet was served up by the said Barristers and Students, and delivered by them on their knees at the King's table. The music, consisting of his Majestie's violins, playing all the tyme of dinner in the gallery, at the lower end of the hall; towards the end of dinner, his Majestie, to doe a transcendant honour and grace to this Society, and to expresse his most gracious acceptance of their humble duty and affection towards him, was pleased to command the Booke of Admittances to be brought to him, and with his owne hand entred his royall name therein, most graciously condescending to make himselfe a member thereof, which high and extraordinary favour was instantly acknowledged by all the members of this Society then attending on his Majestie, with all possible joy, and received

with the greatest and most humble expressions of gratitude; itt being an example not preceeded by any former King of this realme. His Royall Highnesse and Prince Rupert followed this great and highest example, as also the Dukes and other Lords, who, before his Majestie's riseing from dinner, borrowed gownes of the Students, and put them on, and in those gownes waited on his Majestie, with which his Majestie was much delighted. And his Majestie, through his owne most obliging favour, vouchsafed to it, (haveing made himselfe more nearely and intimately concerned for the good of this Society,) was pleased himselfe to begin a health to the welfare thereof, and to cause itt to be pledged in his owne presence, immediately gave the Reader leave to drinke his Majestie's health, and to begin to his Royall Highnesse. Then riseing from dinner, he was agayne attended to the new Councill-chamber, where he conferred the honour of knighthood on Mr. Nicholas Pedley and Mr. Richard Stote, two of the Benchers, who had in their turns beene Readers of this house, as also upon Mr. James Buttler, one of the Barristers, and Mr. Francis Dayrell, one of the Students, that soe each degree and order of the Society might have a signal testimony of his Majestie's high favour. His Majestie, upon his departure, made large expressions of his most gracious acceptance of the

entertainment, and returned his thanks to the Reader, and was pleased to signifie the great respect and esteeme he should ever have for the Society.

“ The gentlemen of the horse guards, yeomen of the guards, and other inferior attendants, were bountifully entertayned att the costs and charges also of the Reader. The gentlemen of the horse guards dined in the old Councill-chamber, the yeomen of the guards in Mr. Day’s chamber, and the coachmen and lacqueys in the gardener’s house, to all their contentment.

“ On Saturday following, Mr. Reader, Sir Robert Attkins, Sir Nicholas Pedley, and Sir Richard Stote, Benchers and Readers of Lincolne’s Inne, waited on his Majestie att Whitehall, being conducted to his Majestie’s presence by the Earle of Bath, and gave most humble thanks for that high and transcendant honour he had been pleased to vouchsafe to this Society, which was graciously received by his Majestie. And he did the said Benchers the honour to kisse his hand.”

THE LAW OF ASSAULT AND BATTERY AMONG  
THE ANGLO-SAXONS.

“ The compensation allotted to personal injuries, arising from what modern lawyers would call assault and battery, was curiously arranged. Homer is celebrated for discriminating the wounds

of his heroes with anatomical precision. The Saxon legislators were not less anxious to distinguish between the different wounds to which the body is liable, and which, from their laws, we may infer that they frequently suffered. In their most ancient laws these were the punishments: The loss of an eye, or of a leg, appears to have been considered as the most aggravated injury which could arise from an assault; and was therefore punished by the highest fine, or 50 shillings.

“ To be made lame was the next most considerable offence, and the compensation for it was 30 shillings.

“ For a wound that caused deafness, 25 shillings.

“ To lame the shoulder, divide the chine-bone, cut off the thumb, pierce the diaphragm, or to tear off the hair and fracture the skull, was each punished by a fine of 20 shillings.

“ For cutting off the little finger, 11 shillings.

“ For cutting off the great toe, or for tearing off the hair entirely, 10 shillings.

“ For piercing the nose, 9 shillings.

“ For cutting off the fore finger, 8 shillings.

“ For cutting of the gold finger, for every wound in the thigh, for wounding the ear, for piercing both cheeks, for cutting either nostril, for each of the front-teeth, for breaking the jaw-bone, for breaking an arm, 6 shillings.

“ For seizing the hair, so as to hurt the bone, for the loss of either of the eye-teeth, or the middle-finger, 4 shillings.

“ For pulling the hair, so that the bone became visible, for piercing the ear, or one cheek, for cutting off the thumb-nail, for the first double-tooth, for wounding the nose with the fist, for wounding the elbow, for breaking a rib, or for wounding the vertebræ, 3 shillings.

“ For every nail, (probably of the fingers,) and for every tooth beyond the first double-tooth, 1 shilling.

“ For seizing the hair, 50 scættas.

“ For the nail of the great toe, 30 scættas.

“ For every other nail, 10 scættas.

“ To judge of this scale of compensations by modern experience, there seems to be a gross disproportion, not only between the injury and the compensation in many instances, but also between the different classes of compensation. Six shillings is a very inconsiderable recompense for the pain and confinement that follows an arm or the jaw-bone broke ; and it seems absurd to rank in punishment with these injuries the loss of a front-tooth. To value the thumb at a higher price than the fingers is reasonable ; but to estimate the great-toe at twelve shillings, the little-finger at eleven shillings, the fore-finger at six shillings, the ring-finger at five shillings, and the middle-

finger at four shillings, seems a very capricious distribution of recompense. So the teeth seem to have been valued on no principle intelligible to us ; a front tooth was atoned for by six shillings, an eye-tooth by four shillings, the first double-tooth three shillings, either of the others one shilling. Why to lame the shoulder should occasion a fine of twenty shillings, and to break the thigh but twelve shillings, and the arm but six, cannot be explained, unless we presume that the surgical skill of the day found the cure of the arm easier than that of the thigh, and that easier than the shoulder.

“ Alfred made some difference in these compensations, which may be seen in his laws. He also appointed penalties for other personal wrongs.

“ If any one bound a ceorle unsinning, he was to pay ten shillings ; twenty if he whipped him ; and thirty if he brought him to the pillory. If he shaved him in such a manner as to expose him to derision, he forfeited ten shillings, and thirty shillings if he shaved him like a priest, without binding him ; but if he bound him, and then gave him the clerical tonsure, the penalty was doubled. Twenty shillings was also the fine if any man cut another's beard off. These laws prove the value that was attached to the hair and the beard in the Anglo-Saxon society.

“ Alfred also enjoined, that if any man carry-

ing a spear on his shoulder pierced another, or wounded his eyes, he paid his were, but not a wite. If it was done wilfully, the wite was exacted if he had carried the point three fingers higher than the shaft. If the weapon was carried horizontally he was excused the wite." (*Turner's History of the Anglo-Saxons, vol. iv. p. 306.*)

MR. JUSTICE POWIS AND MR. YORKE,  
(AFTERWARDS LORD HARDWICKE.)

“ Mr. Yorke, by means of his own merit, and the countenance he was known to have from the court, made so rapid a progress in his profession, that he had soon as much business as he could well go through with, which gave occasion to Judge Powis to make him a compliment, that in the manner it was made, terminated more to Mr. Yorke's credit as a young man of ready wit, than to the Judge's good sense. The affair was this,— Mr. Justice Powis, who had been trying causes at some one of the assizes in the circuit he went, being at dinner, and several of the counsel with him, amongst whom was Mr. Yorke, took occasion to make Mr. Yorke some compliment, by telling him he could not but be greatly surprised at his having acquired so great a share of business for so young a man, and said to him, ‘ Mr. Yorke, I cannot well account for your having so much business, considering how short a time you



have been at the bar : I humbly conceive,' (continued the Judge,) ' you must have published some book, or are about publishing something, for look you, do you see, there is scarcely a cause before the court but you are employed in it, on one side or other ; I should, therefore, be glad to know, Mr. Yorke, whether this is the case ?' Such a curious way of accounting for Mr. Yorke's run of business, could not but force a smile from him, and it determined him to make the Judge such a reply as might put an end to so fulsome a compliment ; he, therefore, told the Judge, he had, indeed, some thoughts of publishing a book, but that he had made no progress in it as yet : at which the Judge, pleasing himself for having made so happy a discovery, became importunate with Mr. Yorke to let him know the subject of this book ; which put him upon telling the Judge, that he had thoughts of publishing Coke upon Littleton, in verse, but that he had gone but a very little way in it ; this, however, tickled the Judge's curiosity still more ; and telling Mr. Yorke, that it was something so new, and must be so entertaining, he begged him to oblige him with the recital of a few of the verses ; when Mr. Yorke, finding the Judge would not drop the subject, be- thought himself he could not get rid of it better than by giving, by way of a specimen, something in the Judge's own words, and introducing the

phrases he himself was in the habit of making use of upon all occasions, let the subject be what it would. Therefore, accompanying what he intended to say with some excuses for complying with the Judge's request, Mr. Yorke began with reciting, as he pretended, the following verses : viz.

“ He that holdeth lands in fee,  
 Need neither to quake nor to shiver ;  
*I humbly conceive, for look, do you see,*  
 They are his, and his heirs for ever.”\*

“ Such a specimen as this, it may easily be conceived, was enough to satisfy the Judge ; but, however that might be, the rest of the company could not but be under some difficulty to refrain from laughter : and it seems at least to prove, that Mr. Yorke had a ready wit, and a good deal of pleasantry about him.” (*Sketches of the Life of Philip, Earl of Hardwicke, p. 56.*)

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“ Sir Thomas More, when the counsel of the party pressed him for a longer day to perform the decree, said, ‘ Take Saint Barnaby's day, which is the longest day in the year.’ Now Saint Barnaby's day was within a few days following.” (*Bacon's Apothegms.*)

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\* This appears to be the original of Cowper's poetical version of Co. Litt. (*See ante, vol. i, p. 101.*)

## THE PUBLIC LIFE OF SIR EDWARD COKE.

Amongst the many distinguished lawyers whose names are connected with the political history of their times, few, perhaps none, have merited so well of their country as Sir Edward Coke. In estimating the public life of this celebrated man, it must be remembered that he lived at a period of our history when the virtue of civil courage, as applied to political conduct, was scarcely known amongst us, and when even the highest and most powerful subjects submitted without murmuring to every demonstration of the royal will. There, perhaps, never was a period in our annals when the Court attempted to exercise a more unqualified authority than during the reign of James I. The austere dominion of Henry VIII. who was styled, and not without reason, *metuendissimus*, the cruelties of Mary, and the unquestioned submission which Elizabeth ever required from all ranks of her people, had raised the royal prerogative in the estimation of the monarch, and, indeed, of the country, to a very high pitch, insomuch that the pretensions of James I. which now appear to us so wildly extravagant (*see vol. ii. p. 256,*) were probably at that period regarded by most persons as just expositions of the royal authority. The nobility, so far from endeavouring to offer any resistance to these unreasonable claims of the



**SIR EDWARD COKE.**



crowns, seem to have considered themselves wholly dependant upon Court favour, and submitted without murmuring to all the injustice and caprice with which the monarch chose to harass them ; while the churchmen displayed a spirit of servility unequalled amongst any other class of citizens. Amongst the Commons alone were to be found some of those resolute spirits who watched with jealousy and distrust the proceedings of the Court, and who anxiously sought to raise some firmer bulwarks around the rights and liberties of their countrymen.

Thrown during times like these into some of the most arduous and responsible offices of the state, Sir Edward Coke had to act a part which required the firmest integrity and the most skilful address. The tide of popular opinion was just beginning to set in against the encroachments of the prerogative, and the crown, on the other hand, anxiously sought every means to resist a torrent which, should it once get head, was but too likely to sweep away the throne in its course. In strengthening the royal hands, the advantages which might be derived from a submissive and well-disposed Bench, were not overlooked. In several cases in which the interests of the Court came before the judges, means were taken to ensure the desired decision, and the power of removing them from their seats was more than

once exercised with effect during the reign of James I.

The political life of Sir Edward Coke can scarcely be said to have commenced before his elevation to the Bench, which took place in the year 1606, when he was created Chief Justice of the Common Pleas. In this situation it soon became necessary for him to adopt a definite line of conduct on some of the most important questions of public policy. The judges at that period were very frequently consulted upon the legality and propriety of state measures, a practice which arose out of their supposed character of King's Counsellors. Upon these occasions the opinions of Sir Edward Coke were necessarily brought forward, and we fortunately possess sufficient memorials of them to assist us in determining their peculiar character. In the twelfth part of the Reports, (a volume which was not published until after Coke's death,) we find many cases recorded which throw considerable light on his political conduct. Some of the most remarkable of these cases relate to the prohibitions which had been issued by the Courts at Westminster against the ecclesiastical jurisdictions. The following case, under the date of 5 Jac. 1. (two years after Coke's elevation to the Bench) presents an admirable picture of all the parties concerned in it.

“ Note ; upon Sunday, the 10th of Nov: in

this same term, the King, upon complaint made to him by Bancroft, archbishop of Canterbury, concerning prohibitions, the King was informed, that when the question was made of what matters the ecclesiastical judges have cognizance, either upon the exposition of the statutes concerning tithes, or any other thing ecclesiastical or upon the statute 1 Eliz. concerning the High Commission, or in any other case in which there is not express authority in law, the King himself may decide it in his royal person, and that the judges are but the delegates of the King, and that the King may take what causes he shall please to determine, from the determination of the Judges, and may determine them himself. And the Archbishop said, that this was clear in Divinity, that such authority belongs to the King by the word of God in the Scriptures. To which it was answered by me, in the presence and with the clear assent of all the Justices of England and Barons of the Exchequer, that the King in his own person cannot adjudge any case, either criminal, as treason, felony, &c. or betwixt party and party concerning his inheritance, chattels, goods, &c. but this ought to be determined and adjudged in some Court of Justice, according to the law and custom of England \* \* \*. And it was greatly marvelled that the Archbishop durst inform the King that such absolute power and



authority, as is aforesaid, belonged to the King by the word of God. \* \* \* Then the King said, that he thought the Law was founded upon reason, and that he and others had reason, as well as the Judges. To which it was answered by me, that true it was, that God had endowed his Majesty with excellent science and great endowments of nature, but that his Majesty was not learned in the laws of his Realm of England; and causes which concern the life, or inheritance, or goods, or fortunes of his subjects, are not to be decided by natural reason, but by the artificial reason and judgment of the law, which law is an act which requires long study and experience before that a man can attain to the cognizance of it, and that the law was the golden met-wand and measure to try the causes of the subjects, *and which protected his Majesty in safety and peace*; with which the King was greatly offended, and said that then he should be under the law, which was treason to affirm, as he said; to which I said, that Bracton saith, *Quod Rex non debet esse sub homine, sed sub Deo et Lege.*" (12 Rep. 64.)

We have another account of this singular conference preserved in a familiar letter of the period. "On Sunday, before the King's going to Newmarket, my Lord Coke and all the Judges of the common law were before his Majesty to answer some complaints of the civil lawyers, for the ge-

neral granting of prohibitions. I heard that the Lord Coke, amongst other offensive speech, should say to his Majesty, that his Highness was defended by the law: at which saying, with other speech then used by the Lord Coke, his Majesty was very much offended, and told him he spake foolishly, and said he was not defended by his laws, but by God; and so gave the Lord Coke, in other words, a very sharp reprehension, both for that and other things; and withal told him that Sir Thomas Compton (the Judge of the Admiralty Court) was as good a man as Coke." (*Lodge's Illustrations*, vol. iii. p. 364.)

In the same year Coke was again called upon to give his opinion on a most important constitutional question, as to the nature and extent of the King's proclamation. The practice of regulating and even altering the law by these royal Ordinances had been carried to a great extent by James I. "The people," observes Rapin, "could not see without grief such a number of proclamations, which seemed to suppose that the King's will was the sole rule and measure of the government." What could be more monstrous than the proclamation issued by James, on calling his first parliament, in which he threatened the cities and boroughs with a forfeiture of their franchises, and the parties elected with imprisonment, unless the requisitions of his royal edict were complied with?

To resist these arbitrary notions required no small portion of resolution and firmness, and fortunately those qualities were possessed, in an eminent degree, by Sir Edward Coke. An occasion soon occurred which called for the exercise of them, and we have an account of the transaction in Coke's own words.

“ *Memorandum*, that upon Thursday, 20 Sept. 8 Regis Jacobi, I was sent for to attend the Lord Chancellor, Lord Treasurer, Lord Privy Seal, and the Chancellor of the Dutchy; there being present the Attorney, the Solicitor, and Recorder. And two questions were moved to me by the Lord Treasurer; the one, if the King, by his proclamation, may prohibit new buildings in and about London, &c.; the other, if the King may prohibit the making of starch of wheat; and the Lord Treasurer said, that these were preferred to the King as grievances, and against the law and justice. And the King hath answered, that he will confer with his Privy Council, and his Judges, and then he will do right to them. To which I answered, 1st. That these questions were of great importance; 2nd. That they concerned the answer of the King to the body, viz. to the Commons of the House of Parliament; 3rd. That I did not hear of these questions until this morning, at nine of the clock, for the grievances were preferred and the answer made when I was in my circuit. And

lastly, both the proclamations, which now were showed, were promulgated, An. 5 Jac. after my time of Attorneyship: and for these reasons I did humbly desire them that I might have conference with my brethren, the judges, about the answer of the King, and then to make an advised answer, according to law and reason. To which the Lord Chancellor said, that every precedent had first a commencement, and that he would advise the judges to maintain the power and prerogative of the King; and, in cases in which there is no authority and precedent, to leave it to the King, to order in it according to his wisdom, and for the good of his subjects, or otherwise the King would be no more than the Duke of Venice: and that the King was so much restrained in his prerogative, that it was to be feared the bonds would be broken: and the Lord Privy Seal said, that the physician was not always bound to a precedent, but to apply his medicine according to the quality of the disease: and all concluded that it should be necessary at that time to confirm the King's prerogative with our opinions, although that there were not any former Precedent or Authority in Law, for every precedent ought to have a commencement.

“ To which I answered, That true it is that every precedent hath a commencement, but when authority and precedent is wanting, there is need of

great consideration, before that any thing of novelty shall be established, and to provide that this be not against the law of the land: for I said, that the King cannot change any part of the common law, nor create any offence by his proclamation, which was not an offence before, without parliament. But at this time I only desired to have a time of consideration and conference with my brothers, for *Deliberandum est diu, quod statuendum est semel*; to which the solicitor said, that divers sentences were given in the Star Chamber upon the proclamation against building; and that I myself had given sentence in divers cases for the said proclamation. To which I answered, that precedents were to be seen, and consideration to be had of this upon conference with my brethren, for that, *melius est recurrere, quam male currere*; and that indictments conclude, *contra leges et statuta*, but I never heard an indictment to conclude, *contra regiam Proclamationem*. At last my motion was allowed, and the lords appointed the two Chief Justices, Chief Baron, and Baron Altham to have consideration of it.—The result of this conference was a resolution “that the King, by his proclamation, cannot create any offence which was not an offence before.” “Also it was resolved *that the King hath no prerogative but that which the law of the land allows him.*” (12 *Rep.* 74.) A resolution of the

very highest consequence at this period of royal assumption. There is little doubt that the constitutional interpretation of the Law upon this occasion proceeded from the influence of Sir Edward Coke.

In the succeeding year (1612) new complaints were made to the King by the ecclesiastics, upon the frequent issuing of prohibitions out of the Court of Common Pleas to the High Commissioners, whose violent and illegal proceedings appear particularly to have excited the indignation of Coke. Shortly before Trinity Term, in that year, all the judges were summoned before the Council, where they found Abbott, the Archbishop of Canterbury, two Bishops, and several civilians, prepared to dispute the propriety of the proceedings adopted by the Courts of common law. After "great disputation" between Coke and the Archbishop, the Council appears to have been adjourned without coming to any determination; but in the course of the ensuing term, the Justices of the Common Pleas were again cited to appear at the Council table, on which occasion they unanimously expressed their adherence to their former resolutions with regard to the prohibitions. The Court found little satisfaction in these proceedings, and therefore, on another day, summoned the other judges also to attend. "And when we were all assembled," says Coke, "we of the

Common Pleas were commanded to retire, for that, as the Lord Treasurer said, we had contested with the King." The result of these conferences, in which Coke bore so distinguished a part, was, that James promised to "reform the High Commission in divers points," to the great grief of the Lord Treasurer, who said, "that the principal member was plucked from the High Commission, and nothing but stumps remained." The conclusion of this singular and important case is highly characteristic of Coke's resolute mode of dealing with his royal master—"but I said to the King, that when we, the Justices of the Common Pleas, see the Commission newly reformed, we will, as to that which is of right, seek to satisfy the King's expectation." (12 *Rep.* 84.)

The Court, finding Coke thus obstinately bent upon opposing these arbitrary proceedings, attempted to corrupt him, by bestowing upon him a share of the illegal power which was vested in the High Commissioners. In conjunction with some others of the Judges he was named in the Commission; "and I was," says he, "commanded to sit, by force of the said Commission, which I refused for these causes." He then enumerates his objections to the Commission, "which contained three great skins of parchment, and divers points against the laws and statutes of England." "All the time the long commission was in reading,"

adds Coke, "I stood and would not sit, as I was requested by the Archbishop and the lords, and so, by my example, did all the rest of the Justices." (12 *Rep.* 88.)

Amongst the other unconstitutional measures which distinguished the reign of James I. was the practice of consulting the Judges on matters which it was probable might afterwards be brought before them judicially. An instance of this kind occurred in the case of one Peacham, a Minister, in whose possession was found a sermon containing, as it was said, various treasonable passages. The Court was desirous of obtaining from the Judges an opinion that this was treason, and with this view Bacon, then Attorney-General, used all his art to prevail upon the Chief Justice of the Common Pleas, to deliver in *his* opinion with that of his brothers. An application like this, so contrary to Coke's excellent maxim, *that he was a Judge in a Court and not in a Chamber*, was resisted by him with his usual resolution, and the Attorney-General almost despaired of prevailing upon him—"neither am I wholly" says he, in a Letter to the King, "without hope, that my Lord Coke himself, when I have, in some dark manner, put him in doubt that he shall be left alone, will not continue singular." Notwithstanding his objection to this "auricular taking of opinions," Coke was at last prevailed upon to



transmit an answer to the question propounded to him. How far he was justified in so doing is a question of difficult determination, more especially as we are ignorant of the nature of his answers. We only know that they were not altogether pleasing to Sir Francis Bacon, "who was glad to send them in the Chief Justice's handwriting for his own discharge." (See *Peacham's Case*, 2 *How. St. Tr.* 870.)

We have now to notice a transaction which has been thought to throw suspicion on the integrity of Sir Edward Coke's political character, but which, when properly understood, will, perhaps, be found to leave it unsullied. In the year 1615, Mr. Oliver St. John published a paper against a benevolence which had been collected under the authority of Letters from the Privy Council, and for this offence an information was exhibited against him in the Star Chamber. According to Bacon, Sir Edward Coke gave it as his opinion, that the King could not so much as move any of his subjects for a benevolence, but afterwards retracted this opinion before the Star Chamber, and there delivered the law strongly in favour of the benevolence; "I would," adds Bacon, "he had done it timely." Now it appears from the case under the title of "Exaction of Benevolence," in Coke's 12th Report, that he had carefully consulted the legal authorities on the subject, the

result of which seems to have left an impression, that a free grant to the crown without coercion is lawful, and there is little doubt that it was of this gratuitous benevolence only that Coke spoke in the Star Chamber. The only statute which at this period existed against the taking of a benevolence was that of 1 Ric. 3. c. 2, from the preamble of which it appears, as Coke informs us, that the benevolence there intended was a benevolence against the will and liberty of the subject, but that a free will offering was not restrained. (12 Rep. 120.) Even the petition of right, which was a subsequent enactment, extended only to compulsive benevolences. At length, in the reign of Charles II. (see 13 C. 2. c. 4,) not only were compulsive benevolences declared to be illegal, but all commissions from the crown to solicit and receive voluntary gifts, were also declared to be unconstitutional. Sir Edward Coke, however, doubtless conceiving himself to be bound by the law as it then stood, gave his opinion in favour of a voluntary benevolence; and in so doing cannot in justice be said to have infringed in any manner upon his political integrity. It was his duty to declare the law as he found it, a duty which he appears to have performed on this as upon other occasions, with firmness and decision. (See the Case of Mr. Oliver St. John, and Mr.

*Hargrave's excellent Note, 2 State Trials, 899.—12 Rep. 119.)*

The celebrated case of Commendams, which occurred in the year 1616, and in which Sir Edward Coke played so conspicuous a part, has been already noticed. (*see ante, vol. i. p. 44.*) This was soon afterwards followed by the quarrel between Coke and Lord Ellesmere, respecting the jurisdiction of the Courts of Common Law and Equity; but, as Coke was not on this occasion actuated by political motives, a more particular narrative of that transaction is not called for here. It is, however, proper to notice it, as it was probably one of the causes which subsequently led to the disgrace of the Chief Justice. In the same year (1616) he was called before the Privy Council, where several charges were preferred against him. First he was accused of malversation in his office of Attorney-General—a charge which was never substantiated. Secondly, of using words of high contempt on the Bench, an accusation which appears to have originated in the quarrel with the Court of Chancery.—Thirdly, of indecent behaviour before his Majesty, by which was meant his honourable conduct in the affair of Commendams. For these alleged offences his sentence was,—1. That he should be sequestered from the Council Table until his Majesty's further pleasure should be known. 2ndly. That he should forbear to

ride his Summer Circuit as Justice of Assize; and, lastly, that during the leisure thus afforded him he should review his books of Reports, which had in various points given displeasure to his Majesty. (*See the Biog. Brit. Article, Coke.*)

The conduct of Sir Edward Coke on this sentence being announced to him was not altogether that which might have been expected from a man of his firm and unbending mind. Something, however, must be conceded to the spirit of the time, to which no man is, perhaps, altogether superior; and which, at this period, sanctioned a degree of servile submission to the will of the Court, which, at the present day, we can scarcely suppose to have existed. On hearing the sentence of the Council Table, Coke "did in all humility prostrate himself to his Majesty's good pleasure—acknowledged the decree to be just, and proceeding rather from his Majesty's exceeding mercy than from his justice—gave humble thanks to their lordships for their favours and goodness towards him, and hoped that his behaviour for the future time, should be such as should deserve their lordships' favour." But even this submission could not appease the anger of Coke's enemies; and in the month of November, he was deprived of his office of Chief Justice, which was bestowed upon Sir Henry Montague. This last blow entirely conquered his fortitude, and he is

said to have received the *supersedeas* "with dejection and tears."

The causes which led to his dismissal have been already adverted to, and a reference to them will also be found in the speech of the Lord Chancellor to the new Chief Justice, (*see Moor's Rep.* 827,) which is, in fact, little more than a catalogue of his predecessors' delinquencies.

The influence and abilities of Sir Edward Coke were too well known to be long neglected; and accordingly, shortly after his disgrace, he was again restored to some degree of favour, and resumed his seat at the Council Table. He was appointed a commissioner under several commissions chiefly relating to revenue matters, and appears, during this period, to have rendered himself very useful to the country. As James became poorer, the necessity of calling a parliament became more urgent, and Coke was consulted as to the measures most fit to be pursued at this hazardous conjuncture. It is probable that the advice which he gave was neglected by the Court, for on the meeting of the parliament, he took a decided part against the measures of the Crown. On the 6th of February, 1620, an important debate took place in the House, on liberty of speech, the increase of popery, and other grievances, upon which Coke expressed himself with great warmth, declaring at the same time, (a bold declaration at

that period,) that proclamations against the tenor of acts of parliament were void. He again offended the Court by the part which he took in a question of breach of privilege, which occasioned a prorogation of the parliament, and soon afterwards he was committed to the Tower. The parliament being dissolved, Sir Edward was summoned once more before the Council, where he was accused of having suppressed some papers relative to the trial of the Earl of Somerset, in which he had taken a very active part. The charge, however, was not pressed, the King contenting himself with dismissing him a second time from his office of Privy Counsellor. Upon this occasion his Majesty is said to have made use of some expressions with regard to him, the application of which, when we review his life, it is very difficult to understand: *that he was the fittest instrument for a Tyrant that ever was in England.* After this period he was never again reconciled to the Court.

As the struggle between the Court and the Country approached its crisis, Sir Edward Coke was no idle spectator of the course of events. Having been returned, in the year 1628, for the county of Bucks, he acted a very prominent part in the House of Commons, supporting its privileges and arguing warmly in defence of the liberty of the subject. In this parliament he performed

the most signal service to the country which has perhaps ever proceeded from individual exertion, in proposing and framing the celebrated PETITION OF RIGHTS. He likewise distinguished himself greatly by vindicating the right of the House of Commons to proceed against any subject, how high soever, and boldly named the Duke of Buckingham as the principal cause of the public grievances, although he appears previously to have entertained a different opinion of the Duke's character. An account of the speech which he delivered on this occasion, and during which he is said to have been interrupted by his tears, has been preserved, and is strongly tinged with his peculiar manner.

During a warm debate, a member having alluded to the Duke of Buckingham, the Speaker rose and said, "There is a command upon me that I must command you not to proceed." Upon this a deep silence ensued, after which the House resolved itself into a committee to consider what was fit to be done; and ordered that no man should leave the House on pain of being sent to the Tower. The Speaker, however, desiring to withdraw, had leave to do so; and, Mr. Whitby being in the chair, Sir Edward Coke spoke to the following effect.—"We have dealt with that duty and moderation that never was the like, *rebus sic stantibus*, after such a violation of the liberties of

the subject ; let us take this to heart. In 30 Ed. III. were they then in doubt in parliament to name him that misled the King ? They accused John de Gaunt, the King's son, and Lord Latimer and Lord Nevil, for misadvising the King, and they went to the Tower for it. Now, when there is such a downfall of the state, shall we hold our tongues ? How shall we answer our duties to God and men ? 7 Hen. IV. Parliam. rot. No. 31, 32, and 11 Hen. IV. No. 13 ; there the Council are complained of, and are removed from the King ; they mewed up the King, and dissuaded him from the common good. And why are we now retired from that way we were in ? Why may we not name those that are the cause of all our evils ? In 4 Hen. III. and 27 Ed. III. and 13 Rich. II. the parliament moderateth the King's prerogative, and nothing grows to abuse, but this house hath power to treat of it. What shall we do ? Let us palliate no longer ; if we do, God will not prosper us. I think the Duke of Buckingham is the cause of all our miseries ; and till the King be informed thereof we shall never go out with honour, or sit with honour here. That man is the grievance of grievances ; let us set down the causes of all our disasters, and all will reflect upon him." On the dissolution of this parliament, which took place in March, 1628, Coke retired from public life. This imperfect



account of his character as a patriot cannot be better concluded than in the words of a modern historian. "It is impossible," says Mr. Godwin, in his *History of the Commonwealth*, "to review these proceedings without feeling that the Liberties of England are to no man so deeply indebted as to Sir Edward Coke."

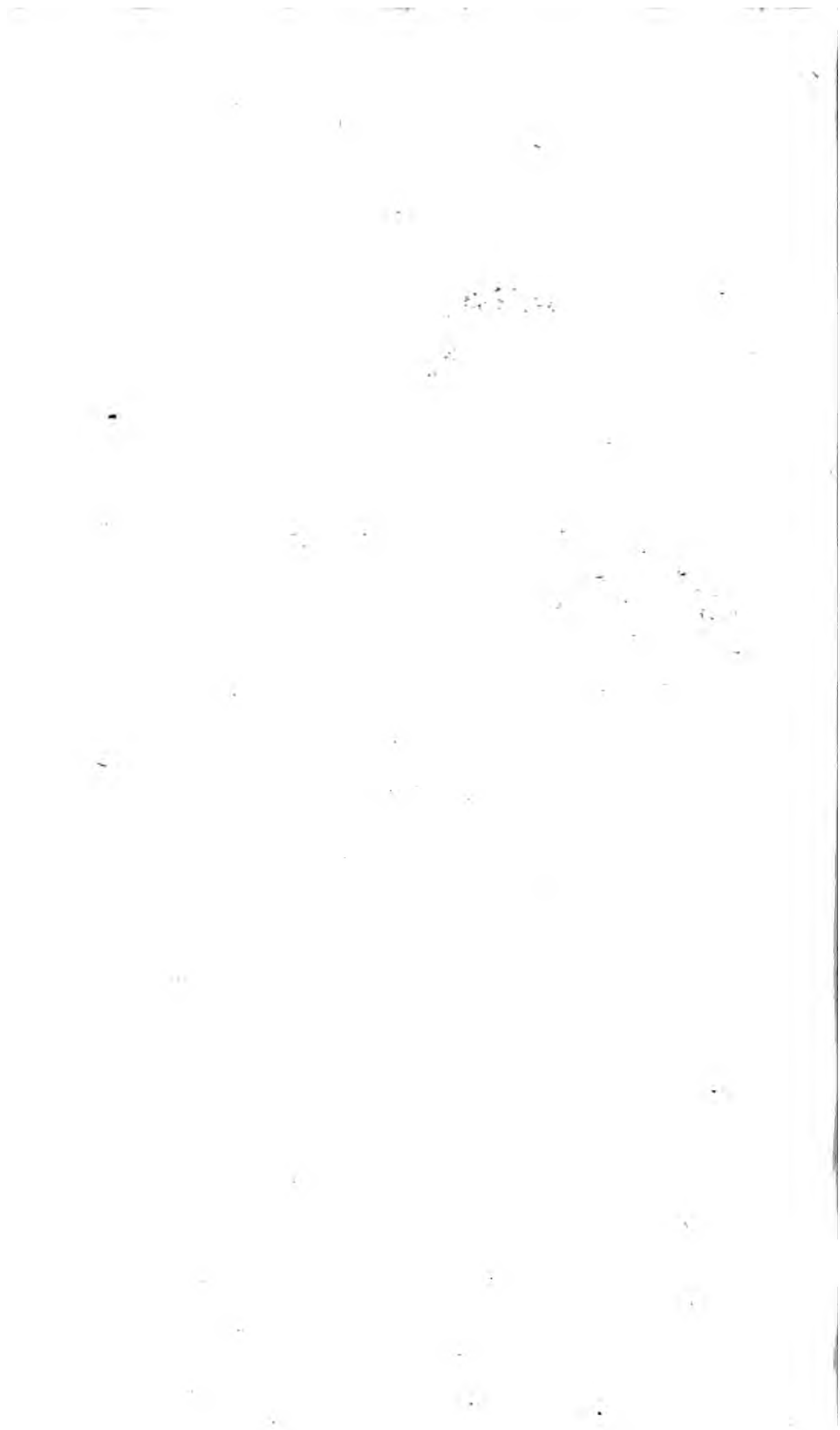
CHARACTER OF SIR M. HALE.

"I shall now," says Burnet, in his *Life of Hale*, "conclude all that I shall say concerning him, with what one of the greatest men of the profession of the law sent me as an abstract of the character he had made of him, upon long observation and much converse with him." (*Life of Sir M. Hale*, p. 86.)

"He would never be brought to discourse of public matters in private conversation; but in questions of law, when any young lawyer put a case to him, he was very communicative, especially while he was at the bar; but when he came to the bench, he grew more reserved, and would never suffer his opinion, in any case, to be known, till he was obliged to declare it judicially; and he concealed his opinion in great cases so carefully, that the rest of the judges in the same court could never perceive it; his reason was, because every judge ought to give sentence according to his own persuasion and conscience, and not to be



SIR MATTHEW HALE.



swayed by any respect or deference to another man's opinion, and by this means it hath happened sometimes, that when all the barons of the Exchequer had delivered their opinions, and agreed in their reasons and arguments, yet he coming to speak last, and differing in judgment from them, hath expressed himself with so much weight and solidity, that the barons have immediately retracted their votes and concurred with him. He hath sat as judge in all the courts of law, and in two of them as chief; but still, wherever he went, all business of consequence followed him, and no man was content to sit down by the judgment of any other court, till the case was brought before him, to see whether he were of the same mind; and his opinion being once known, men did readily acquiesce in it, and it was very rarely seen, that any man attempted to bring it about again, and he that did so, did it upon great disadvantages, and was always looked upon as a very contentious person; so that what Cicero says of Brutus, did very often happen to him, *etiam quos contra statuit æquos placatosque dimisit.* Nor did men reverence his judgment and opinion in courts of law only, but his authority was as great in courts of equity, and the same respect and submission was paid to him there too; and this appeared not only in his own court of equity in the Exchequer-chamber, but in the

Chancery too, for thither he was often called to advise and assist the Lord Chancellor, or Lord Keeper for the time being; and if the cause were of difficult examination, or intricated and entangled with variety of settlements, no man ever showed a more clear and discerning judgment: if it were of great value, and great persons interested in it, no man ever shewed greater courage and integrity in laying aside all respect of persons: when he came to deliver his opinion, he always put his discourse into such a method, that one part gave light to the other, and where the proceedings of Chancery might prove inconvenient to the subject, he never spared to observe and reprove them, and, from his observations and discourses, the Chancery hath taken occasion to establish many of those rules by which it governs itself at this day.

“ He did look upon equity as a part of the common law, and one of the grounds of it, and therefore, as near as he could, he did always reduce it to certain rules and principles, that men might study it as a science, and not think the administration of it had any thing arbitrary in it. Thus eminent was this man in every station; and into what court soever he was called, he quickly made it appear, that he deserved the chief seat there.

“ As great a lawyer as he was, he would never suffer the strictness of law to prevail against con-

science; as great a chancellor as he was, he would make use of all the niceties and subtilties in law, when it tended to support right and equity. But nothing was more admirable in him than his patience; he did not affect the reputation of quickness and dispatch, by a hasty and captious hearing of the counsel; he would bear with the meanest, and gave every man his full scope, thinking it much better to lose time than patience. In summing of an evidence to a jury, he would always require the bar to interrupt him if he did mistake, and to put him in mind of it, if he did forget the least circumstance; some judges have been disturbed at this as a rudeness, which he always looked upon as a service and respect done to him.

“ His whole life was nothing else but a continual course of labour and industry; and when he could borrow any time from the public service, it was wholly employed either in philosophical or divine meditations, and even that was a public service too, as it proved; for they have occasioned his writing of such treatises as are become the choicest entertainments of wise and good men, and the world hath reason to wish that more of them were printed. He that considers the active part of his life, and with what unwearyed diligence and application of mind he dispatched all men's business which came under his

care, will wonder how he could find any time for contemplation ; he that considers again the various studies he past through, and the many collections and observations he hath made, may as justly wonder how he could find any time for action ; but no man can wonder at the exemplary piety and innocence of such a life, so spent as this was, wherein, as he was careful to avoid every idle word, so 'tis manifest he never spent an idle day. They who came far short of this great man, will be apt enough to think, that this is a panegyric, which, indeed, is a history, and but a little part of that history, which was, with great truth, to be related of him : men who despair of attaining such perfection, are not willing to believe that any man else did ever arrive at such a height.

“ He was the greatest lawyer of the age, and might have had what practice he pleased ; but though he did most conscientiously affect the labours of his profession, yet, at the same time, he despised the gain of it ; and of those profits which he would allow himself to receive, he always set apart a tenth penny for the poor, which he ever dispensed with that secrecy, that they who were relieved seldom or never knew their benefactor. He took more pains to avoid the honours and preferments of the gown, than others do to compass them. His modesty was beyond all example ; for where some men, who never attained

to half his knowledge, have been puffed up with a high conceit of themselves, and have affected all occasions of raising their own esteem by depreciating other men; he, on the contrary, was the most obliging man that ever practised: if a young gentleman happened to be retained to argue a point in law, where he was on the contrary side, he would very often mend the objections, when he came to repeat them, and always commended the gentleman if there was any room for it, and one good word of his was of more advantage to a young man, than all the favour of the court could be."

## LORD CHANCELLOR BATHURST.

The following severe character of this nobleman forms part of the "Strictures on the Lives and Characters of the most eminent Lawyers of the present Day." (1790.)

"If general report be entitled to any credit, we may boldly write down, that the Earl of Bathurst became a great character *per force*,—he was nursed in a political hot-bed, and raised *per fas aut nefas*. Nothing less than the same necessity introduces his Lordship's name in the same page with those illustrious personages, which it is the purpose of this volume to portray.

"The Earl of Bathurst, as the register proclaims, is descended of an illustrious family; his



father was the much celebrated nobleman whom Pope, in his tuneful numbers, so highly, so elegantly, and so justly panegyrised; and Swift, in spite of his satirical vein, and almost in contradiction of his nature, condescended to praise. The old earl was commonly known under the accepted description of one of Queen Anne's Peers, who, like some of later date, sprung up in an abundant and unexpected crop, in a single night. If, however, they had all owned the same pretensions with his Lordship, we should have supposed that the batch of new-made lordlings would have escaped a general name, which oftener originated from contempt than a more ennobled principle.

“ The present Earl of Bathurst, by the force of natural conclusion, must be understood to have received an education liberal as his birth; for he who is fond of the learned, by an undeniable axiom, must be equally attached to the arts which they profess.

“ At a very early period he was endued with the *toga forensis*, and, much sooner than is common, exchanged the rough bombazeen for the more light and silken robe, that is the sure indication of professional advancement. He travelled all the stages of the law with a rapidity that great power and interest can alone, in the same degree, accelerate. His professional character in his

several official situations, was never prominently conspicuous, till that wonderful day, when he leapt at once into the foremost seat of the law.

“ Every individual member of the profession stood amazed; but time, the great reconciler of strange events, conciliated matters even here. It was seen that the noble Earl was called upon from high authority, to fill an important office, which no other could be conveniently found to occupy. Lord Camden had retired, without any abatement of rooted disgust, far beyond the reach of persuasion to remove. The great Charles Yorke, the unhappy victim of an unworldly sensibility, had just resigned the seals and an inestimable life together; where could the eye of administration be directed? The rage of party ran in torrents of fire. The then Attorney and Solicitor General were at the moment thought ineligible,—perhaps too, the noble Lord, then at the head of affairs, and who was yet untried, had a policy in not forwarding transcendent abilities to obscure his own. Every such apprehension vanished upon the present appointment. This man could raise no sensation of envy as a rival, or fear as an enemy.

“ He was made Chancellor in 1771, and on retiring from his situation in 1778, to make way for the present legal Atlas, was appointed Lord President of the Council.

“ He never entered the Chancery Court with a firm dauntless step. The daring Thurlow, and the wary Wedderburne, frequented the haunts that he was equally necessitated daily to pursue, under a dread of their formidable talents. These great men stood constantly opposed to each other, and it required the eye and nerve of a master to parry their oratorical assaults : skilled equally to attack and to defend, it required the finest intellect, and that incessantly upon the stretch of exertion, to balance their powers, and preserve the scale of equity from unfair preponderance ; a task to which he was so unequal, that it has been averred by the wits, that even an old woman had sufficient ability to vanquish his Lordship in his own court. In this recorded saying, the suit, and its determination, concerning the ground on which he built the house at Hyde Park Corner, is evidently glanced at.

“ As a Speaker of the House of Lords, and viewing him in a political light, this account must, from circumstances, be necessarily short. Such as had the fortune to behold his Lordship presiding at the table of the Lords, and have witnessed the superior dignity of Mansfield, and the awful aspect of Thurlow's sullen scowl, in the same elevated chair, will not, (we are persuaded,) to speak mildly, pay a bad compliment to the present, in the recollection of past times : neither

has his political life been marked with all the stubbornness of Catonian virtue : happily for its owner, his disposition has been more accommodating and accordant to the temper of modern times. He has occasionally taken part with every administration, from the glorious days of Lord Chatham to the present degenerate æra of William Pitt.

“ He has been, at different times, the *locum tenens* of Lord Thurlow, when an involuntary exclamation heaves from the heart of every beholder, —Heu ! (they sigh,)

‘ ——— Quantum mutatus ab illo  
Hectore !’

“ As a private nobleman he has some good traits : a benevolent heart, that we know has been put to the severest test. His natural temper is said to be sordid and penurious ; but there are many of his actions within recollection, which should rescue his character from so ungenerous an imputation. The patronage that his Lordship afforded the dawning talents of Sir William Jones, will ever be an honourable testimony of virtue of this description, and ought to plead as an atonement for many political errors.”

MR. SERGEANT MAYNARD.

The principles professed by Sergeant Maynard

did not altogether accord with the prerogative notions of Roger North, who does not treat him with much respect in the *Life of his Brother, the Lord Keeper*. He acknowledges, however, that he was "the best old book lawyer of his time;" a fact which we may easily credit, when we are told, that "he had such a relish of the Old Year Books, that he carried one in his coach to divert his time in travel, and said, he chose it before any comedy." (*Life of North, vol. i. p. 26.*) In the same volume we have also the following anecdotes of the Sergeant.

"Mr. Sergeant Maynard had a mind to punish a man who had voted against his interest in a borough in the West, and brought an action against him for scandalous words, spoke at a time when a member to serve in the House of Commons for that borough was to be chosen. And, after his great skill, he first laid his action in the County of Middlesex; and that was by virtue of his privilege, which supposes a Sergeant is attendant on the Court of Common Pleas, and not to be drawn from the county where the court sat. And then, in the next place, he charged the words in Latin, that, if he proved the effect, it would be sufficient, whereas, being in English, they must prove the very words to a tittle, and those were, a long story that used to be told of Mr. Noy, and all the cock lawyers in the West, and this was

tried before his Lordship at the nisi prius, for the Common Pleas, for Middlesex. The witness telling the story as he swore the defendant told it, said, that a client came to the Sergeant, and gave him a basket of pippins, and every pippin had a piece of gold in it.—‘ Those were golden pippins,’ quoth the Judge. The Sergeant began to puff, not bearing the jest ; so the witness went on, and then said he, the other side came and gave him a roasting pig, (as it is called in the West,) and, in the belly of that, there were fifty broad pieces. ‘ That’s good sauce to a pig,’ quoth the Judge again. This put the Sergeant out of all patience, and speaking to those about him, ‘ This,’ said he, ‘ is on purpose to make me ridiculous.’ This story being sworn, the Judge directed the Jury to find a verdict for the Sergeant ; but in the court, the judgment was arrested, because the words were but a land story, and went as mere merriment over ale, without intent to slander. Such bitterness flows from the sour spirits of old pretended republicans. It had been well if no other instances, but such as this, were extant to shew it. This happened when I attended, and so know the matter to be as above literally true. But it is hard to believe that such a poor revenge could have been put into act by so great a man. And I should almost distrust myself, if I had not been partaker of a more wretched come off with the same person ;

which I shall relate, conceiving it to be full as material to shew little things of great men, as great things of little men. One afternoon at the nisi prius court of the Common Pleas, in Westminster Hall, before the Judge sat, a poor, half-starved old woman, who sold sweet-meats to school-boys and footmen, at the end of the bar, desired the Sergeant to pay her two shillings for keeping his hat two terms. She spoke two or three times, and he took no notice of her; and then I told the Sergeant, the poor woman wanted her money, and I thought he would do well to pay her. The Sergeant fumbled a little, and then said to me, 'Lend me a shilling.' 'Ay, with all my heart,' quoth I, 'to pay the poor woman.' He took it and gave it her; but she asked for another. I said I would lend him that also, to pay the woman. 'No, don't, boy,' (said he,) 'for I never intend to pay you this.' And he was as good as his word; for however he came off with the woman, having been, as they say, a wonderful charitable man; I am sure he died in my debt. But in this manner, (as I guess he intended,) I stood corrected for meddling.

“ This great man, as I must call him, since his natural and acquired abilities, and the immense gains he had by practice, justly entitle his name to that epithet, was an anti-restoration lawyer. In 1684, I heard him say in the Court of Chau-

cery, of a cause then at hearing, that he was a counsel in that cause in the year 1643. His name is in Cook's Reports, in 3 Car. His actions in the rebellious times, made the act of indemnity smell sweet. And afterwards, he had the cunning to temporise, and get to be made the King's eldest Sergeant, but advanced no farther. His lordship must needs have much conversation, as well as intercourse in business, with this eminent practiser in the law, but as in other cases of adverse party men, so here, there could be no cordial friendship between them, but a fair and reasonable correspondence there always was. The Sergeant ever took in with proceedings that maligned his lordship; but he never outwent discretion, so far as some did, to appear directly and nominally against him, which must have certainly rescinded all kind of correspondence. When his lordship sat in the chair of the Common Pleas, he practised under him, and had always the respect due to his known abilities. But though the Sergeant never failed to conform to all things required of him in public, as oaths, and tests, &c. yet, for all that, he continued a favourite in the presbyterian congregations; and is at this day among them extolled as a saint, and his wonderful charities, and other good works, related; and to give him his due, he was, to his last breath, at the bottom, true as steel to the principles of the late times,



when he first entered upon the stage of business. And whatever we, that were frequently at his elbow, knew of his saint-like administration of himself and his wealth, it is fit to be silent, because we should not speak ill of the dead. And, in that tendency, I shall only observe farther of him, that he practised before his lordship in all the King's courts where he had sat as judge, and, being an artful, as well as learned, lawyer, would lay notable snares, but when discovered, never persisted, but sat down; and for the decorum of bar practice of the law, was an excellent pattern, and held a fair correspondence and used a decent respect towards his lordship all his time." (*Life of Lord Guilford*, vol. i. p. 220.)

#### FESTIVAL AT THE INNER TEMPLE.

The following account of a splendid Christmas Festival in the Inner Temple is given by Gerard Leigh, in his *Accidence of Armory*. The Hero of the Festival was Dudley, Earl of Leicester, who assumed the character of "Palaphilos, Prince of Sophie." He was entertained by a person representing a Sovereign Prince, and had for his officers the Lord Chancellor, Privy Seal, Treasurer, the Chief Justices of the King's Bench, Common Pleas, and Chief Baron of the Exchequer, besides many other dignitaries of the Law, and

upwards of fourscore of the Guard. The author thus commences.—

“ After I had travailed through the East parts of the unknown world, to understand of Deedes of Armes, and so arrivig in the fair River of Thames, I landed within half a league from the city of London, which was (as I conjecture) in December last, and drawing neer the city, suddenly heard the shot of double canons, in so great a number and so terrible, that it darkened the whole ayr; wherewith, although I was in my native country, yet stood I amazed, not knowing what it meant. Thus, as I abode in despair, either to return or continue my former purpose, I chanced to see coming towards me an honest citizen cloathed in a long garment, keeping the highway, seeming to walk for his recreation, which prognosticated rather peace than perill, of whom I demanded the cause of this great shot, who friendly answered, ‘ It is,’ quoth he, ‘ a warning shot to the Constable Marshall of the Inner Temple, to prepare to dinner.’ ‘ Why (said I) what, is he of that Estate, that seeketh no other means to warn his officers than with so terrible shot in so peaceable a Country.’ ‘ Marry,’ saith he, ‘ he uttereth himself the better to be that officer whose name he beareth.’ I then demanded what Province did he govern, that needeth such an officer. He answered me, The Province was not great in

quantity, but antient in true nobility. A place, said he, priviledged by the most excellent Princess, the High governor of the whole Island, wherein are store of Gentlemen of the whole Realm, that repair thither to learn to rule and obey by Law, to yield their fleece to their Prince and Commonwealth ; as also to use all other exercises of body and mind whereunto nature most aptly serveth to adorn, by speaking, countenance, gesture, and use of apparel, the person of a Gentleman ; whereby amity is obtained, and continued, that Gentlemen of all countries, in their young years, nourished together in one place, with such comely order, and daily conference, are knit by continual acquaintance in such unity of mindes and manners as lightly never after is severed, than which is nothing more profitable to the Commonwealth.

“ And after he had told me thus much of honour of the place, I commended, in mine own conceit, the policy of the Governor, which seemed to utter in itself the foundation of a good Commonweal ; for that the best of their people, from tender years trained up in precepts of justice, it could not choose, but yield forth a profitable people to a wise commonweal, wherefore I determined with myself to make proove of what I had heard by report.

“ The next day I thought for my pastime to walk to this Temple, and, entring in at the gates,

found the Building nothing costly, but many  
 mely Gentlemen of face and person, and thereto  
 ry courteous, saw I pass to and fro, so as it  
 emed, a prince's port to be at hand : and pass-  
 g forward, entred into a Church of antient  
 ilding, wherein were many monuments of noble  
 rsonages, armed in knightly habit, with their  
 tes depainted in antient Shields, whereat I took  
 easure to behold. Thus gazing as one bereft  
 ith the rare sight, there came unto me an Here-  
 ught, by name Palaphilos, a King of Armes,  
 ho courteously saluted me, saying, For that I  
 as a stranger, and seeming by my demeanour, a  
 ver of Honour, I was his guest of right :  
 hose curtesy (as reason was) I obeyed, answer-  
 g, I was at his commandment.

“ Then, said he, ye shall go to mine own  
 dging here within the palace, where we will  
 ve such cheer as the time and country will  
 eld us ; where I assure you I was entertained,  
 no where met I with better cheer or company,  
 cc.)—Thus talking we entred the prince his  
 all, where anon we heard the noise of drum and  
 e. What meaneth this drum ? said I. Quoth  
 , This is to warn Gentlemen of the House-  
 ld to repair to the dresser, wherefore come on  
 th me, and ye shall stand where ye may best  
 e the Hall served : and so from thence brought  
 e into a long Gallery, that stretcheth itself along

the Hall neer the prince's table, where I saw the prince set; a man of tall personage, a manly countenance, somewhat brown of visage, strongly featured, and thereto comely proportioned in all lineaments of body. At the nether end of the same table were placed the ambassadors of sundry princes. Before him stood the Carver, Server, and Cup-bearer, with great number of Gentlemen wayters attending his person: the Ushers making place to strangers of sundry regions that came to behold the honour of this mighty Captain. After the placing of these honourable guests, the Lord Steward, Treasurer, and Keeper of Pallas seal, with divers honourable personages of that Nobility were placed at a side Table neer adjoining the Prince on the right hand: and at another Table on the left side were placed the Treasurer of the Household, Secretary, the Prince his Sergeant at the Law, four Masters of the Revels, the King of Arms, the Dean of the Chappel, and divers gentlemen Pensioners to furnish the same.

“ At another Table on the other side were set the Master of the Game, and his Chief Ranger, Masters of the Household, Clerks of the Green Cloth and Check, with divers other strangers to furnish the same.

“ On the other side, against them, began the Table, The Lieutenant of the Tower, accompanied with divers Captains of Foot-bands, and shot.

At the nether end of the Hall, began the Table, the High Butler, the Panter, Clerks of the Kitchen, Master Cook of the Privy Kitchen, furnished throughout with the Souldiers and guard of the prince : all which with number of inferiour Officers placed and served in the Hall, besides the great resort of Strangers, I spare to write.

“ The Prince so served with tender meats, sweet fruits, and dainty delicates confectioned with curious cookery, as it seemed wonder a world to observe the provision : and at every Course the Trumpeters blew the couragious blast of deadly War, with noise of Drum and Fyfe, with the sweet harmony of Violins, Sackbutts, Records, and Cornetts, with other instruments of Musick as it seemed Apollo’s harp had tuned their stroke. Thus the Hall was served after the most antient order of the island, in commendation whereof I say, I have also seen the service of great Princes, in solemn seasons, and times of triumph, yet the order hereof was not inferior to any.

“ But to proceed, this Herehaught Palaphilos, even before the second Course came in, standing at the High Table, said in this manner, The mighty Palaphilos, Prince of Sophie, high Constable Marshall of the Knights Templars, Patron of the honourable order of Pegasus : and therewith cryeth a Largess. The Prince praying the

Herehaught, bountifully rewarded him with a chain to the value of an hundred Talents.

“ I assure you I languished for want of cunning, ripely to utter what I saw so orderly handled, appertaining to service ; wherefore I cease, and return to my purpose.

“ The supper ended and tables taken up, the high Constable rose, and awhile stood under the place of Honour, where his Atchievement was beautifully embroidered, and devised of sundry matters, with the Ambassadors of foreign Nations as he thought good, till Palaphilos, King of Armes, came in, his Herehaught Marshall, and Pursivant before him ; and after followed his Messenger and Caligate Knight ; who, putting off his Coronel, made his humble obeysance to the Prince, by whom he was commanded to draw neer and understand his pleasure ; saying to him in few words to this effect ; ‘ Palaphilos, seeing it hath pleased the high Pallas, to think me to demerit the office of this place ; and thereto this night past vouchsafed to descend from heavens to increase my further honour by creating me Knight of her order of Pegasus, as also commanded me to join in the same Society such valiant Gentlemen throughout her province, whose living honour hath best deserved, the same choice whereof most aptly belongeth to your skill, being the watchman of their doings, and Register of their deserts ; I

will ye choose as well throughout our whole Ar-  
myes, as elsewhere, of such special Gentlemen,  
as the gods have appointed, the number of 24 and  
the names of them present us : commanding also  
those chosen persons to appear in our presence in  
Knightly habit ; that with conveniency we may  
proceed in our purpose.' This done, Palaphilos  
obeying his Princes commandement, with 24 va-  
liant Knights, all appavelled in long white vestures  
with each man a Scarf of Pallas colours, and  
them presented with their names to the Prince,  
bowed towards these worthy personages, standing  
every man in his antienty, as he had born Armes  
in the field, and began to shew his Princes plea-  
sure ; with the honour of the Order."

MR. JUSTICE BULLER.

" The great and learned Judge Buller was ad-  
mitted of the Inner Temple on the 8th of Febru-  
ary, 1763, and called to the bar after the usual  
period of probation, from the honourable Society  
of the Middle Temple ; from the same Society he  
was also made a Sergeant, and almost immediately  
after, promoted to the rank of a Judge of the  
Court of King's Bench.

" This is the age of young men—we now see  
men *born* statesmen and lawyers. They are trans-  
lated almost from the cradle to the government  
of Kingdoms, and to presidency in legislation.



In former times, none but men advanced in years were permitted to assume the dignity of the coif, or to ascend the magisterial bench : a period indeed, beyond the bloom of manhood, customarily elapsed before their call to the bar. In the instance before us we see a Judge eminently qualified for the station he fills almost in the bloom of youth.

“ Mr. Buller's first entré into the profession was in the department of Special Pleading. He studied under the present Judge, then Mr. Ashurst, and, like Demosthenes, excelled his master, and was always ranked amongst the most eminent of the profession. His accession to business, as a common law draughtsman, was immediate and immense, his practice as a barrister was also, at first, considerable, and in an extremely short period, became equal to that of the very first-rate Lawyers.

“ In all that part of practice which pushes a cause out of its regular course, and forms the great business of the Term, he had no equal ; in every motion of consequence or special argument, he was always engaged, either for the Plaintiff or Defendant, and here Mr. Buller was perfectly at home.

“ Nature designed him for a lawyer, and he wisely pursued her bias ; for very early in life he seems to have entered into a recognizance, to talk

and think of nothing but law ; his knowledge of practice and cases left him without a competitor. He resembles the Roman lawyer, Sulpitius, and certainly *is* the Coke of the present age.

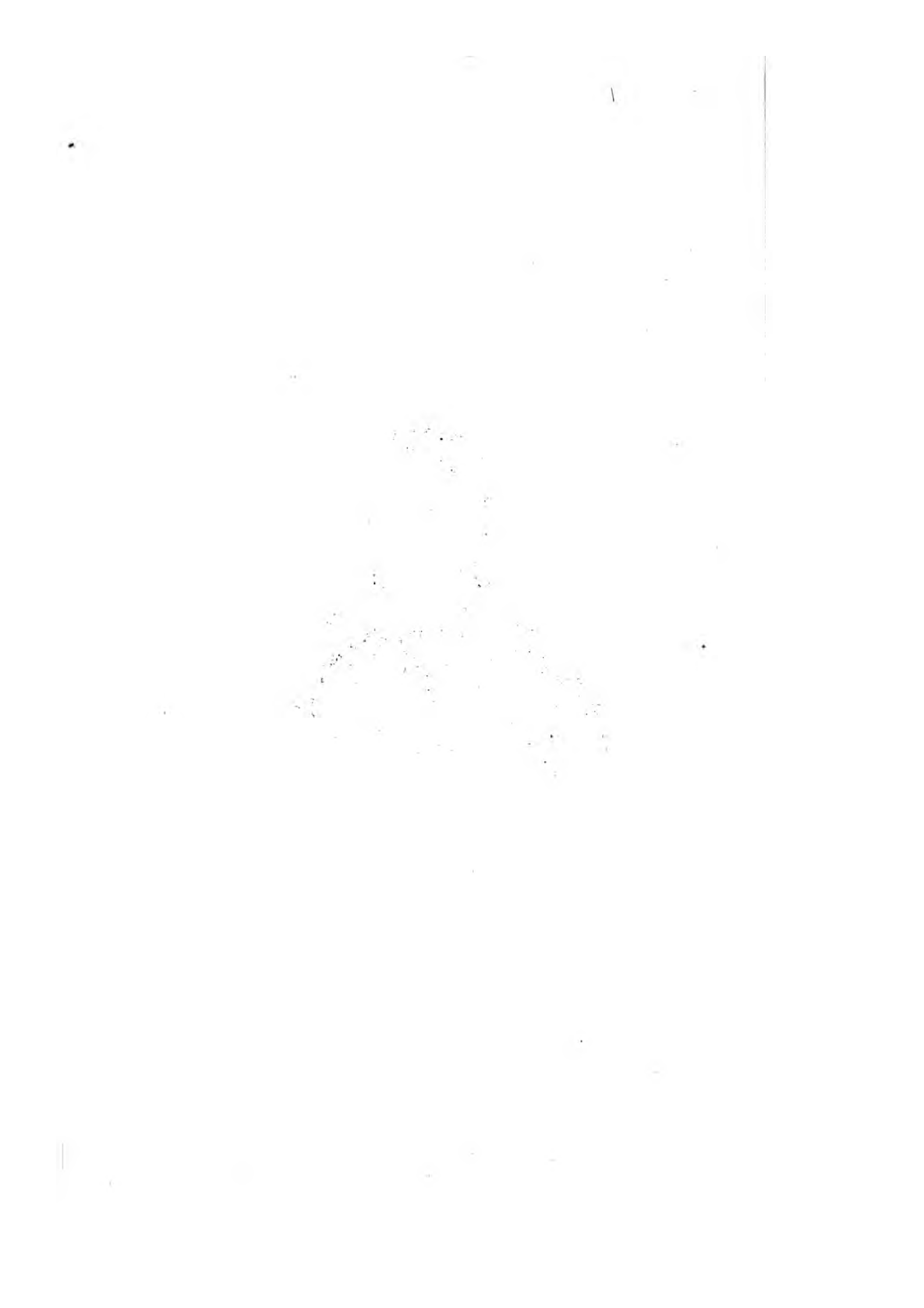
“ His *Nisi Prius* practice was, indeed, comparatively inconsiderable. The fact is, Mr. Buller had little success in his address to the passions, and could not therefore be eminent in his appeal to a jury. However shrewdly he cross-examined ; however pertinently he pointed his remarks ; however sagacious he might be in the arrangement and management of a cause, (from a want, probably, of directing his attention to the embellishments of oratory) he was by no means happy as an advocate : his advocatorial address rather conveyed the idea of barking than speaking. But excellence does not erect her banner in every region of the mind ; he sought and found fame in the recesses of law learning ; and therefore we are not to be surprised, if he was deficient in those more showy accomplishments, which were little, or not at all, objects of his choice or attention. If *Special Pleading* has any sun-beams, many others have been lighted up by *his*. The astonishing success of Judge Buller introduced the fashion of making the study of that science (if it ought to be dignified by that name) an introduction to the profession.

“ The eloquence of magistracy is of a far dif-

ferent kind from that of the advocate ; and the speeches of this very learned judge from the Bench, certainly approach as near perfection as modern example reaches : it is a model for imitation.

“ He possesses great quickness of perception, sees the consequences of a fact, and the drift of an argument at its first opening, and can immediately reply to an unforeseen objection, though, perhaps, it may be sometimes suspected that his perception is *too quick* ; it has certainly exposed him in some instances to the charge (whether true or false) of impatience and petulance, very indecorous in the character of a Judge ; it is not enough that the magistrate on the bench should perceive the truth or fallacy of an argument ; it is his duty to proceed with the most cautious deliberation, 'till, from the arguments of the pleader, or the result of evidence, he has drawn forth the clearest demonstrations that the case possibly admits, and established conviction, by the patient exertion of argumentative reason.

“ It is the general, as it is the just professional character of this great lawyer, that he states his arguments with the utmost accuracy and precision, reasoning logically, and in a style, which may be deemed the true eloquence of law. Like his present Chief, he was not calculated to push his way in parliamentary campaigns ; but his con-





L O R D E R S K I N E .

immense knowledge rendered him an important acquisition to the bench. He was the youngest English Judge ever promoted to that rank, and, growing up under the cedar of knowledge and eloquence, may justly now be considered as one of its greatest ornaments.

“ Mr. Justice Buller, if we consider the traits which his judicial conduct has been strongly marked, seems to possess the greatest inflexibility of sentiment and opinion. Like Holt, he is too staunch and too systematic a lawyer to suffer the stubborn and general principles of law to give way in any instance to the milder inferences of equity. It cannot, however, be denied or concealed, that the calmness of his temper, and the delicate firmness of his conduct, have not in every instance kept pace with the inflexibility of his judgment, and tenacious adherence to general maxims. A striking proof of this was exhibited at the famous trial of the Dean of St. Asaph, when, after pushing his opposition to Mr. Erskine even to threats and commands, he yet suffered him to set his authority at open defiance, and proceed in the interrogation, to which he had so strenuously objected.

“ The anecdote being remarkable, and eminently calculated to illustrate this part of the Judge's character, it may not be improper to relate it.

“ Mr. Erskine put a question to the Jury re-

lative to the meaning of their verdict ; Mr. Justice Buller objected to its propriety. The Counsel reiterated his question, and persisted in demanding an answer. The Judge again interposed his authority in these emphatic words : ‘ Sit down, Mr. Erskine ; know your duty, or I shall be obliged to make you know it.’ Mr. Erskine with equal warmth replied : ‘ I know *my* duty as well as your Lordship knows *your* duty. I stand here as the advocate of a fellow citizen, and *I will not sit down.*’ The Judge was silent, and the advocate persisted in his question.

“ Who was legally right, is not intended to be here discussed ; since this book treats of the characters of Judges, not of the maxims of Law. But it must be readily allowed, that to proceed to threats, which either he could not, or he was not inclined to, carry into execution, was, in some respect, derogatory from that dignity which the representative of Majesty and Justice ought carefully to sustain.” (*Strictures on the Lives and Characters of the most eminent Lawyers of the present day*, (1790) p. 103.)

#### PREScribing FOR A RIGHT OF ROBBERY.

In an action on the case on the statute of Winton, Manwood Justice said, “ When I was servant to Sir James Hales, one of the Justices of the Common Pleas, one of his servants was robbed

at *Gadshill*, within the Hundred of Gravesend, in Kent, and he sued the men of the Hundred upon this statute, and it seemed hard to the inhabitants there, that they should answer for the robberies done at *Gadshill*, because robberies are there so frequent, that if they should answer for all of them, they should be utterly undone. And Harris, Sergeant, was of counsel with the inhabitants of Gravesend, and pleaded for them, *that time out of mind, &c. felons had used to rob at Gadshill, and so prescribed*; and afterwards, by award, they were charged; and note, that the case was, that three men were robbed, and they three joined in the action against the inhabitants." (2 *Leon. Rep.* 12.)

## LORD KENYON'S LATINITY.

Lord Kenyon's classical acquirements are well known to have been but slender. He was nevertheless exceedingly fond of ornamenting his judgments with Latin quotations, which did not always fall exactly into their right places. Upon one occasion, he is said to have concluded his summing up in the following manner: "Having thus discharged your consciences, Gentlemen of the Jury, you may retire to your homes and your hearths, in peace; and with the delightful consciousness of having well performed your duties as citizens, you may lay down your heads upon



your pillows, and say, ‘ *Aut Cæsar aut nullus!* ’” Upon another occasion, his Lordship, wishing to illustrate in a strong manner the conclusiveness of some fact, thus addressed the Jury, “ Why, Gentlemen of the Jury, it is as plain as the noses upon your faces!—*Latet anguis in herbâ!* ” Even death could not divorce him from his bad Latin. Upon his hatchment, it is said, there was inscribed, *Mors Janua vitæ*. On this fact being related to Lord Ellenborough, his Lordship observed, “ Yes, Sir: it was by his own particular directions,—and, moreover, it saved the expense of a diphthong!”

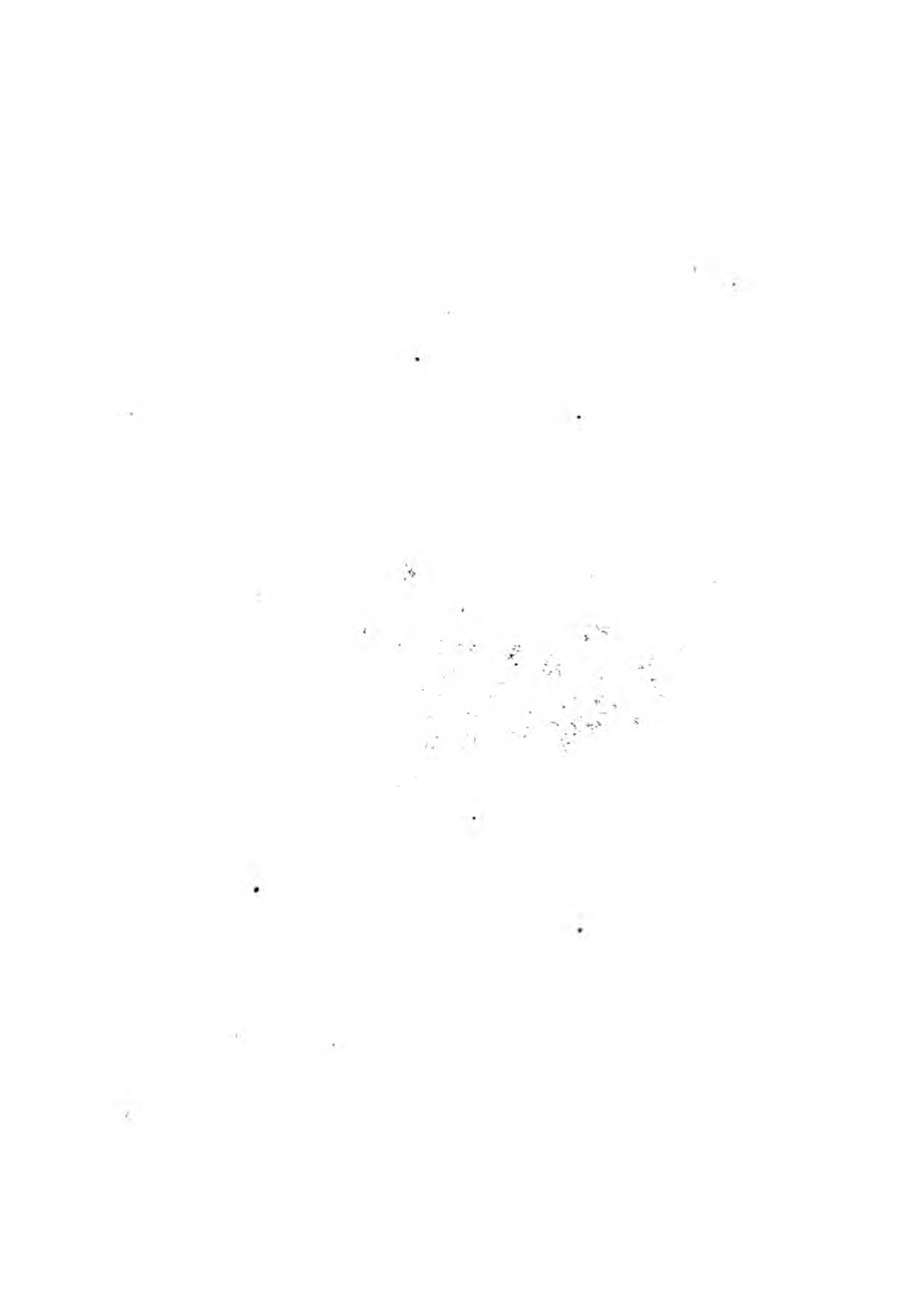
#### LORD CLARENDON AND HIS FRIENDS.

Lord Clarendon, in the earlier part of his professional career, of which he has given a very pleasing account in his *Life of himself*, enjoyed the friendship of many of the most distinguished members of his profession. “ Having a competent estate of his own,” as he tells us, “ he enjoyed a very pleasant and plentiful life, living much above the rank of those lawyers, whose business was only to be rich, and was generally beloved and esteemed by most persons of condition and great reputation.” His method of spending his time at this period of his life, he has himself described. “ He always gave himself at dinner to those who used to meet together at that hour, and in



*W. Read Sc.*

**LORD CLARENDON.**



such places as was mutually agreed between them, where they enjoyed themselves with great delight, and public reputation, for the innocence, and sharpness, and learning of their conversation. For he would never suffer himself to be deprived of some hours (which commonly he borrowed from the night,) to refresh himself with polite learning, in which he still made some progress. The afternoons he entirely dedicated to the business of his profession, taking instructions and the like, and very rarely supped, except he was called out by some of his friends, who spared him the more, because he always complied with those summonses; otherwise he never supped for many years, (before the troubles brought in that custom,) both in the gaining that time to himself, and that he might rise early in the morning, according to his custom, and which he would say, he could never do when he supped. The vacations he gave wholly to his study and conversation, never going out of London in those seasons, except for two months in the summer, which he spent at his own house in the country with great cheerfulness, amongst his friends, who then resorted to him in good numbers." (*Life of Clarendon, vol. i. p. 27.*)

He was much attached to the society of the many eminent men, whose friendship he was fortunate enough to possess, and he has acknow-

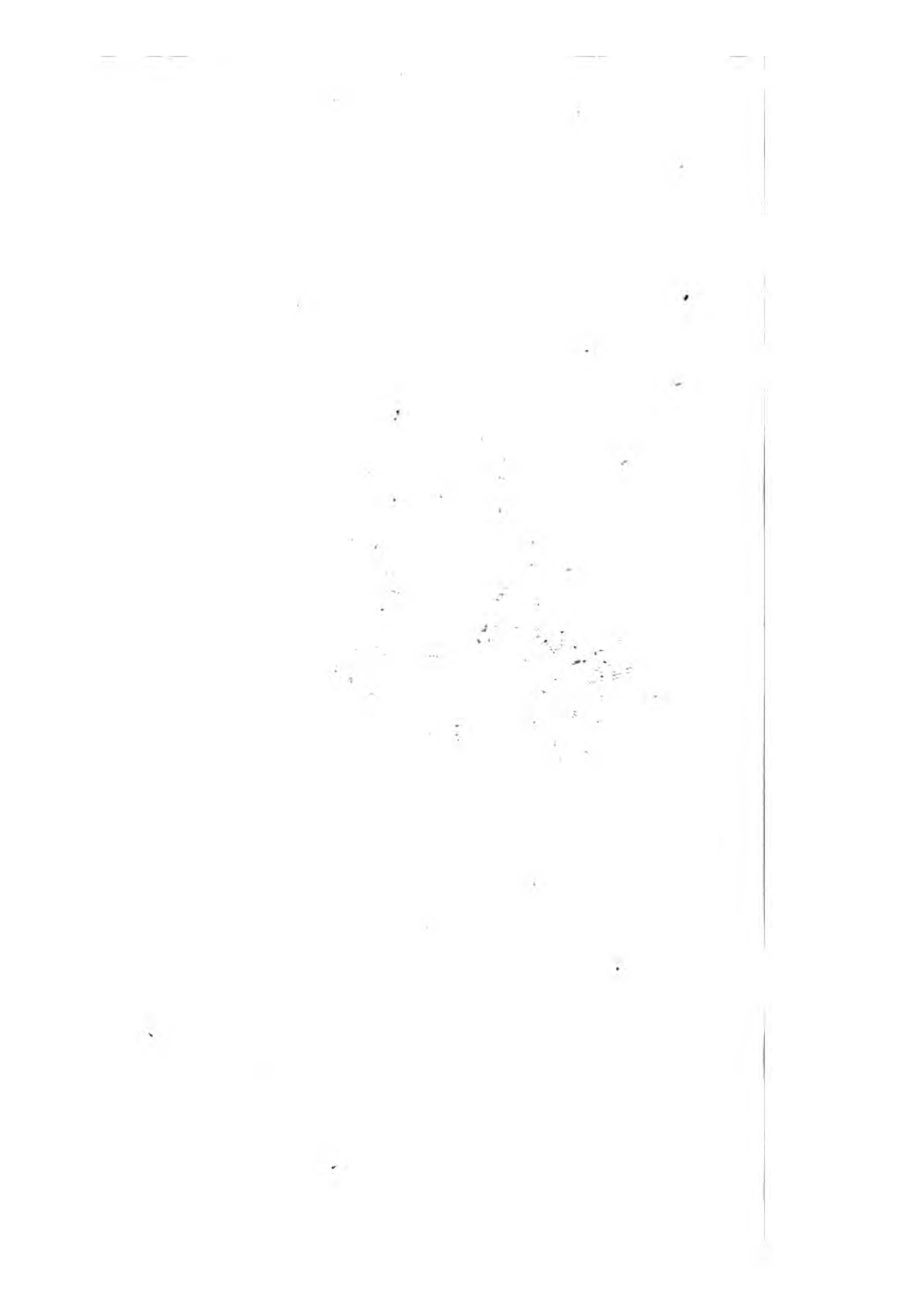
ledged his obligations to them with a gratitude and a modesty highly honourable to his character. "He owed all the little he knew, and the little good that was in him, to the friendships and conversation he had still been used to, of the most excellent men in their several kinds, that lived in that age, by whose learning and information and instruction he formed his studies, and mended his understanding, and by whose gentleness and sweetness of behaviour, and justice and virtue and example, he formed his manners, and subdued that pride, and suppressed that heat and passion he was naturally inclined to be transported with."

Amongst the most favoured of his intimates, we find the name of the celebrated Selden, whose character he has drawn with the affectionate admiration which it merited.

"Mr. Selden was a person, whom no character can flatter, or transmit in any expressions equal to his merit and virtue. He was of so stupendous learning in all kinds, and in all languages, (as may appear in his excellent and transcendent writings,) that a man would have thought he had been entirely conversant amongst books, and had never spent an hour but in reading and writing; yet his humanity, courtesy, and affability, was such, that he would have been thought to have been bred in the best courts, but that his good-



**SELDEN.**



nature, charity, and delight in doing good, and in communicating all he knew, exceeded that breeding. His style in all his writings, seems harsh, and sometimes obscure, which is not wholly to be imputed to the abstruse subjects of which he commonly treated, out of the paths trod by other men, but to a little undervaluing the beauty of a style, and too much propensity to the language of antiquity; but in his conversation he was the most clear discourser, and had the best faculty in making hard things easy, and presenting them to the understanding, of any man that hath been known. Mr. Hyde was wont to say, that he valued himself upon nothing more than upon having had Mr. Selden's acquaintance from the time he was very young, and held it with great delight as long as they were suffered to continue together in London; and he was very much troubled always when he heard him blamed, censured, and reproached, for staying in London, and in the parliament, after they were in rebellion, and in the worst times, which his age obliged him to do: and how wicked soever the actions were, which were every day done, he was confident he had not given his consent to them; but would have hindered them if he could, with his own safety, to which he was always enough indulgent. If he had some infirmities with other men, they were



weighed down with wonderful and prodigious abilities and excellencies in the other scale."

The portrait of Lord Chief Justice Vaughan is not so amiable a one.

"John Vaughan was then a student of the law in the Inner Temple, but at that time indulged more to the politer learning, and was, in truth, a man of great parts of nature, and very well adorned by arts and books: and so much cherished by Mr. Selden, that he grew to be of entire trust and friendship with him, and to that owed the best part of his reputation, for he was of so magisterial and supercilious a humour, so proud and insolent a behaviour, that all Mr. Selden's instructions, and authority, and example, could not file off that roughness of his nature, so as to make him very grateful. He looked most into those parts of the law which disposed him to least reverence to the crown, and most to popular authority, yet without inclination to any change in government; and therefore, before the beginning of the civil war, and when he clearly discerned the approaches to it in parliament, (of which he was a member,) he withdrew himself into the fastnesses of his own country, North Wales, where he enjoyed a secure, and as near an innocent life, as the iniquity of that time would permit; and upon the return of King Charles the Second, he appeared under the character of a

man who had preserved his loyalty entire, and was esteemed accordingly by all that party.

“ His friend, Mr. Hyde, who was then become Lord High Chancellor of England, renewed his old kindness and friendship towards him, and was desirous to gratify him all the ways he could, and earnestly pressed him to put on his gown again, and take upon him the office of a judge; but he excused himself upon his long discontinuance, (having not worn his gown, and wholly discontinued the profession from the year 1640, full twenty years,) and upon his age, and expressly refused to receive any promotion; but continued all the professions of respect and gratitude imaginable to the Chancellor, till it was in his power to manifest the contrary, to his prejudice, which he did, with circumstances very uncommendable.”

The anti-prerogative principles of Sir John Vaughan may, perhaps, have influenced Clarendon in the foregoing sketch of his character. A much more amiable idea of him may be gathered from Selden's dedication to him of his *Vindiciæ Maris Clausi*, in which he addresses him with the warmest expressions of esteem and affection.

Amongst his other professional friends, “ who were all eminent men, or of the most hopeful parts; and who being all much superior to him in age and experience, and entirely devoted to their profession, were yet well pleased with the gaiety

of his humour, and inoffensive and winning behaviour," Clarendon reckoned Lane, afterwards successively Lord Chief Baron and Lord Keeper; Palmer, afterwards Attorney General; Sergeant Maynard and Bulstrode Whitelocke. "All were of eminent parts and great learning out of their profession, and in their profession, of signal reputation. And though," he adds, "the two last did afterwards bow their knees to Baal, and so swerved from their allegiance, it was with less rancour and malice than other men."

There appears to have been no one amongst all his friends to whom Clarendon was more truly attached than to Selden, "upon whom," he tells us, "he looked with so much affection and reverence, that he always thought himself best when he was with him."

For the characters of his other friends,—Lord Falkland, Ben Jonson, Waller, Hales, Chillingworth, and others, we refer the reader to his Life.

#### READINGS IN THE INNS OF COURT.

"The eve next before the Reading begins, the Reader takes his place at the upper end of the bench-table, in the treasurer's place; and, supper ended, the ancientest utter barrister in commons brings in a case at the bench-table, which the reader and benchers are to argue if they will; and then, after rising from the table, the reader

first, and next all the benchers and gentlemen follow and come to the place between the buttery-door, and backside of the skreen in the hall, where the reader, by some plausible words, or house speech, declares publickly the statute whereon he purposeth to read the next day. Then the ancientest bencher, by another plausible house speech, commends Mr. Reader's discretion in the choice of his statute, and declares the desires of the whole house, and what great desire they have to hear the reader's learned conceits upon that statute, in his ensuing reading, and so take leave and depart.

“ The next morning, about eight or nine of the clock, the reader comes into the hall, followed by the judges, if any of that house be present, and benchers that attend the case that day : and as soon as the reader is set at the table, and all ceremonies of curtesy, the reader takes the oaths of supremacy and allegiance, and then makes another house speech, wherein he utters some divisions and expositions of the statute whereon he is to read.

“ During the reading time, the reader is to read, every reading-day, his two first cases twice, if the barrister, who is to argue the case, do desire it. And the first day, the ancientest utter barrister in commons is to take the reader's case, and is to argue it. And the readers of Inns of

Chancery, and the vacationer utter barristers, one after another, are to take the reader's case in the morning, every reading-day, and the ancientest bencher, or the ancientest of the judges then present, who are to argue the reader's case, (if they will,) may put the utter barrister appointed to argue that morning, to any other of the reader's cases: after whom, the judges and benchers argue, according to their antiquity, the puisne bencher beginning first, and so every one after another, till the ancientest judge or bencher have argued the case, all which is to be done *ex tempore pro* and *con*: and lastly, the reader to answer the objections made against his conclusion, to shew his opinion of his case, as he takes the law to be; and so concludes that morning's reading.

“Immediately after the first morning's reading is ended, the reader delivers his paper of cases for that morning, to the puisne vacationer utter barrister, who is to argue one of those cases which he likes best, immediately after dinner, at the bench-table end, and the puisne barrister and all the other barristers attending the reading, resort together to break the case, and open the points to the said puisne barrister, and then he argues the case at the bench-table, after dinner, and after him every bencher present argues the case *pro* and *con*. And lastly, the reader concludes the argument with his opinion, as he takes the law:

and so the exercise is continued every reading-day, which is closed up by the ancientest of the bench, and then the reader, with congratulatory house speeches, each to other, for their company, pains, and attendance, costs and charges.

“ If in reading-time, or other times of exercise, there fail to be sufficient attendance upon the exercise, the reader, benchers, and utter barristers, respectively, may amerce the absent, dissolve the exercise for that time, and so depart. Before any moot in the hall, after supper, the benchers go all behind the skreen, as afore, and there break the case, which is to be argued then forthwith in the hall, and they have power to over-rule the case, as not argumentable; and that over-ruling is termed a failer; and the whole inner barre is to be amerced, unless they presently plead and argue another case of the same learning, which, if the benchers that sit approve of, the amercement is saved.

“ Although the reader at the first week's end, or fortnight's end, do end his reading, yet there is exercise in the house or abroad, by readers or vacationers, until the end of the whole reading-month, as if the reading had so long continued. But if no reading at all be in the house, yet are the readers of Inns of Chancery, and the gentlemen of the inner barre to hold the grand mootes so long time as any other reader of any other of

the three inns of court do continue their reading, except in time of mortality." (*Dugd. Orig.* p. 160.)

THE ANCIENT PRACTICE OF RETAINING LAWYERS.

A reference has been already made to the custom which formerly prevailed in noble families of retaining a lawyer in their service, who received an annual stipend, *pro consilio impenso et impendendo*, and who was treated as a retainer. (See *Barrington's Observations on the Statutes*, p. 374.) In *Madox's Formulæ Anglicanum*, there is the form of a retainer during his life of John de Thorpe, as Counsel to the Earl of Westmoreland; and it appears by the household book of Algernon, fifth Earl of Northumberland, that in the beginning of the reign of Henry VIII. there was in that family a regular establishment of two counsellors and their servants.

In *Selden's Table Talk*, we find the following passage: "Lady Kent articed with Sir Edward Herbert, that he should come to her when she sent for him, and stay with her as long as she would have him, to which he set his hand; then he articed with her, that he should go away when he pleased, and stay as long as he pleased, to which she set her hand."

"When I read this passage," observes an ingenious writer, "I was at a loss to conceive what was the nature of the connexion between her La-

dyship and Sir Edward; but a legal friend suggested to me, that the latter, who was an eminent lawyer, was probably retained for his advice by Lady Kent, at an annual salary; and he produced to me examples of deeds granted for payments on the same account, one of them so late as the year 1715. Hence it would appear, that the Lady had a great deal of law business on her hands, which would render the domestic counsel of such a person as Selden very valuable to her." (*Aikin's Life of Selden*, p. 154.) Selden was conjectured to have been privately married to Lady Kent.

## LORD MANSFIELD'S WIT.

" Lord Mansfield, when fair occasion offered, would sometimes make the Bench and the Bar relax a little from their accustomed gravity; but the object to be attained by a moment's pleasantry was generally worthy of a great judge. Numerous instances of this kind might be adduced by the Bar, who have not only enjoyed the wit, but have also felt the force of the keen arrows which darted occasionally through the Court. To select two or three of this nature may relieve the jurisperit a little who has already travelled over many pages of dry law.

" To convert a capital offence to the lighter punishment of transportation, where favourable circumstances in behalf of the prisoner made an



impression upon every one present, except the prosecutor, Lord Mansfield recommended the Jury to find the value of a gold trinket, which the prisoner had stolen, under 40 shillings. The prosecutor, unfeelingly and imprudently, expressed his surprise, 'Under forty shillings, my Lord! Why, the fashion alone cost me more than double the sum!' 'That may be, friend,' replied the Chief Justice, 'yet God forbid that we should hang a man for fashion sake.'

"In his own Court he set too just a value on his time, to permit it to be improperly wasted by long interrogatories of Counsel in justifying bail, where the debt was barely of magnitude enough to be brought into the Court of King's Bench. It fell to the lot of the late Sergeant Davy to examine a Jew who came to justify bail in a tawdry laced suit of clothes before Lord Mansfield. The jocose and learned Sergeant pressed the Israelite close to know whether he was worth the sum he had sworn to, after all his debts were paid. The Jew answered repeatedly and unequivocally in the affirmative; but the debt, which was the object of the suit, being small, and the Sergeant still persisting in his interrogatories, his Lordship addressed the Sergeant unexpectedly with—'For shame, Brother Davy, how can you tease the poor gentleman so? Don't

you see that he would *burn* for double the sum?" (*Halliday's Life of Lord Mansfield*, p. 212.)

"The late Mr. Madan, who about the year 1756, changed his bar gown for a clerical one, having written a pamphlet\* wherein he arraigned the mistaken lenity of the Judges in too frequently replevying capital offenders, was present either as a magistrate or one of the Grand Jury at the Assizes held at East Grinstead, in Sussex, some years ago, which proved to be a maiden one. On

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\* The pamphlet to which Mr. Halliday here alludes is the "Thoughts on Executive Justice." "His imagination," says a writer in a valuable periodical work, in speaking of this Revd. Author, "his imagination seems to have been overwhelmed with a horror of footpads and highway robbers by day, and of house-breakers by night. In his fit of panic and pious zeal he invoked the shadows of the Judges of Assize (for he held the substance to be gone) to prevent those beasts of prey from changing the kingdom into a desert, quoting ancient poets to shew that wounds which were incurable required the knife; considering the poet's premonition, that all other remedies must be first resorted to, merely in the same sense as the Apostle's prelude, to try all things, but to hold fast to that which is good, and representing the Kingdom of Heaven as one whose principal happiness would be, that thieves did not there break through nor steal, and as if it were the paramount duty of man to assimilate earth to heaven in that particular." (*See The Inquirer*, vol. ii. p. 305.)

the Sheriff's expressing his happiness in presenting the white gloves to his Lordship, as the emblem of purity, the Chief Justice pleasantly observed, ' Mr. Madan, too, will have a singular pleasure on this occasion, because there is no condemned prisoner to be reprieved.' (*Ibid.* p. 186.)

" In his convivial conversation," says Mr. Halliday of Lord Mansfield, " he was particularly excellent. His general and almost universal knowledge of men and things presented a constant and copious supply of familiar dialogue and discourse. His sallies of pleasantry were innocent, and wounded no man; his sentences of observation were judicious and solid. His particular friends could easily illustrate this part of his character by a thousand familiar instances; the few which the Author begs leave to select occasionally, as they serve to illustrate his character for ease and pleasantry, were impromptus delivered on the spur of the occasion, and some of them are well known to his surviving friends.

" One of the Right Reverend Bench having very charitably established an alms-house, at his own expense, for 25 poor women; Mr. Murray, in his juvenile days, was applied to for an inscription to be placed over the portal of the house; upon which he took up his pencil and immediately wrote the following.

“ Under this roof  
The Lord Bishop of \_\_\_\_\_  
Keeps  
No less than 25 Women.”

(*Halliday's Life of Lord Mansfield*, p. 130.)

#### SERGEANTS' RINGS.

The custom of giving rings on having the degree of Sergeant conferred, is one of the few relics of antiquity still retained in the profession. In the account of the great Sergeants' Feast in 1555, by Dugdale, we have an accurate description of the rings given on that occasion.

“ These Sergeants made choice of one Nicholas Deering, goldsmith, to make their rings of gold, who was allowed, for the fashion of those rings, which were given to the King and Queen; viz. for each ring *xxd.* and for the fashion of every other ring *xiid.*

“ It was also agreed, that all the rings of *xs.* in gold, and above, should be made with swaies; and all under that value, their fashion should be plain. Likewise that every ring of gold of *xxs.* value, should contain in gold weight *18s.* two shillings being allowed for the fashion of every such ring. And that every ring of *xvis* in gold to weigh *14s.* and two shillings to be allowed for the fashion. Likewise that every ring of *vis. viiid.* in

gold to bear his own marking. And every ring of *vs. ivd.* in gold, to have allowed *6d.* for fashion and no more. And every ring of *4s.* in gold to bear his full weight in gold besides the fashion; and, lastly, that all the said several gold rings should be of one value, and contain one weight, *Secundum ratum*, as afore, and that every ring do contain one value, without diminution in form severally before agreed on.

“ Note. That each Sergeant disbursed and delivered to the goldsmith, towards the provision of rings, viz. in half sovereigns, the weightiest that could be gotten, *xxs.*”

“ The rings given to the King and Queen were made of the finest angel gold, every ring being in value, besides fashion, *iii l. vis. viii d.*”

The following is Fortescue's account of the Sergeants' rings. “ I very well remember when I took upon me the estate and degree of a Sergeant at Law that my bill for gold rings came to fifty pounds. Each Sergeant at the time of his creation gives to every prince of the blood, to every duke, and to each archbishop, who shall be present at the solemnity, to the Lord High Chancellor, and to the Treasurer of England, to each a ring of the value of *1l. 6s. 8d.* to every Earl and Bishop, to the Keeper of the Privy Seal, to each Chief Justice, to the Chief Baron of the King's Exchequer, a ring worth *20s.* and to every other

Lord of Parliament, to every Abbot and to every Prelate of distinction, to every Worshipful Knight then and there present, to the Master of the Rolls, or to every Justice, a ring to the value of one mark; to every Baron of the Exchequer, to the Chamberlains, and to all the great men at Court then in waiting on the King, rings of a less value in proportion to their rank and quality, so that there will not be the meanest Clerk, especially in the Court of Common Pleas, but that he will receive a ring convenient to his degree. Besides they usually make presents of rings to several of their friends and acquaintance." (*Fortescue de Laudibus, chap. 50.*)

In the reign of Charles II. we find Chief Justice Kelynge remonstrating with the Sergeants on the weight of their rings, as appears by the following memorandum in 1 *Mod. p. 9.*

"Seventeen Sergeants being made the 14th day of November, a day or two after Sergeant Powis, the junior of them all, coming to the King's Bench Bar, Lord Chief Justice told him, that he had something to say to him, viz. That the rings which he and the rest of the Sergeants had given weighed but eighteen shillings a piece; whereas Fortescue in his book *De laudibus Legum Angliæ* says, 'The rings given to the Chief Justice and to the Chief Baron ought to weigh twenty shillings apiece;' and that he spoke not this expect-

ing a recompence, but that it might not be drawn into a precedent, and that the young gentlemen there might take notice of it."

The motto inscribed on the rings of these seventeen learned Sergeants would not have disgraced the gentlemen practising in the Courts of Algiers or Constantinople—A DEO REX, A REGE LEX!

LORD CHIEF JUSTICE SCROGGS.

Roger North has left us two portraits of Sir William Scroggs, one in the *Life of Lord Keeper Guilford*, the other in the *Examen*. The following is from the *Life of the Lord Keeper*.

"This Sir William Scroggs was made Lord Chief Justice of the King's Bench while his Lordship sat in the Common Pleas. He was of a mean extract, having been a butcher's son, but wrought himself into business in the law, was made a Sergeant, and practised under his Lordship. His person was large, visage comely, and aspect witty and bold. He was a great voluptuary, and companion of the high Court rakes, as Ken, Gug, &c. whose merits for ought I know might prefer him. His debaucheries were egregious, and his life loose, which made the Lord Chief Justice Hales detest him. He kept himself very poor, and when he was arrested by King's Bench process, Hales would not allow him the privilege

of a Sergeant; as it touched elsewhere. He had a true libertine principle. He was preferred for professing loyalty: but Oates coming forward with a swinging popularity, he (as Chief Justice) took in and ranted on that side most impetuously. It fell out that when the Earl of Shaftesbury had sat some short time in the Council, and seemed to rule the roast, yet Scroggs had some qualms in his politic conscience, and, coming from Windsor in the Lord Chief Justice North's coach, he took the opportunity and desired his Lordship to tell him seriously, if my Lord Shaftesbury had really so great power with the King as he was thought to have. His Lordship answered quick, 'No, my Lord, no more than your footman hath with you.' Upon that, the other hung down his head, and, considering the matter, said nothing for a good while, and then passed to other discourse. After that time, he turned as fierce against Oates and his plot, as ever before he had ranted for it, and thereby gave so great offence to their evidences, the plot witnesses, that Oates and Bedloe accused him to the King, and preferred formal articles of divers extravagancies and immoralities against him. The King appointed a hearing of the business in Council, where Scroggs run down his accusers with much severity and wit; and the evidences fell short, so that for want of proof, the petition and articles were dismissed. But, for



some jobs in the King's Bench, as discharging a grand jury, &c. he had the honour to be impeached in Parliament, of which nothing advanced. At last he died in Essex-street of a polypus in the heart. During his preferment he lived well, and feathered his nest, for he purchased the manor of Gruntwood, in Essex. It was observed of him, that every day in his house was holyday. His lady was a very matronly good woman ; she died long before him. He had one son who lived not many years after him ; for he was a sufferer in the wars of amour. He had two daughters ; one of whom was married to Sir Robert Wright, and lived to see his misfortunes ; for at the Revolution he was clapt up in Newgate, and there died. The other daughter, sometime the widow of Mr. Kilbie, a lawyer, married the truly noble Charles Hatton, and may be yet living." (*Life of Lord Guilford, vol. ii. p. 123, and see North's Examen, p. 568.*)

Roger North has alluded to the conduct of Scroggs on the trials for the Popish plot, and certainly nothing could be more scandalous. On the trial of Stayley, the first victim in this series of judicial murders, Scroggs displayed so much heat that he thought it necessary to make an apology, alleging "that it was better to be warm there than in Smithfield." As soon as the Jury had found Stayley guilty, Scroggs, with the bru-

tal levity which distinguished him, addressed the prisoner with,—“ Now you may die a Roman Catholic, and when you come to die, I doubt you will be found a priest too.” (*See Howell's State Trials, vol. vi. p. 1502, and the other Trials in vol. vii.*)

In the year 1680, “ Articles of High Misdemeanours” against Scroggs were presented to the King by Oates and Bedloe, whom he had offended by his conduct on the trials for the Popish Plot, as above related. Amongst these articles we meet with the following :

“ That the Lord Chief Justice is very much addicted to cursing and swearing in his common discourse, and to drink to excess, to the great disparagement of the dignity and gravity of his said place. He did, in his common discourse at dinner, at a gentleman's house of quality, publicly and openly use and utter many oaths and curses, and there drank to excess.”

These charges were not prosecuted ; but Scroggs was subsequently impeached by the House of Commons, on which occasion his immoralities were again made the subject of a charge against him.

“ Whereas, the said Sir William Scroggs, being advanced to be Chief Justice of the Court of King's Bench, ought, by a sober, grave, and virtuous conversation, to have given a good example.

to the King's liege people ; and to demean himself answerable to the dignity of so eminent a station ; yet he, the said Sir William Scroggs, on the contrary, by his flagrant and notorious excesses and debaucheries, and his profane and atheistical discourses, doth daily affront Almighty God, dishonour his Majesty, give countenance and encouragement to all manner of vice and wickedness, and bring the highest scandal on the public justice of this kingdom." (*State Trials*, viii. 200.)

" He was," says Burnet, speaking of Scroggs, " a man more valued for a good readiness in speaking well, than either for learning in his profession or any moral virtue. His life had been indecently scandalous, and his fortunes were very bad. He was raised by the Earl of Danby's favour, first to be a Judge, and then to be Chief Justice ; and it was a melancholy thing to see so bad, so ignorant, and so poor a man raised to that great post."

#### TRIALS FOR THE POPISH PLOT.

There are few passages in English history more obscure than the much debated question of the Popish Plot.—So many contradictions occur on every side, and so many arguments suggest themselves in favour of each view of the subject, that it seems impossible either to give credit to the plot or wholly to reject the belief of it. Perhaps

Dryden's representation of it is, after all, the most correct. He tells us,

“ Some truth there was, but dash'd and brew'd  
with lies :”

and that

“ Succeeding times did equal folly call,  
Believing nothing, and believing all.”

Mr. Fox, in the Fragment of his Historical Work, has examined the subject with his usual philosophical judgment, and has weighed, with great nicety, the authorities on both sides of the question.—But whatever diversity of opinion may exist with regard to the reality of the plot, there can be but one sentiment with respect to the trials of the persons who were supposed to be implicated in it, and who were wickedly murdered under the sanction of the law. “ The proceedings on the Popish Plot,” says Mr. Fox, “ must always be considered as an indelible disgrace upon the English nation, in which King, Parliament, Judges, Juries, Witnesses, Prosecutors, have all their respective, though certainly not equal, shares. Witnesses of such a character as not to deserve credit in the most trifling cause, upon the most immaterial facts, gave evidence so incredible, or to speak more properly, so impossible to be true, that it ought not to have been believed if it had come from the mouth of a Cato ; and upon such

evidence, from such witnesses, were innocent men condemned to death, and executed. Prosecutors, whether Attorney and Solicitors General, or Managers of Impeachments, acted with the fury which in such circumstances might be expected; Juries partook, naturally enough, of the national ferment; and Judges, whose duty it was to guard them against such impressions, were scandalously active in confirming them in their prejudices, and inflaming their passions."

A CHINESE INDICTMENT FOR HIGH TREASON.

" 1st. When our Royal Father, on the 3d day of the 9th moon of the 60th year of his reign, elected ourself to be his heir and successor, Ho-quen waited on us, on the second of the moon previous to the disclosure of the imperial will, and presented us with the insignia of the rank newly conferred on us, thereby betraying an important secret of the state, that had been confided to him, in the expectation that such conduct would be meritorious in our estimation.

" 2nd. On receiving the summons of our Imperial Father, on the 1st moon of the preceding year, to attend at the palace of Yuen-ming-yuen, he ventured to ride in on horseback through the left gate, and by the great hall of Ching-la-quang-ming, as far as the bottom of the mount, called

Shem-shan, regardless, to a degree beyond example, of a father and a sovereign.

“ 3d. When formerly suffering from a lameness in his feet, he went into the interior of the palace in a palanquin, and passed and repassed through the gate of Shin-vev-men in a wheel-chair, before the gazing eyes of the multitude, and without the smallest fear or hesitation.

“ 4th. The young females that were educated for the service of the palace, he took from thence, and appropriated to himself as concubines, without any sensation of shame, or regard to decorum.

“ 5th. During the latter campaigns against the rebels in the provinces of Se-chuen, and Hou-quen, when our imperial father waited with anxious expectation for intelligence from the army, so as to be bereft of sleep and appetite, Ho-quen received himself the various reports that arrived from the troops stationed in different quarters of the empire, and detained them, according to his pleasure, with a view to deceive his sovereign, by misrepresentation and concealment; in consequence whereof the military operations of the campaign were for a considerable time incomplete and ineffectual.

“ 6th. Having been appointed, by a decree of our imperial father, to the presidency of the supreme board for civil affairs, and also to that of the supreme court of judicature, and afterwards,

on account of some experience acquired in superintending the disbursements of the army, having been directed, by another imperial decree, to officiate as secretary to the 'supreme board of revenue ; he immediately united in his own person the power and authority which were respectively annexed to these several high offices.

“ 7th. Last winter, when the venerable person of our imperial father laboured under infirmity, his signature and hand-writing were in some degree confused, and not easily distinguishable ; whereupon Ho-quen had the audacity to declare, that they had ‘ better be thrown aside,’ and then issued orders of his own suggestion.

“ 8th. In the last moon of the preceding year, Kien-Ho reported, that in the districts of Sinwha and Quei-Te, a party of above a thousand of the rebels had collected, and forcibly carried away a herd of cattle belonging to the Da-lai-lama's merchants, as well as mortally wounded two persons, and that they still continued to ravage the district of Ching-hay. Ho-quen, however, rejected and dismissed the report, and, concealing the whole transaction, took no measures in consequence.

“ 9th. On the late event of our imperial father's decease, we issued our orders, declaring, that the attendance of such of the princes and chieftains of the Monquo tribes as had not had the

small-pox, would be dispensed with; but Ho-  
quen, in opposition to our commands, signified to  
them to attend indiscriminately, whether having or  
not having had that disease; regardless of the  
intention of our government to shew to foreign  
tribes our kindness and consideration. The mo-  
tives of his conduct herein it would be difficult to  
investigate.

“ 10th. The minister of state, Su-lin-go, was  
entirely deaf, and worn out by age and infirmity;  
yet, because he was connected by marriage with  
Ho-lin, the younger brother of Ho-quen, his  
incapacity to discharge the duties of his situation  
was artfully concealed from the emperor's know-  
ledge.

“ 11th. The officers Ou-sung-lau, Ly-ham, and  
Ly-quang-yun, having received their education at  
the house of Ho-quen, have been since promoted  
to the most respectable offices in the state.

“ 12th. Many of the principal officers, whose  
names have been registered in the different civil  
and military departments, have been, in instances  
too numerous to be particularized in this place,  
removed and dismissed according to his pleasure,  
and by his sole authority.

“ 13th. In the late confiscation of the property  
of Ho-quen, many apartments were found to be  
built in a most costly manner, of the imperial  
wood hau-moo, and several ornamented terraces



and separate inclosures, were observed to have been constructed in the style and resemblance of the imperial palace of Hing-shen-Kung : the gardens likewise laid out in a style little differing from that of Yuan-ming-quen, and Fung-too-yas-tay, but with what view or design we cannot imagine.

“ 14th. Among his treasures of pearls and precious stones, upwards of two hundred strings or bracelets of the former were discovered, many times exceeding in value those in our imperial possession. One among the pearls belonging to Ho-quen was of an enormous size, and exceeded even that which adorns the imperial crown. There were likewise found various buttons distinguishing princely rank, carved out of precious stones, such as his situation by no means entitled him to wear. Many score of these gems were discovered, besides pieces of the same kind in the rough state, to an incalculable amount, and in an endless variety, unknown even among the imperial treasures.

“ 15th. An estimate of the property in gold and silver which has been confiscated is not yet completed ; but the sum is already found to exceed many millions of ounces of silver.

“ 16th. The avarice by which he appears to have been actuated, and the corruption by which his wealth has been amassed, cannot be equalled in the history of preceding ages.” (*Sir G. Staunton's Penal Code of China, p. 494.*)

## THE LAW OF THE NOVELS.

Those of our legal readers who, like Curran, go to bed with a romance in their hands, and, instead of the Novels of Justinian, study those of Sir Walter Scott, must often have been shocked at the marvellous mistakes in points of law, into which the Heroes and Heroines of those works so frequently fall. We could cite numerous examples, but the two following will suffice. The first is from Mrs. Brunton's excellent Novel of "Self-Control." Hargrave, as our readers will recollect, attempts to enforce his suit by a *latitat*, and despatches two bailiffs to his mistress as intercessors.

"I cannot procure the money just now, even though I were willing," said Laura, with spirit, "and I do not believe that you have a right to remove me." "Oh, as for the right, Miss, we'll let you see that.—*There is our warrant properly signed and sealed.* You may look at it in my hand, for I don't much like to trust you with it."

And what sort of an instrument does the reader imagine this formidable warrant was? why,

"The warrant was stamped and imposingly written on parchment: with the tautology which Laura had been taught to expect in a Law-paper, it rung changes upon the permission to seize and confine the person of Laura Montreville, as heiress

of William Montreville, debtor to John Dykes of Pimlico. It was signed as by a Magistrate, and marked with the large Seals of office. Laura no longer doubted."—

Miss Edgeworth, in many of her novels, is exceedingly *technical*, but where she has meddled with the law she has been eminently unsuccessful. In "Patronage" there is a great display of professional knowledge in the person of Mr. Alfred Percy, a young Barrister, who thus narrates the mode in which he took advantage of the Statute of Limitations.

"A little while after my interview with Lord Oldborough, his Lordship, to my surprise, for I thought his offer to assist me in my profession, if ever it should be in his line, was a mere courtier's promise, sent his Attorney to me in a cause of Col. Stanton's. The Colonel has gone to law (most ungrateful as he is) with his uncle, who was his guardian, and who managed all his affairs for years. I need not explain to you the merits of the suit, or the demerits of the plaintiff. It is enough to tell you that I was so fortunate as to perceive, that the Colonel's claim was what we call *barred* in law by the Statute of Limitations. I, all-glorious with the hope of *making a good point*, which had escaped the other Counsel employed on our side, went into Court *with my act in my hand*; but when I was beginning to make

my point, the Senior Counsel would not permit me to speak, snatched the book from my hand, stated my objection as his own, never even acknowledged the assistance he had received from me,—obtained a *nonsuit* against the Colonel, and had all the honor and triumph of the day. Some few gentlemen of the Bar who were near me knew the truth, and they were indignant. I hear that my Senior, whose name I will never tell you, lest you should hate it, has got into great practice by the gaining of this suit." (*Patronage*, v. ii. p. 172.)

## SIR FRANCIS PEMBERTON.

“The Lord Chief Justice Pemberton was a better practiser than a Judge, for, being made Chief Justice of the King’s Bench, he had a towering opinion of his own sense and wisdom, and rather made, than declared, law. I have heard his lordship say that, in making law, he had outdone Kings, Lords, and Commons. This may seem strange to such as see not the behaviour of Judges, and do not consider the propensity of almost all to appear wiser than those that went before them. Therefore, it is the most impartial character of a Judge to defer to eldership, or antiquity. But to proceed: this man’s morals were very indifferent; for his beginnings were debauched, and his study and first practice in the gaol; for having been one of the fiercest town

rakes, and spent more than he had of his own, his case forced him upon that expedient for a lodging; and there he made so good use of his leisure, and busied himself with the cases of his fellow collegiates, whom he informed and advised so skilfully that he was reputed the most notable fellow within those walls, and, at length, he came out a sharper at the law; after that, he proceeded to study and practice, till he was eminent, and made a Sergeant. After he was made Chief Justice of the King's Bench, he proved, as I said, a great ruler, and nothing must stand in the way of his authority. I find a few things noted of him by his Lordship.

*“(Case of Lady Ivey where he advised that there was subornation, for which Johnson was ruined, and heart-broken.)*

“The lady prosecuted Johnson for this subornation by information in the King's Bench, and the cause was tried before Pemberton. It appeared that Johnson had no concern or words, but by way of advice to his client, but he was borne down and convict: at which the fellow took despair, and died. It was thought his measure was very hard and cruel: and that some mighty point of interest, in her ladyship's law-suits, depended upon this man's suffering.

*“(Doyly's settlement, a cheat for want of words usual. Q. by whose contrivance? But he advised.)*

“ This fraudulent conveyance was managed between Sir Robert Baldock and Pemberton. It is certain it was perused by Pemberton, who was the Counsel chiefly relied on, but not so certain it was his contrivance; for Baldock had wit and will enough to do it. The device was to make two jointures, as of A and B complete, and without words of reference of the one to the other, as “in part,” &c. or “together with —— in full,” whereby the one called upon the other. The use made of this trick was mortgaging both these estates as free, but, in truth, encumbered with the jointure and settlement. For, upon the proffer of A to be mortgaged, and the Counsel demanding a sight of the marriage settlement, that of B was shewed; then, upon the proffer of B, the settlement of A was shewed; and so the cheat passed of both.

“ This Chief Justice sat in the King’s Bench till near the time that the great cause of the *quo warranto* against the city of London was to be brought to judgment in that Court; and then his Majesty thought fit to remove him. And the truth is, it was not thought any way reasonable to trust that cause, on which the peace of the government so much depended, in a Court where the Chief never shewed so much regard to the law as to his own will; and notorious as he was for little honesty, boldness, cunning, and incontrollable

opinion of himself. After this removal he returned to his practice, and by that (as it seems the rule is) he lost his style of Lordship, and became bare Mr. Sergeant again. His business lay chiefly in the Common Pleas, where his lordship resided : and, however some of his brethren were apt to insult him, his lordship was always careful to repress such indecencies ; and, not only protected, but used him with much humanity. For nothing is so sure a sign of a bad breed as insulting over the depressed." (*Life of Lord Guilford, vol. ii. p. 222.*)

This character is a severe one, but it may, perhaps, in some degree be accounted for when we remember that Pemberton "was not wholly for the Court," as Burnet informs us. "His," (Pemberton's) "rise was so particular that he is worth the being remembered ; in his youth he mixed with such lewd company that he quickly spent all he had, and ran so deep in debt that he was cast into a gaol, where he lay many years : but he followed his studies so close in the gaol that he became one of the ablest men of his profession. He was not wholly for the Court ; he had been a judge before, and was turned out by Scroggs's means, and now he was raised again, and was afterwards made Chief Justice of the other Bench, but, not being compliant enough, he was turned out a second time, when the Court

would be served by none but men of a thorough-paced obsequiousness." (1 *Burnet's Own Times*, 498.) In the year 1683, Pemberton presided at the trial of Lord Russel, "upon which occasion," says Mr. Sergeant Runnington, "he behaved to the prisoner with a candour and decorum seldom found in the Judges of that reign or the succeeding one." Nothing can exhibit in a more forcible manner the gross political prejudices of Roger North than the manner in which he speaks of this trial: "I shall only affirm," says he, "in general, that neither in England nor in any other country in the world had ever any person under a capital charge of treason against the government, a more indulgent (not to say strictly a juster) trial for his life than my Lord Russel had." (*Examen*, p. 463.)

PRICE OF LAW-BOOKS IN FORMER TIMES.

"And here I can but admire at the comparative paucity of the books of our Common Law, in proportion to those written of the Civil and Canon Law. Oh, how *corpulent* are the *corpuses* of both those laws! besides their *shadows* are far bigger than their *bodies*; their *glosses* larger than their *text*.

"Insomuch, that one may bury *two thousand* pounds and upwards in the purchase, and yet hardly compass a moiety of them: whereas all the writers of the Common Law (except they be much



multiplied very lately), with all the Year-Books belonging thereunto, may be bought for *three-score pounds*, or thereabouts: which with some is an argument, that the Common Law imbraceth the most *compendious course* to decide causes, and, by the *fewness* of the books, is not guilty of so much difficulty and tedious prolixity as the Canon and Civil Lawes.

“ Yet it is most true, the Common Law-Books are dearer than any of the same proportion. *Quot Libri, tot Libræ*, holdeth true in many, and exceeded in some of them. Yea, should now an *old Common Law-Book* be *new-printed*, it would not quit cost to the PRINTER, nor turn to any considerable account. For the profession of the law is *narrow* in itself, as confined to *few persons*; and those are already *sufficiently furnished* with all authors on that subject, which, with *carefull keeping* and *good using*, will serve *them* and their *sons' sons*, unto the third generation, so that a whole age would not carry off a *new impression* of an *ancient Law-Book*, and (*quick return* being the *life of trading*) the tediousness of the *sale* would eat up the *profit* thereof.

“ All I will adde is this, that that TAYLOR who, being cunning in his trade, and taking *exact measure* of a person, maketh a suit purposely for him, may be presumed to fit him better than those who (by a general aim) at *randome*, make cloaths for

him : in like manner, seeing our *Municipal Law* was purposely composed by the sages of this land, who best knew the genius of our nation, it may be concluded more proper for our people, and more applicable to all the emergencies in this *Half-Island*, than the Civil Law, made for the general government of the whole empire, by such who were unacquainted with the particularities of our land and nation.' (Fuller's *Worthies*.)

## IGNORAMUS.

Of the distaste of James I. for the Common Law and its Professors, something has been already said. In the year 1615, his Majesty, accompanied by the Prince, and a numerous court, visited Cambridge, where strenuous efforts were made to amuse the Royal Guest. The scholars of that learned University, aware of the King's attachment to polemical divinity, prepared a series of sermons and disputations to occupy the mornings, but in their zeal to satisfy his Majesty's controversial appetite, they fed him with Theology even to repletion, and after a *Concio ad clerum* of considerable length, James was heard to complain that care had not been taken to prevent *tediosity*.

By way of diversifying the performances, a new entertainment was brought forward, which is said to have afforded the highest gratification to his Majesty. This was the Comedy of Ignoramus,

written by George Ruggle, of Clare Hall, a person of whom nothing further is known. It was intended to satirize the Professors of the Common Law. "The hero of the piece is a practitioner of the Common Law, so much decried by the courtiers of the day, and the ridicule attached to his cunning, his pedantry, and the barbarous jargon of technical terms, and latinized English, of which his discourse is compounded, was no less agreeable to the monarch, than it proved offensive to the profession of which Ambidexter Ignoramus is the representative." (*Memoirs of the Court of King James, v. ii. p. 3.*) By the royal command the piece was twice represented; and during the last century it was twice selected for performance by the Westminster Scholars.

In the following scene, Ignoramus informs his clerks, Dulman and Pecus, of his love to Rosabella, and ridicules Musæus for his academical education.

“ ACTVS I. SCÆNA III.

*Ignoramus. Dulman. Musæus. Pecus.*

Phi, phi, tanta pressa, tantum croudum, vt fui pene trusus ad mortem: habebō *actionem de intrusione contra omnes et singulos*: Aha, Mounsiers, voulez vox intruder par ioinct Tenaunt, il est playne case, il est point droite, de le ben seance. O valde caleor, O chaud, chaud! precor deum non

meltaui meum pingue. Phi, Phi. In nomine Dei, vbi sunt Clerici mei iam? *Dulman, Dulman.*

*Dul.* Hic, magister *Ignoramus*, vouz haues *Dulman.*

*Igno.* Meltor, *Dulman*, meltor! Rubba me cum Towallio; Rubba! vbi est *Pecus*?

*Pec.* Hic, Sr. *Ignoramus.*

*Igno.* Fac ventum *Pecus.* Ita, sic, sic! Vbi est *Fled-wit*?

*Dul.* *Non est inventus.*

*Igno.* Ponite nunc chlamides vestras super me, ne capiam frigus. Sic, sic. *Ainsi bene faict.* Inter omnes pœnas meas, valdè lætor, et gaudeor nunc, quod feci bonum aggreamentum inter *Anglos* nostros: *Aggreamentum*, quasi *aggregatio mensium.* Super inde cras hoysabimus vela, & retornabimus iterùm erga *Londinum*: Tempus est, nam huc venimus *Octabis Hillarii*, et nunc fere est *Quindena Pasche.*

*Dul.* Iuro, magister, titillasti punctum Legis hodie.

*Igno.* Puto titillabam. *Si le nom del granteur, ou grante soit rased, ou interlind en faict pol, le faict est grandement suspitious.*

*Dul.* Et nient obstant si faict *Pol*, et illud etiam in *Coine.*

*Pec.* At id de vn faict pendu in le *Smoake*, nunquàm audiui titillatum melius.

*Igno.* Quid tu dicis, *Musæe*?

*Mus.* Equidem ego parum intellexi.

*Ign.* Tu es *Gallicrista*, vocatus a *Coxcombe*; nunquam faciam te *Legistam*.

*Dul.* Nunquam, nam ille fuit *Vniuersitans*.

*Ign.* Sunt magnæ *Idiotæ*, et *Clerici nihilorum* isti *Vniuersitantes*: miror quomodo spendisti tuum tempus inter eos.

*Mus.* Vt plurimum versatus sum in *Logicâ*.

*Ign.* Quæ villa? quod Burgum est *Logicâ*?

*Mus.* Est vna artium liberalium.

*Ign.* Liberalium: Sic putabam: In nomine dei, stude Artes parcas et lucrosas: non est mundus pro Artibus liberalibus iam.

*Mus.* Deditus etiâ fui amori *Philosophiæ*.

*Ign.* Amori? Quid? Es pro *Bagaschijs* et *Strumpetis*? si custodis malam regulam, non es pro me: sursum reddam te in manus *Parentum* iterum:

*Mus.* *Dij faxint*.

*Ign.* Quota est *Clocka* nunc?

*Dul.* Inter octo, & nina. *Ig.* Ite igitur ad mansorium nostrum, cum *Baggis* & *Rotulis*. Quid id est? videam hoc instrumentum, mane *PETIT* dum calceo *spectacula* super nasum. O ho, ho, scio iâ *Hæc Indentura facta est inter Rogerum Rattle-docke de Carton in Com. Brecknocke*. O ho, *Richard Fen, John Den*. O ho, *Proud Buzzard Plaintiffe, aduersus Peakegoose defendant*. O ho, hic est defalta literæ, emenda, emenda, nam in nostra lege vna *Comma* euertit totum *placitum*.

**Ite iam, capiato tu hoc, tu hoc ingrossa, tu trus-  
sato sumptorium pro iornea.**

*Exeunt Clerici.*

**IGNORAMVS. Solus.**

Hi, ho, *Rosabella*, hi, ho ! Ego nunc eo ad *Veneris Curiam* lætam tentam hic apud *Torcol* : Vicecomes eius *Cupido* nunquam cessavit, donec *inuenit me in Baliua sua* : Primum cum amabam *Rosabellam* nisi parnum, misit *paruum Cape*, tum *magnum Cape*, & post *alias Capias*, & *pluries Capias*, & *Capias infinites*, & sic misit tot *Capias*, vt tandem *Capavit me vtlegatum* ex omni sensu & ratione mea. Ita sum sicut musca sine caput, buzzo & torno circum circa, & nescio quid facio ; cum scribo instrumentum, si foemina nominatur, scribo *Rosabellam*, pro *Corpus cum causâ*, *Corpus cum caudâ*, pro *nouerint uniuersi*, *amauerint uniuersi*, pro *habere ad rectum*, *Habere ad lectum*, & sic vasto totum *Instrumentum*, Hei, ho, ho, hei, ho."

In the scene which we give below, Ignoramus pays his court to his mistress and promises her a valuable jointure. The "Versus legales" are peculiarly piquant.

"ACTVS I. SCÆNA V.

*Torcol. Rosabella. Ignoramus.*

*Surda.*

Quid fles, perueicax ? num ego te caste et pudice eduxi, ideo vt mihi, tibi que adeo, tuoque aduersere

commodo ? Aut huic libenter nube aut *per a ques-  
ta Cruz de Dios* te hinc aueham *Fessam* iterum,  
vbi te aut vendam aut prostituam. Ego tibi bene  
cupio. Tunc vis ? Responde quid ais ?

*Ros.* Patruè, tu sapis, tibi quod videbitur, æquum  
est id me facere.

*Tor.* Recte iam, atque vt decet.

*Ros.* Dissimulandum amorem video, ne ruam in  
peius : Non vnquam ego te *Antoni*.

*Tor.* Hanc ego illi custodem apposui *Nanam*,  
quæ tres menses licet integros surda sit iam, fide-  
lis tamen, atque ex signis intelligit satis. (*He  
makes signes to her.*)

*Sur.* Recte intelligo, vt illam arcte custodiam,  
neue quopiam longius abeat à foribus.

*Tor.* Intelligit.

*Sur.* Neue iuuenem eam patiar alloqui.

*Tor.* Bene.

*Sur.* Quamprimum ille hanc allocutus sit, intro-  
eat illicò.

*Tor.* Eia, quàm citò.

*Sur.* Sin secus, interminare mihi te me verbe-  
raturum vsque ad necem. Curabitur quod iubes.

*Tor.* Signior, mea Cognata hæc summopere te  
super omnes mortales amat : Experire: ego hinc  
abeo, nam mihi negotium est : memento signi, &  
pecuniæ.

*Ignò.* Nulla erit defalta. Sed tu nos admittas.

*Sur.* Fiet, inquam.

*Igno.* Ha he, *Rosabella* mea, hem hem hem, *Madame*, & vosmet *Magistri iurati*, hæc est *Actio super casum*. Phi phi, lingua vadit ad verba ac customata : Puto me placitare iam.

*Sur.* Quantum video, hic homo stultus est.

*Igno.* Madame, pardona mihi, nunquam amaui antehac. Sed veniam ad punctam, & iungemus *issue*. Visne facere *maritagium* mecum ?

*Ros.* Haud equidem tali me dignor honore.

*Igno.* Profectò, *Rosabella*, amo te plusquàm *rosa solis*. Dico tibi, Amor tuus fecit me *legalem Poetam*. Vis versus meos ?

*Ros.* Si placet, senior.

*Igno.* Hem hem, Versus legales de *Rosabella*. Hem hem.

*Si possem, vellem pour te, Rosa, ponere pellem :  
Quicquid tu vis, craua, & habebis singula  
braua :*

*Et dabo Fee simple, si monstras Loue's prettie  
dimple,*

*Gownos, Silkcotos, Kirtellos, & Petticotos ;  
Farthingalos Biggos, Stomacheros, & Perri-  
wiggos ;*

*Pantaflos, Cuffos, Garteros, Spanica ruffos.  
Buskos & soccos, Tifanas, & Cambrica Smoc-  
kos :*

*Pimpillos, pursos : Ad ludos ibis & vrsos.*

Anglice Beargarden.

Annon hæc sunt bona in lege ?



*Ros.* Euge optima.

*Ign.* Ergo ad ludos ibis & vrsos. Facies quicquid vis, puella, si alijs sit *clausa Curia* : Tene, est *lilla vera*.

*Ros.* Portabo in sinu meo.

*Ign.* Amas me ?

*Ros.* Amaret quis non ?

*Ign.* Ais? dabo tibi *bonam iuncturam*, faciam ames me plus & plus. Audi *iuncturam tuam*. Ego *Ambidexter Ignoramus in feoffo te uxorem meam Rosabellam in Taile special de situ Manerij de Tongwell, cum capitali messuagio ; Et do tibi omnia & singula Messuagia, Toftos, Croftos, Cottagia, & Columbaria, Molendina, Fullonica, Aquatica, Ventritica, Gardinos, Tenementa, Boschos, subboschos, Jampnos, Brueras, Moros, Morischos salsos, Morischos freschos, Juncaria, Turbaria, Alneta, Mosseta, Communiam pasturæ, liberam warrenam, piscariam, faldam, & Decimas garbarum, bladorum, lgranorum, agnellorum, foeni, lini, canabis, & telonium, Stallagium, Pontagium, Picagium, Esche-ta Catalla felonum, waviata, extra, H Æ R A S, wrecca maris.*

*Ros.* O nimium est.

*Ign.* Mane dum capio anhelitum ; & dabo tibi decies tantum.

*Ros.* Quauquam intus fleam, risum expressit mihi.

*Sur.* Satin sanus hic homo ? Videtur foeminâ,  
& Picâ, & Psittato loquacior.

*Ignor.* Redde mihi amorem iam quid pro quo.

*Ros.* Æquum postulas.

*Ignor.* Ergo da mihi osculum, da quæso.

*Ros.* Durè. Cor dura. O pulchrum *Amasium* !  
ô patruî auaritiâ !

*Ignor.* Lego pulchras lineas in facie tua——  
*He offers to kisse her.*

*Sur.* Abi, abi.

*Ignor.* Habeo *quare impedit* pro te. Volo tibi  
*sigillare et deliberare vnum osculum.*

*Sur.* Skats, scat, ah.

*Ignor.* Vale, *Rosabella* mea, iam vsque ad mox.  
Hoc osculum mihi facit bonum apud cor. Possum  
volare super tria clocheria nunc Sed ego ero satis  
callidus pro *Torcol.* Nam cum venio in *Angliam*,  
maritabo diuitem vxorem ; & tum tenebo hanc in  
*Commendam* tantum pro *Transi-tempus.* Ibo nunc  
pro coronis.

*Sur.* Illum amas vti video.

*Ros.* Mortem magis.

*Sur.* Bene facis. (*Exit Ignor.*)

Ille tibi dabit——

*Ros.* Malum.

*Sur.* Ergo non amas illum iuuenem.

*Ros.* Non vitam æquè.

*Sur.* Odisse te innuis ; optimè. Equidem im-  
meritò te suspicatur herus meus.

*Ros.* Quàm crucior. *Antonium* me non amare nunc, vel fingere? fingendum est tamen, vt suspitione libera ad illum aufugiam facilius, si ad *Ignorantium* ducar. Verum audiui *Antonium* hodiè hinc *Londinum* abiturum. O perfidam, si id nunc faciat! fidem dedit mihi: quod si iam me deserit, perij.

*Sur.* Nam si illi nubes, affluës diuitijs.

#### THE CRIME OF MULTIPLICATION.

The reader must not imagine, that we are going to discuss Mr. Malthus's doctrine. The crime of multiplication related only to the multiplication of gold, for, as yet, we have no enactments directly forbidding the multiplication of man. In the reign of Henry IV. (5 Hen. IV. cap. iv. repealed by Stat. 1 W. and M. sess. i. c. 30.) a statute was made forbidding the multiplication of the precious metals, which gave rise to the following case. (*Dyer*, 88. a.)

#### *Eden and Whally's Case.*

One Eden confessed himself guilty of multiplication; *ss.* That he had practised the making of a quint-essence and the philosopher's stone, by which all metals might be turned into gold or silver, and also accused Whally, now a prisoner in the Tower, of urging and procuring to use and practise this art, and that Whally had laid out money in red wine and other things necessary for

the said art ; and because this offence is only felony, Eden, the principal, was pardoned by the general pardon. But Whally, who was but accessory, in this case excepted, as one of those who were in the Tower. The question was moved, whether Whally should be discharged ; quære the statute of 5 Henry IV. c. 4, which enacts, that none should use to multiply gold or silver, nor use the craft of multiplication ; and if any the same do, that he incur the pain of felony in this case. Quære, whether there can be any accessory in this new felony ?

In the margin of this Report, Lord Chief Justice Treby has cited a case from Moore, thus :—  
“ In Mr. Darcy’s action on the case of monopolized cards, there was cited a commission in the time of Henry VI. directed to three friars and two aldermen of London, to enquire, whether the philosopher’s stone was feasible ; who returned, that it was ; and upon this a patent was made out for them to make it.” (*See Moore, 675.*)

We know not what to admire most in this transaction : the wisdom of his Majesty’s choice in selecting three friars and two aldermen of London to prosecute so philosophical an inquiry,—the modest confidence of the worthy commissioners in reporting the matter so practicable,—or the King’s sly hit in directing a patent to be immediately made out for it, in order to secure

to the reverend and corpulent philosophers the full benefit of their valuable discovery.

THE PERVISE OF PAUL'S.

The word Pervise is said to be derived from *Paravisus*, the porch of a church, or the outer court of a palace or great house. In the early times the Pervise of St. Paul's was frequented by the lawyers as a kind of judicial exchange, where they were accustomed to meet their clients for the purpose of consultation. "In an afternoon," says Fortescue, "the suitors of the court betake themselves to *the Pervise*, and other places, to advise with the Sergeants at Law, and others their Counsel, about their affairs." (*De Laudibus, &c. c. 51.*) "Ibi," says Spelman, "Legis periti convenere ut clientibus occurrerent, non ad tyrocinia juris quas *Motas* vocant exercenda." (*Ad. v. Parvæ, &c.*) Dugdale tells us, that at St. Paul's, "Each Lawyer and Sergeant at his pillar, heard his client's cause, and took notes thereof upon his knee, as they do at this day at Guildhall. After the Sergeants' feast ended," continues Dugdale, "they do still go to Paul's in their habits, and there choose their pillar whereat to hear their client's cause, (if any come,) in memory of that old custom." (*Origines Jurid. p. 142.*) It seems that the Temple church was a place of common-resort in the same manner. "Item, they, (the

lawyers,) have no place to walk in, and talk and confer their learnings, but in the church ; which place all the term-times hath in it no more quietness than the Pervise of Paul's, by occasion of the confluence and concourse of such as are suitors in the law." (*Dugd. Orig. Jurid. p. 195.*)

Even as early as Chaucer's time, the Pervise of St. Paul's appears to have been appropriated to this use :

“ A Sergeant at Law ware and wise,  
That often had been at the Pervise.”

CURRAN'S BON MOTS.

For the following observations on the genius of Curran's wit we are indebted to the admirable Life of that celebrated man, by his son, Mr. W. H. Curran.

“ Numerous specimens of his wit have been preserved, from which its style, rather than its extent, may be collected. It may be generally observed of his wit, that it delighted, not so much from the naked merit of any single efforts, as from the incessancy and unexpectedness of its combinations. It also possessed one quality, which is above all value, that of never inflicting an undeserved wound. In all those cases where the words might seem to intend a personal reflection, he never failed to neutralize the poison by a playful

ironical manner, which testified his own disbelief of what he was asserting. It would be difficult to produce an equal number of pointed sayings, in which the spirit consists so little in particular or general satire, neither do they appear, like the humorous sallies of many celebrated wits, to have been dictated by any peculiar set of speculative opinions. The sceptic, the misanthrope, the voluptuary, and all, in short, who habitually look at the business of life through the medium of their particular doctrines, are perpetually betraying in their mirth, some open or lurking application to their favourite tenets; the instances of their wit, if accurately examined, may be resolved into illustrations of the system. Thus, the humour of Voltaire is for ever reminding us of his impiety, that of Swift of his splenetic contempt of human folly; but almost all of Mr. Curran's lively sayings were suggested at the moment by the immediate circumstances and persons, or verbal associations. They are in general insulated and individual, ending where they began, and not referring to any previous systematic views of human affairs.

“ An entire collection of the Bon-mots attributed to Mr. Curran, would fill many pages. The following are selected as a few specimens. In all of them it will be seen, how much less the essence

depends upon the satire than upon the fanciful combination of words or images.

“Mr. Curran was engaged in a legal argument : behind him stood his colleague, a gentleman whose person was remarkably tall and slender, and who had originally designed to take orders. The Judge observing that the case under discussion involved a question of ecclesiastical law, ‘Then,’ said Mr. Curran, ‘I can refer your Lordship to a high authority behind me, who was once intended for the *church*, though, (in a whisper to a friend beside him,) in my opinion, he was fitter for the steeple.’

“An officer of one of the courts, named Halfpenny, having frequently interrupted Mr. Curran, the Judge peremptorily ordered him to be silent, and sit down. ‘I thank your Lordship,’ said the Counsel, ‘for having at length *nailed that rap to the counter*.’

“‘I can’t tell you, Curran,’ observed an Irish nobleman, who had voted for the Union, ‘how frightful our old House of Commons appears to me.’ ‘Ah, my Lord,’ replied the other, ‘it is only natural for murderers to be afraid of ghosts.’

“A deceased Judge had a defect in one of his limbs, from which, when he walked, one foot described almost a circle round the other. Mr. Curran being asked how his Lordship still continued to walk so fast? answered, ‘Don’t you see that



one leg goes before like a tipstaff, and clears the way for the other.'

" Mr. Curran, cross-examining a horse-jockey's servant, asked his master's age. ' I never put my hand in his mouth to try,' answered the witness. The laugh was against the counsel, till he retorted, ' You did perfectly right, friend, for your master is said to be a *great Bite*.'

" A miniature-painter, upon his cross-examination by Mr. Curran, was made to confess, that he had carried his improper freedoms with a particular lady so far as to attempt to put his arm round her waist. ' Then, Sir,' said the counsel, ' I suppose you took that waist (*waste*) for a *common*.'

" ' No man,' said a wealthy, but weak-headed barrister, ' should be admitted to the bar, who has not an independent landed property.' ' May I ask, Sir,' said Mr. Curran, ' how many acres make a *wise-acre* ?'

" ' Could you not have known this boy to be my son, from his resemblance to me ?' asked a gentleman. Mr. Curran answered, ' Yes, Sir, the maker's name is stamped upon the *blade*.'

" Mr. Curran being asked, ' what an Irish gentleman, just arrived in England, could mean by perpetually putting out his tongue ?' answered, ' I suppose he's trying to catch the English accent.'

" At a public dinner, he was defending his

countrymen against the imputation of being a naturally vicious race. ‘ Many of our faults, for instance,’ (said he,) arise from our too free use of the circulating medium, (pointing to the wine,) but I never yet heard of an Irishman *being born drunk.*’ ” (*Life of Curran, vol. ii. p. 339.*)

## MR. CURRAN AND LORD CLARE.

“ Lord Clare had a favourite dog that sometimes followed him to the Bench. One day, during an argument of Mr. Curran’s, the Chancellor, in the spirit of habitual petulance which distinguished him, instead of attending to the argument, turned his head aside, and began to fondle the dog. The counsel stopped suddenly in the middle of a sentence,—the judge started.—‘ I beg pardon,’ said Mr. Curran, ‘ I thought your *Lordships* had been in consultation ; but as you have been pleased to resume your attention, allow me to impress upon your excellent *understandings* that—, &c.’ ” (*Curran’s Life, by his Son.*)

## LEGAL BIOGRAPHY.

The Life of a Lawyer, like that of a Scholar, has been generally supposed to offer few materials for the pen of the biographer ; but this idea is erroneous. The History of a celebrated Lawyer is, for the most part, so closely connected with that of his age and country, as to acquire an interest

far above that which usually distinguishes the Memoir of a private individual. His professional avocations are frequently only pursued as the means of political advancement, a circumstance which will always give his biography a degree of public interest. At the same time, an eminent Lawyer must necessarily fill a conspicuous place in society, and his Life will, therefore, be more or less connected with that of the most distinguished men of his day. The personal character also of a man who has occupied the first rank in an intellectual and arduous profession, can never be unworthy of study. It is singular, therefore, when we remember the many eminent names which adorn the annals of our law, that our legal biography should still remain so imperfect a branch of our literature. With the view of briefly shewing what has already been accomplished with regard to this subject, the following observations are offered to the reader.

Amongst the earliest works of Legal Biography is the Life of Sir Thomas More, and of none of our lawyers are the Memoirs so numerous as of this celebrated man. The earliest printed Memoir of him appears to be a 4to. volume, entitled *Historia aliquot nostri seculi martyrum, viz. Thomæ Mori, Joan. Fisher, &c.* 1550. The next in point of date is his Life by Stapleton, written in Latin, and published in the year 1588; “ upon

the whole," says Mr. Dibdin, (*Introduction to Utopia*, p. xl.) "a valuable and elegantly written composition." It is rarely to be met with. In 1626, another Life was published, under the title of "*The Mirror of Virtue in worldly greatness ; or, the Life of Sir Thomas More*," which appears to be an incorrect transcript from Roper's Life of More. (See *Lewis's Preface to Roper's More*, p. 24.) About the same time appeared "*The Life and Death of Sir Thomas More, Lord High Chancellor of England. Written by M. T. M., &c.*" 4to. without date or place. The author of this Life, (which was reprinted in 1726,) was the Chancellor's great grandson, Thomas More. It is very scarce, and is termed, by Mr. Dibdin, "in every respect the most valuable piece of biography extant of More;" (*Introduction, &c.* p. xliv.)—an opinion which may, perhaps, be thought too eulogistic.\* Hoddesdon's Life is next in date, "*Tho. Mori, Vita et Exitus; or, the History of Sir*

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\* A different character of this volume is given in Jortin's Life of Erasmus, vol. i. p. 174. "We have a Life of Sir Thomas More, written by this Mr. More, who was a narrow-minded zealot, and a very fanatic. However, we will extract a few passages from it. Wood, the Antiquary, says of this book, that it was incomparably well written, and the judgment is such as might have been expected from the man."

*Thomas More, sometime Lord High Chancellor of England, collected out of several Authors. By J. H. [oddesdon,] Gent. London.*" 1652, 8vo. 1662, 12mo. This work is chiefly, as its title expresses, a compilation from the preceding volumes. In 1716, the first edition of the *Life of More*, by his son-in-law, Roper, appeared, edited by Hearne: and in 1729, Mr. Lewis, the author of the *Life of Caxton*, published the same *Life* from another MS. and added to it a Preface, and some valuable Notes. This volume, which is by far the most interesting of all the *Memoirs of Sir Thomas More*, has been several times reprinted; a very beautiful edition of it appeared in the year 1822, from the Chiswick press, edited by that intelligent scholar, Mr. W. S. Singer.\* Two more modern Lives remain to be mentioned, that prefixed by Dr. Warner to his edition of the *Utopia*, (1758,) and Cayley's "*Memoirs of Sir Thomas More*," 2 vols. 4to. 1808. The reader who is desirous of further information respecting the *Biography*

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\* We observe that Mr. Singer is inclined to give credit to the accusations against More respecting his persecution of Heretics. (*See Ante, p. 53.*) "The only serious and unrefuted charge which can be brought against his memory, is the severity of misguided zeal with which he sought out and punished the early reformers, whom he *unrelentingly persecuted* with the pen and the scourge, as pernicious Heretics." (*P. xviii.*)

of Sir Thomas More, may be referred to Mr. Dibdin's Biographical Introduction to his reprint of Robinson's Translation of the Utopia.

One of the most singular, and, in some respects, the most entertaining pieces of biography in the language, is the Life of the Lord Keeper Williams, by his Secretary, Dr. Hacket, afterwards Bishop of Lichfield: "*A Memorial offered to the Great deservings of John Williams, D.D. who some time held the places of Lord Keeper of the Great Seal of England, Lord Bishop of Lincoln, and Lord Archbishop of York.*" The style of this work (of which the reader has already, in the course of these volumes, had an opportunity of judging) is most singular, and partakes very largely of the pedantry which prevailed at the period when the author wrote. The fanciful allusions, the recondite metaphors, and the quaint expressions with which it abounds, render the continuous perusal of it rather a tiresome task; but the zeal and fervor of the writer, and his intimate acquaintance with the subject of his memoir, are sufficient to overcome the distaste which his pedantry inspires. The details which this work contains of the political events and the Court intrigues of the reign of James I. give it no inconsiderable value in the estimation of the general historian; while the curious matter which we occasionally find in it relative to the state of the law, and the character

of the lawyers of that day, render it a favourite with the legal antiquary. In many of these particulars it will almost bear a comparison with that admirable work, the *Life of Lord Guilford*, of which we shall shortly have occasion to speak.

There is also another *Life of Lord Keeper Williams*, by Ambrose Phillips: "*The Life of John Williams, Lord Keeper of the Great Seal, Bishop of Lincoln and Archbishop of York in the reigns of King James and King Charles I. wherein are related several remarkable occurrences of those times, both in Church and State.*" 12mo. Lond. 1700. This *Life* is little more than an Abridgment of Bishop Hacket's: "Bishop Hacket's," says Phillips, in his Preface, "is the great storehouse from whence I have taken my materials for the following *Life.*"

Of the other celebrated lawyers of this day, (and they were many,) we have few memorials. Of Selden, "the Arch-antiquary," as he has been well designated, a biographical account is prefixed by Dr. Wilkins, to the collected edition of his works, which has served as the basis of Dr. Aikin's judicious "*Life of Selden.*" There is not, however, much to interest the reader in the personal history of this celebrated man, whose life was more devoted to reflection than to action.

The *Life of Sir Thomas Egerton*, afterwards Baron Ellesmere, who preceded Bacon on the

Woolsack, was written, we believe, some years ago, by a member of the Bridgwater family, who trace their descent from the Chancellor, but as this volume was only printed for private distribution, it has never fallen into the hands of the writer of the present article.

To these volumes the legal biography of the reign of James I., a period rich in eminent lawyers, is confined. Considering this reign as the termination of the *jus antiquum*, or feudal system of jurisprudence which prevailed up to this period, and as the commencement of the *jus novum*, or the system of personal and mercantile law, it affords a rich field for curious speculation to the legal historian and antiquary. At the same time the personal characters of the eminent lawyers of that day are well worthy of attention. The lives of Lord Bacon and Sir Edward Coke, more particularly, have never yet been written in the manner which they deserve.

Amongst the most important *desiderata* of legal biography, a Life of Lord Bacon is undoubtedly the most conspicuous. The personal character of that extraordinary man, his eminence as a philosopher, his profligacy as a politician, and his meanness as a man,—the many important and interesting transactions in which he took part—the state of the law, and more especially of constitutional law, at the period when he lived, all



contribute to render a well-written life of him a most invaluable accession to legal literature. The *Life of Bacon* by Mallet is, as Mr. Butler has observed, "universally admitted to be very defective." But who shall attempt the task? Where shall we find that rare and happy union of the philosopher, the lawyer, and the man of letters, which such a labour would require? The materials for so noble a piece of biography are ample, but what hand shall venture to arrange them? We are indeed told by Mr. Butler that we may expect a *Life of Lord Bacon* from the pen of Mr. Basil Montagu. (*Reminiscences*, p. 316.) The preceding observations are, perhaps, therefore premature.

Closely connected with the biography of Lord Bacon is that of his great legal rival Sir Edward Coke, whose life and writings furnish a rich field for the juridical historian. The account of him which is to be found in the *Biographia Britannica*, is compiled with great diligence and judgment, and would be of very considerable assistance to any future biographer. There exist, we believe, several original letters from Sir Edward Coke in the British Museum.

The only work of legal auto-biography which we possess is the *Life of Lord Clarendon*. "*The Life of Edward, Earl of Clarendon, Lord High Chancellor of England, and Chancellor of the*

*University of Oxford ; containing an account of his life, from his birth, to the restoration in 1660. Written by himself.*" We are so much more accustomed to regard Clarendon in his character of a politician than of a lawyer, that we can scarcely class this admirable work under the head of legal biography. In truth, Clarendon's short professional career has little in it to attract our attention, while his history as a statesman is full of interest and instruction. Of the earlier part of his professional life, and of his intimacies with many of the celebrated lawyers of his day, he has left some pleasing details, which we have already extracted. (*See ante, p. 156.*) In an historical point of view the life of Clarendon is highly valuable, but it contains little matter calculated to interest the mere lawyer.

The half century which followed the Restoration is, perhaps, the richest period in our annals, to the legal biographer. During this short space of time the greatest and meanest, the most excellent and the most infamous characters may be found occupying the judgment seats of our Courts of Justice. Within this period flourished Hale and Jefferies, Somers and Scroggs. Immediately after the Restoration the Court appeared to be anxious that the great offices of the law should be bestowed upon persons worthy of filling them, and Clarendon, who, whatever may have been his

errors, never displayed that open political profligacy which afterwards distinguished the measures of his master's advisers, was entrusted with the arrangement of the new law appointments. A number of respectable men were consequently placed upon the Bench; but when Clarendon lost his favour, and the abandoned designs of the Court began to develop themselves more clearly, several of the most unprincipled men in the nation were raised to the highest dignities of the law. The judicial biography of the reigns of the two last Stuarts furnishes some excellent lessons, and well deserves to be recorded. The materials for such a work also are copious and accessible. There are, indeed, few original memoirs of the lawyers of that day; but in the pages of the historians and other writers much curious information relative to the state of the Bench and the Bar at this period is to be found. The "Examen" of Roger North may be particularly mentioned. Of individual memoirs there exist two or three small volumes containing an account of Jefferies,\* but the history of that infamous man

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\* A judicious memoir of Jefferies would be a valuable addition to the English Historical Library. The question of the guilty connivance of James II. at the cruelties practised in the west has never been thoroughly investigated. Mr. Thorpe, Bookseller, Bedford-st. Covent Garden, possesses a collection of tracts and pam-

is best read in the State Trials. The only work of this period which has any claims to the title of Legal Biography is the inimitable Life of the Lord Keeper Guilford, by his brother, Roger North. Of that work we shall be allowed to speak a little more particularly.

There is not, perhaps, in all our biographical literature, a work more perfect in its kind than the Life of Lord Guilford. If the excellence of a biographer consists in his power of drawing so accurate and natural a likeness that the original shall seem to stand before us, there are few biographical writers more successful than Roger North. After reading the Life of the Lord Keeper we seem absolutely to have been acquainted with him, so powerful and natural is the manner in which his character is drawn. The close intimacy which Roger North enjoyed with his brother gave him an opportunity of finishing his portrait with the utmost nicety and precision of pencil, and he has, indeed, produced a resemblance so extremely faithful, that even the defects of his brother's character are accurately portrayed. The Lord Keeper North occupied the debateable ground between the honest and the dishonest lawyers of his day. He was a man of low principle, with suffi-

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phlets relative to Jefferies, which appears to contain some curious articles.

cient wisdom and good feeling not to degrade himself to the level of Jefferies or Scroggs, and yet without the integrity or nobleness of mind which would have enabled him to approach the rank of Hale. The intellect and feelings of Roger North did not rise above the same standard; and he has accordingly described his brother's character just as it existed, under the firmest conviction of its superior excellence.

But it is not merely as a faithful biographical sketch that the Life of Lord Keeper North is of value; it presents also a lively and amusing picture of the times, and some admirable portraits of several of the most celebrated lawyers who flourished at that period. The account of Sir Edmund Saunders we have already extracted for the amusement of our readers. (*See ante, vol. i. p. 70.*)

It should be observed, however, that Roger North's narrative must often be taken with many grains of allowance. A more prejudiced writer has seldom existed. His bias in favour of his prerogative notions frequently leads him to do great injustice to some of the best men of his day, and amongst the rest to Sir Matthew Hale. Wherever the Court is concerned he shews himself a decided partizan, and does not hesitate to inform his readers that in his opinion there cannot be a good lawyer unless he be at the same time a good

prerogative man. This spirit has occasioned various misrepresentations in his book, which, indeed, stands more in need of annotation than any memoir in the language.

Perhaps one of the best subjects in our literature for the pen of the biographer is the Life of Lord Somers, whose character and actions have never been recorded in a manner suitable to their worth and dignity. On this subject something has already been said, (*see ante*, vol. ii. p. 139,) and it only remains to notice the biographical accounts of this celebrated man which we at present possess. The earliest work on this subject appears to be one entitled "Memoirs of the life of John, Lord Somers," published soon after his death, in 1716, and styled by Mr. Cooksey "a very paltry performance." A work which that gentleman could justly esteem inferior to his own, must indeed be a wretched production. Mr. Cooksey proposing to write "a compendious History of Worcestershire," collected various memoranda relative to the history of the celebrated men connected with that county; and the jejune and scanty memorials of Lord Somers which he thus threw together, he gave to the world under the title of "*An Essay on the Life and Character of John, Lord Somers.*" We may form some opinion of the intellect of this writer when we find him at the commencement of his Essay stating that the only imperfection or blemish

charged upon Lord Somers by his bitterest enemies was the lowness of his birth, and yet accusing him; at the conclusion, of the most degrading profligacies. Fortunately this Essay is only a fragment. To this Essay are also added "*Sketches of the Life and Character of Philip, Earl of Hardwicke,*" which merely consist of several letters addressed to Mr. Cooksey by persons who were in possession of some facts relative to the History of Lord Hardwicke. The most interesting portions of these letters have been already laid before the reader.

In the year 1812, there appeared *An account of the Life and Writings of Lord Chancellor Somers, including remarks on the public affairs in which he was engaged, and the Bill of Rights, with a Comment. By Henry Maddock, Esq.* The title of this work (which is also a fragment) promises much, but the manner in which Mr. Maddock has executed his task is by no means unexceptionable. The style is crude, unpleasing, and devoid of ease. At the same time it must be admitted that Mr. Maddock has displayed considerable diligence in his biographical duties, and that he has properly appreciated the character of Lord Somers.

Of the "*Life of Sir Matthew Hale,*" by Burnet, it is unnecessary to speak, as that work is probably well known to the reader. Its merits justify the high eulogium of Johnson.

Of Holt, the worthy successor of Sir Matthew

Hale, a good biographical account is wanting. The volume which bears the title of "*The Life of the Rt. Hon. Sir John Holt, Knt. (London, 1764,)*" is merely a collection of arguments, and does not contain half a dozen pages devoted to the biography or character of Holt.

Amongst the lawyers\* of the last century there are few whose characters and celebrity are such as to induce us to regret that there exist no more perfect memorials of their lives. Of Lord Somers, who may be more properly referred to the preceding century, we have already spoken. The Life of Lord Mansfield has been written, but in a manner by no means equal to the dignity of the subject.\* It appears also that Mr. Ruffhead, the

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\* The author of the Pursuits of Literature has made some severe observations on this production, which he calls "a long life in 4to. of the great Earl of Mansfield, Lord Chief Justice of the Court of King's Bench, by Mr. Halliday, in a very peculiar style indeed. For the greater part, it is a bundle of reports and law pleadings strung together. It is astonishing to me that conveyancers and attorneys, who really appear not to know how to construct a single sentence without provoking a smile at some error in grammar, in language, or in metaphor, should think themselves qualified to deliver down to posterity the lives of great men. Luckily Mr. Halliday's zeal does not offend us in rhyme. The friendship and the verse of Pope, as well as the splendour of his own abilities and the dignity of their high exertion,



editor of the Statutes, and the author of the Life of Pope, applied to his Lordship for materials for writing his Life, a request with which Lord Mansfield had the discretion not to comply. If we may form a judgment of Mr. Ruffhead's genius for biography, from his Life of Pope, his Lordship's refusal is not to be regretted. On this occasion Lord Mansfield is reported to have said that his Life was not of importance enough to be written, adding "if you wish to write the Life of a truly great man, write the Life of Lord Hardwicke, who, from very humble means, and without family support, became Lord High Chancellor of England, on account of his virtue." (*See Seward's Anecdotes of Distinguished persons, vol. ii. p. 360, and another version of the same anecdote in Strictures on the Lives and Characters of the most eminent Lawyers of the present day, 1790, p. 29.*) It seems questionable whether the incidents of Lord Mansfield's life would have afforded sufficient materials for an interesting biographical work. A spirited sketch of his professional life has been given by Mr. Butler. It first appeared in Mr. Seward's Collection of Anecdotes, and has been subsequently reprinted by its author.

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have secured an eternity of reputation to the Earl of Mansfield, Lord Chief Justice of England, which can never fall, even by Mr. Halliday's attempt." (*Pursuits of Literature, p. 285, Note, 16th Edit.*)

Notwithstanding Lord Mansfield's hint, the *Life of Lord Hardwicke* has never yet been written. Cooksey, indeed, has appended a few fragments respecting him to his *Sketches of the Life of Lord Somers*; but the authenticity of many of these details seems doubtful. In the lately published memoirs of Horace Walpole also, some bitter notices of Lord Hardwicke may be found. (*See Post.*)

Of Sir William Blackstone a short memoir is prefixed to the edition of his reports by Mr. Clithero. A volume was also published in the year 1782, under the copious title of "*The Biographical History of Sir William Blackstone, late one of the Justices of both Benches, a name as celebrated at the Universities of Oxford and Cambridge as at Westminster Hall. And a Catalogue of all Sir William Blackstone's Works, manuscript as well as printed, with a nomenclature of Westminster Hall. The whole illustrated with notes, observations, and references; also, a Preface and Index to each part. By a Gentleman of Lincoln's Inn.*" Who this Gentleman was we know not, but he certainly produced one of the most extraordinary pieces of biography in our literature. A more crude collection of ill-assorted and irrelevant anecdote, and of hasty and injudicious criticism, was never suffered to escape from the press.

The "*Memoirs of the Life of the Right Honor.*

able *Sir John Eardley Wilmot, Knt. late Lord Chief Justice of the Common Pleas, By John Wilmot, Esq.*" is a well written, and upon the whole an interesting work. The character of Sir Eardley Wilmot was not perhaps a very open and simple one, nor is there any thing very eventful in his biography, but his connexion with many distinguished persons of his day, of whom we meet with occasional anecdotes in these memoirs, gives them considerable value.

Before concluding this very imperfect sketch, we cannot forbear to mention a piece of modern legal biography, with which it is probable that most of our readers are acquainted, *The Life of Mr. Curran*, by his son, Mr. W. H. Curran. This judicious and excellent work, so creditable at once to the subject and to the writer of it, is well deserving of a distinguished place in the library of every lawyer. Mr. W. H. Curran had a most difficult and delicate task to perform, and he achieved it in a manner highly honourable to his talents and his feelings. The affectionate forbearance displayed by the writer in alluding to his father's errors, from which it is said he had himself been the chief sufferer, is so highly pleasing, that the paragraph is transcribed in the note.\*

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\* "Such were his excellencies, or his harmless peculiarities, and the office of enumerating them has been

## THE LAW OF GIBBETS.

“ One was ordered by the judge of assize to be hanged in chains ; the officers hung him *in privato solo* ; the owner brought trespass ; and upon Not Guilty, the jury found for the defendant, and the court would not grant a new trial, it being done for convenience of place, and not to affront the owner.” (*Sparks v. Spicer*, 2 *Salk.* 648.)

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easy and attractive. But biography, if the fidelity to truth which it demands be too rigidly exacted, may become a hard task, converting a friend, or one nearer than a friend, into the ungracious character of an accuser. Every lover of genius would wish that this account of Mr. Curran's life would here have closed, without rendering it liable to the charge of having suppressed any circumstance which it would not have been to the interest of his name to have disclosed. But the question will be asked, has this been a faithful picture?—have no shades been designedly omitted?—has delicacy or flattery concealed no defects, without which the resemblance cannot be true? To such inquiries it is answered, that the estimable qualities which have formed the preceding description, have not been invented or exaggerated ; and if the person who has assumed the duty of collecting them, has abstained from a rigorous detail of any infirmities of temper or conduct, it is because a feeling more sacred and more justifiable than delicacy or flattery has taught him, and should teach others, to regard them with tenderness and regret. In thus abstaining from a cruel and unprofitable analysis of failings, to which the most gifted are often

“ Mich. 10. W. 3. per Holt, Chief Justice,—if a man be hung in chains upon my land, after the body is consumed, I shall have gibbet and chain,—said upon a motion for a new trial.” (1. *Lord Raymond*, 738.)

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the most prone, no deception is intended. It is due to that public to whom Mr. Curran's merits have been submitted as deserving their approbation, to admit with candour, that some particulars have been withheld which they would not have approved ; but it is also due to his memory to declare, that in balancing the conflicting elements of his character, what was virtuous and amiable will be found to have largely preponderated. He was not perfect, but his imperfections have a peculiar claim upon our forbearance, when we reflect that they sprung from the same source as his genius, and may be considered as almost the inevitable condition upon which that order of genius can be held. Their source was in his imagination. The same ardour and sensibility, which rendered him so eloquent an advocate of others, impelled him to take too impassioned and irritating views of questions that personally related to himself. The mistakes of conduct, into which this impetuosity of temperament betrayed him, cannot be defended by this or any other explanation of their origin, yet it is much to be able to say, that they were almost exclusively confined to a single relation, and that those who, in consequence, suffered most, but who, from their intimate connexion with him, knew him best, saw so many redeeming qualities in his nature, that they uniformly considered any exclusion from his regard, not so much in the light of an injustice, as of a personal misfortune.”

## SIR SAMUEL ROMILLY.\*

Samuel Romilly was born on the 1st of March, 1757, in Frith St. Soho, Westminster, and was the youngest of nine children. His father, Peter Romilly, was a jeweller. His family was of French extraction, and originally possessed considerable property in the neighbourhood of Montpellier, which they abandoned on the revocation of the edict of Nantes. Young Romilly is said to have been early distinguished by the extreme vivacity and sprightliness of his temper, which were, however, occasionally clouded with fits of nervous depression, a disposition which, in some degree, accompanied him throughout life. He was sent for some years to a small day school in his father's neighbourhood, and afterwards received some private instructions in classical learning. Being designed by his father for the profession of an attorney, he was placed under a gentleman in the Six Clerks' Office, but feeling an inclination towards the bar, an inclination in which he was encouraged by his friend Mr. Roget, (afterwards his brother-in-law) in May, 1778, he became a member of Gray's Inn, where he pursued his studies until the

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\* The substance of the following brief sketch is extracted from the Memoir of Sir Samuel Romilly, prefixed to the collection of his speeches, published by Ridgway in the year 1820.

year 1780. About this period his health suffered from the fatigues which he underwent in his military exercises as a member of the Gray's Inn Association, and being interdicted by his physicians from all severer studies, he employed himself in mastering the Italian language. He soon, however, returned to his professional pursuits, and the following letter, written about this time to his sister, Mrs. Roget, then residing in Switzerland, gives a pleasing picture of his occupations. The style of this letter somewhat resembles that of Sir William Jones's epistles, and is a *little* after the manner of Sir Charles Grandison.

“ You ask me if the circle of my acquaintance is as small as ever ?—Yes, to the full, less, I should rather say. All the few friends I had here two years ago, are now scattered in different parts of the earth. New acquaintance I have none. How indeed should I make them, since I am still as backward to introduce myself into company as ever? One acquaintance it is true I have made since you were in England; a friend I ought to say, if to take the greatest interest in my concerns, and to load me with unaffected civilities, can give a claim to that title. I mean Mr. Spranger, a name I believe perfectly new to you. He is a counsellor, under whom I have studied almost ever since you quitted England. Mrs. Spranger is one of the most amiable women I know, not

very young indeed, for she has four children, but still handsome, and possessing the most engaging manners. At their house, where I frequently dine or sup, though less often than I am pressed to do, I meet a good deal of company, which, consisting mostly of men of sense and education, is very agreeable. But the most engaging society, that, my dear sister, of your amiable sex, I seldom enjoy, for I am hardly ever of their card parties; besides it is not at a whist table that your sex appears in its native charms.

“ With so small an acquaintance you will easily conceive that I seek for amusement in my studies, and there I am never disappointed in what I seek. My rooms are exceedingly lively, and capable in themselves to secure me from indulging in melancholy; so that you may discard those apprehensions which I persuade myself I discover under your obliging inquiries. In the depth of winter, the moment the sun peeps out I am in the country. A cold country indeed it is, for having only one row of houses between me and Highgate and Hampstead, a north wind, sharp as your piercing *bize*, blows full against my chambers. Fortunately I am sheltered from the north east. What renders my chambers very comfortable is a tolerable collection of books, which I confess, somewhat extravagantly, I have lately purchased.”

In a letter to Mr. Roget, he says, “ You ask



me how I spend my time?—In a manner so uniformly the same, that a journal of one day is a journal of all. About six, or sooner, I rise, go into the cold bath, walk to Islington to drink a chalybeate water, (from which I have found great benefit,) return and write or read till ten, then go to Mr. Spranger's, where I study till three, dine in Frith Street, and afterwards return to Mr. Spranger's, where I remain till nine. This is the history of every day with little other variations than that of my frequently attending the courts of justice in the morning instead of going to Mr. Spranger's, and of often passing my afternoons at one of the houses of parliament. Indeed, I am grown as great a politician as \*\*\*\*, though it is not mine as it was his favourite topic of conversation. 'Peace is my dear delight,' and peace and our politics are incompatible. My father is still as warm an advocate as ever for the ministry, and I as deeply affected as ever with the miseries and disgrace they have brought on the country."

In the year 1781, Mr. Romilly visited the continent, and spent some time in Switzerland and on the borders of Italy. During his stay at Paris, he became acquainted with several of the most distinguished men of letters, and amongst others, was introduced to Diderot and D'Alembert. On his return he resumed his practice of attending the House of Commons, and his letters

to his friends abroad at this period are said to exhibit the great interest which he took in the politics of that day. On the 7th of May, 1782, he was present when Mr. Pitt made his celebrated motion on the subject of reform, which appears, from his frequent allusion to the circumstance in his own speeches in parliament, to have made a deep impression upon his mind.

On the 2nd of June, 1783, Mr. Romilly was called to the bar; and the feelings which he experienced at this period, are described with great vivacity in his letters to his friend Mr. Roget. "The nearer I approach that, which I formerly so often wished for, the more I dread it. I sometimes lose all courage, and wonder what fond opinion of my talents could ever have induced me to venture on so bold an undertaking; but it too often happens (and I fear it has been my case,) that men mistake the desire for the ability of acting some very distinguished part."

In another letter of nearly the same date, addressed to the same friend, we find the writer expressing, with the modesty peculiar to a noble nature, those doubts of his own success which his friends never entertained, and that dignified submission to the probable chances of his fortune, which he was eventually not called upon to exercise. "I have taught myself," he says, "a very useful lesson of practical philosophy, which is,

not to suffer my happiness to depend upon my success. Should my wishes be gratified, I promise myself to employ all the talents, and all the authority I may acquire, for the public good,—*patricæ impendere vitam*. Should I fail in my pursuit, I console myself with thinking, that the humblest situation of life has its duties, which one must feel a satisfaction in discharging,—that at least my conscience will bear me the pleasing testimony of having intended well, and that, after all, true happiness is much less likely to be found in the high walks of ambition than in the *secretum iter et fallentis semita vitæ*,—were it not for these consolations, and did I consider my success at the bar as decisive of my future happiness, my apprehensions would be such, that I might truly say, *Cum illius diei mihi venit in mentem, quo mihi dicendum sit, non solum commoveor animo, sed etiam toto corpore perhorresco.*”

It was a characteristic feature of Sir Samuel Romilly's life, that he retained throughout his elevated and useful career, that ardent and generous love of virtue and honour which distinguished him in his early youth. How carefully he guarded these principles, and how sensibly he felt their value, we learn from a letter addressed by him to Mr. Roget soon after he was called to the bar. “I am soon to enter upon a career, which possibly (though, I grant, not very probably,) may

place me in important and critical situations, which will certainly give me partial and selfish interests, incompatible with the good of others,—which will throw me amidst mankind, and condemn me to hear the dishonourable sentiments of which they make profession without opposing them, and to be a near spectator of their selfish and degrading conduct, without discovering any detestation at it. It will, in part, depend upon you to save me from the contagion of such examples. Not but that my heart recoils from them with an antipathy which seems quite insurmountable; but I have I know not what kind of terror, which I cannot overcome, of the force of habit,—of perpetual temptations,—of being familiarized with a contempt of virtue. The best shield against them, and the best security to maintain the purity of one's virtue, is, I am convinced, the society and conversation of such a friend as yourself, whom I may consider as the pledge and deposit of all the sacred engagements which one has taken with God, with oneself, and with one's fellow-creatures."

For some years after his entrance into the profession, Mr. Romilly's fears with regard to his success appeared to be justified. Notwithstanding his unwearied diligence and his sound legal acquirements, he is said to have attended the Warwick Sessions, the Midland Circuit, and the Court of Chancery, for

four or five years, without making the progress which he might reasonably have expected. The nervous diffidence which he displayed in court at this early period of his professional life, probably prevented the full developement of his powers. The time, however, which he spent in court was not thrown away. He gradually acquired those habits of self-possession by which he was subsequently so much distinguished, and he likewise gained that accurate knowledge of the practical part of our Law, both Civil and Criminal, which, at a late period of his life, contributed greatly to the success of his efforts in favour of an amendment of the system of our Jurisprudence. The state of the criminal Law in England had engaged his attention at a very early period, and, in the year 1786, he published some Observations\* upon Mr. Madan's truculent pamphlet, "Thoughts upon Executive Justice," (*see ante*, p. 169.) in which he fully exposed the cruelty and absurdity of that Reverend Gentleman's views.

About the year 1791, Mr. Romilly had attained considerable practice as a junior; and, in 1797, had acquired reputation even as a leader. In the following year he married Miss Garbett, a Here-

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\* Mr. Basil Montagu has republished a great part of this Tract in the first volume of his "Opinions of various Writers on the Punishment of Death."

fordshire lady, whom he had met at the house of the Marquis of Lansdowne, a nobleman who took a lively interest in Mr. Romilly's success. His practice now became very lucrative, and was increased by the elevation of Sir John Scott, then Attorney General, to the Chief Justiceship of the Common Pleas. In the year 1800, he received a silk gown, and from this period he took a decided lead in the Court of Chancery.

On the accession of Mr. Fox and his friends to power, in the year 1806, Mr. Romilly was appointed Solicitor General, and received the usual honour of knighthood, and he was on the same occasion returned to Parliament as Member for Queenborough. His first duty on the commencement of his parliamentary career, was in the conduct of Lord Melville's trial, of which he was appointed one of the managers, and his speech in summing up the evidence, has been said to challenge comparison with Lord Mansfield's masterly effort on the trial of Lord Lovat. In the short period during which he held office, he never forgot his youthful promise, "*patriæ impendere vitam*," and he zealously exerted all his credit and authority in effectuating those enlarged views of legislative improvements which he had been so long maturing.

He introduced into parliament two bills, one for the Amendment of the Bankrupt Laws, (46

G. III. c. 135,) which was carried; the other, to make the Freehold Estates of all debtors assets for the payment of their debts, a proposal which was subsequently carried into effect, (47 G. III. c. 74,) in the case of persons engaged in trade. He had also the satisfaction of lending his assistance towards the completion of that great work of humanity, the Abolition of the Slave Trade; and he exerted himself with effect on the important question of the Mutiny Bill. Early in 1807, the administration, of which he formed a part, was dissolved, and he retired from his official duties. His conduct during his Solicitorship, was wise, discreet, and liberal. The sentiments which he expressed on the discussion of the Mutiny Bill particularly, were such, as to draw from an Honourable Member the observation, that "he had never before heard such constitutional sentiments from any Law Officer of the Crown, and that he was bound, both for his constituents and himself, to offer his sincerest gratitude and acknowledgments to the honourable and learned gentleman who had expressed them."

In the year 1808, Sir Samuel Romilly, having been returned in the new parliament of 1807, brought forward his first motion for amending the Criminal Law. It is impossible, within the narrow limits of the present imperfect sketch, to give a detailed account of his efforts in the melioration

of our Penal Code, and of the Law in general; we must content ourselves, therefore, with giving a brief catalogue of the alterations introduced by him into our Statute Book. In 1809, he brought forward another Bill for the amendment of the Bankrupt Law, (49 G. III. c. 121.) In the following year, he moved for leave to bring in three Bills to repeal the Acts of 10 and 11 W. III. 12 Anne, and 24 G. II. which make the crimes of stealing privately in a shop goods to the value of five shillings, or in a dwelling-house, or on board a vessel in a navigable river, property of the value of forty shillings, capital felonies. The substance of the arguments employed by him on those occasions, will be found in his Tract, entitled "Observations on the Criminal Law of England." Notwithstanding the exertions made by Sir Samuel Romilly, and by the friends of a more just and humane policy, these bills were not suffered to pass into a law. In the following session they were again brought forward; but were rejected in the House of Lords, on the motion of Lord Ellenborough. However, in the year 1811, Sir Samuel succeeded in procuring the repeal of the Statutes 18 G. II. c. 27, and 3 G. III. c. 34, which inflicted the punishment of death for stealing in bleaching-grounds, and likewise the ridiculously bloody enactment of Elizabeth, which made it a capital offence in soldiers and marines



to be found wandering about the realm without a pass.

The Parliament having been dissolved in 1812, Sir Samuel Romilly offered himself as a candidate for Bristol, on the invitation of a numerous body of the electors. He was unsuccessful in the contest; but the good-temper and honourable feeling, which distinguished his conduct on this occasion, were more creditable to him than any triumph could have been. He was subsequently returned to the new Parliament for Arundel. During this Parliament the Bill for the Appointment of a Vice Chancellor was brought forward, which was strongly opposed by Sir Samuel Romilly. In the course of the same session he introduced two Bills for altering the Punishment of High Treason, and for taking away the Corruption of Blood in cases of Treason and Felony. Both the Bills were rejected at the time; but the latter of them was subsequently allowed to pass, with some material modifications. In the discussions which took place in this Parliament on the Suspension of the Habeas Corpus Act, Sir Samuel Romilly acted a distinguished part; and shortly before the dissolution, he made a solemn appeal to the House, upbraiding them for the unconstitutional measures which they had pursued, in twice repealing that Act, and in afterwards indemnifying ministers for those violations of the Law, which were

not even protected by the suspension. "Who our successors may be," said he, "I know not; but God grant, that this country may never see another Parliament so regardless of the liberties and rights of the people, and of the principles of general justice as this Parliament has been."

The highly honourable manner in which Sir Samuel Romilly was returned for Westminster, in the year 1818, must be remembered by every one; but the year which witnessed this signal attestation to his merits, was destined also to behold the termination of his most enviable and happy career. The health of Lady Romilly had begun to decline, and this circumstance, in addition to the too arduous duties of his professional and public life, visibly affected the health and spirits of Sir Samuel. The heavy anxieties under which he suffered pressed so painfully upon his mind, that he appears to have apprehended that last of human misfortunes—a state of mental derangement. The fluctuations of hope and fear, in which he was kept by the varying health of Lady Romilly, prevented his mind from enjoying any repose. For a long period he is said to have been either a stranger to sleep, or to have had his rest disturbed by the most frightful dreams; but amid all his sufferings he still preserved an outward serenity, and, for the sake of his family and his friends, seemed to struggle with the sorrows which

were overwhelming him. On the arrival of his sister, whom he tenderly loved, he met her without the appearance of a tear, or of any visible emotion. On the 28th Oct. 1818, Lady Romilly died, and when informed of the event, he listened to it with that unnatural composure which shewed that the strong current of his affections had been diverted from its channel.

On that day he was removed by his friends from the Isle of Wight, where Lady Romilly had resided during her last illness, and arrived in London by easy stages on the 1st of November. During this journey his feelings were violently agitated. The account of his last hours is thus given by Mr. Peter : “ On his arrival at his residence in Russell Square, he made repeated but ineffectual attempts to compose his mind, and, throwing himself upon a sofa, joined his hands together for some moments as if in a state of prayer. He was now apparently calm, but his tranquillity was more frightful than even his former violence. He had the aspect of a man dying from some internal wound. Dr. Roget, who had attended his uncle from the commencement of his illness, and watched over his couch with all the pious care and devotion of a son, was, soon after their arrival in London, joined by Dr. Marcet, and on the following morning by Dr. Babington. But their efforts were vain. Long suffering had sus-

pended the faculties of their unhappy patient. His mind became deranged—his heart was broken—and in the violence of frenzy he terminated his own existence." He was interred in the same grave with Lady Romilly, at Knill in Herefordshire.

It is unnecessary to attempt a character of Sir Samuel Romilly, as we are enabled to present to the reader a much more able one than any which it is in our power to sketch. (*See post, p. 249.*) We may, however, be permitted to remark, that perhaps his most valuable quality was a purity of ambition, or rather an absence of that morbid love of distinction which is nourished even by infamous splendour. It is in this view more particularly that his character is worthy of the deep attention and studious imitation of all the members of that profession of which he formed the most distinguished ornament. His talents and his attainments it may be difficult to emulate, but his honourable feelings and his integrity of principle, we may, if we have the resolution to do so, make our own.

#### HORSE PLEAS.

The learned author of the Pleader's Guide imagines that sham pleas obtained the above title from their being intended to *jockey* the plaintiff, but this derivation is incorrect. They are termed Horse Pleas from their being in fact pleas of a

horse delivered in satisfaction of the debt. The late Mr. Baron Wood when practising under the Bar, having drawn a plea of this kind, was entreated by the party to prepare another exactly similar to the first, as that had answered extremely well. "How so?" said Mr. Wood. "Oh," said the gentleman, "I took care to prove it."

Some singular sham pleas are upon record. In one instance to an action of assumpsit for board and lodging, the facetious pleader pleaded the delivery of two Bengal tigers in satisfaction.

#### BLACKSTONE AND THE BOOKSELLER.

Sir William Blackstone is said to have possessed an irritability of temper which in the latter part of his life was increased by a nervous affection. The writer of that disjointed book, the *Memoirs of Sir W. Blackstone*, in referring to this infirmity relates the following anecdote. "I was perfectly well acquainted with a certain bookseller, now deceased, who told me that on hearing that Mr. Blackstone had commenced Doctor of Civil Law, the next time he did him the honour of a visit, the former in the course of conversation, and out of pure respect, called the new-made Civilian "Doctor." This familiar mode of accosting him (as he was pleased to term it) put the doctor in such a passion, and had such an instantaneous and violent effect, and operated upon him

to so alarming a degree, that the poor bookseller really thought he should have been obliged to have sent for another doctor, and from Saint Luke's too." (*Character of Sir William Blackstone*, p. 90.)

DR. PARR'S CHARACTER OF LORD THURLOW.

“ Minas possumus contemnere vocemque fulmineam Thrasonici istius Oratoris τὴν τὰς ὀφρῦς κυανίας ἐπιηρότος, cujus vulticulum, uti Noviorum istius minoris, ferre posse se negat Quadruplatorum genus omne et Subscriptorum. Quid enim? truculentus semper incedit, teterque, et terribilis aspectu. De supercilio autem isto quid dicendum est? annon reipublicæ illud quasi pignus quoddam videtur? annon senatus illo, tanquam Atlante cœlum, innititur?

“ Ferunt profectò Novium in ‘summa feritate esse versutissimum, promptumque ingenio ultra Barbarum.’ Quod si demseris illi aut σφοδρότητα quanta in Bruto fuit, aut πικρότητα verè Menippeam, aut προσώπις στυβρότητα propriam et suam, facilè eidem juris nodos legumque ænigmata ad solvendum permiseris.

“ Fervido quodam et petulanti genere dicendi utitur, eodemque, nec valdè nitenti, nec planè horrido. Solutos irradientium cachinnos ita commovet, ut lepores ejus, scurriles et prorsús veteratorios diceres. Omnia loquitur verborum sanè bonorum cursu quodam incitato, itémque voce,

qua ne subsellia quidem ipsa desiderant pleniorē et grandiorē. In adversariis autem lacerandis ita caudicorum figuras jaculatur, ita callida et malitiosa juris interpretatione utitur, ita furere et bacchari solet, ut sæpè mirere tam alias res agere optimates, ut sit penè insano inter disertos locus.

“ Fuit ei, perinde atque aliis, fortuna pro virtutibus. Didicit autem à Muciano, satis clarum esse apud timentem, quisquis timeatur. Corpore ipse ingens, animi immodicus, verbis magnificus, et specie inanium magis quàm sapientia validus, studia ad se Optimatum illexit, eamque adeptus est auctoritatem, quæ homini novo pro facundia esse posset. Scilicet, quæ bonis Titio, Seioque turpissima forent, Novium nostrum maximè decent, siquidem è subsellis elapsus de Tribunali nunci pronuntiet, et ex Præcone aionum factus sit institor eloquentiæ senatoriæ. Quam igitur in civitate gratiam dicendi facultate Q. Varius consecutus est, vastus homo atque fœdus, eandem Novius intelligit, illa ipsa facultate, quamcunque habet, se esse in Senatu consecutum——

———“ Ellum, *confidens, catus* :

Cùm faciem videas, videtur esse quantivis preti :  
Tristis severitas inest in voltu, atque in verbis  
fides.”

(*Preface to Bellendenus.*)

## LORD CHIEF JUSTICE KELYNG AND LORD HOLLES.

Kelyng was appointed Chief Justice in 1665. The reports which pass under his name are said to have been published by L. C. J. Holt, (*Fost. Crown Law*, 204.) The following is the account of a quarrel between him and Lord Holles.

“ Lord Chief Justice Kelyng was obliged to make Denzel, Lord Holles, satisfaction for the affront put upon his lordship by him at the trial of certain French gentlemen, (for a robbery,) in the Court of King’s Bench, in Easter Term, 1670, 22 Charles 2. The affront was, that when Lord Holles attempted to speak to the characters of the Frenchmen, the Chief Justice stopped him, saying he must not interrupt the court ; and Lord Holles replying that it was neither to interrupt the court, nor to do them any wrong, to inform them as much as possible of all passages, &c. the Chief answered again very angrily, “ My Lord, you wrong not the court, but you wrong yourself, and it is not the first time you have been observed to appear too much for strangers.” “ So” says Lord Holles, “ I was snubbed and sat down again ; but I must say it was language I had not been used to, nor, I think, any of my condition, that had the honour to serve the King, in the quality I do, of a Privy Counsellor.” The Lord Chief Justice also, upon Walrond’s evidence, declared (looking



fully at Lord Holles, whence the whole court understood it to be meant of him) that there had been some foul doings. Upon these injuries, he petitioned the House of Lords, who on Friday, March 10th, 1670, made the following order. "This day the Lord Holles produced several witnesses to be examined concerning his complaint; on his petition of several indignities put upon him by the Lord Chief Justice of the King's Bench, at the trial of some French gentlemen in the said Court of King's Bench, who were falsely accused of a robbery by four butchers, in Easter Term last. After the hearing of which witnesses, the Lord Chief Justice made his defence, and denied that he intended any thing against the Lord Holles, when he spoke those words at the said trial, that it was a foul contrivance, &c. as in the petition is set forth; to which defence the Lord Holles made a short reply, and then voluntarily withdrew himself, and the Lord Chief Justice withdrew himself also. Upon which the house took the whole matter into serious consideration, and ordered, that the Lord Chief Justice should be called to his place as a judge; and openly, (in the presence of the Lord Holles,) the Lord Keeper should let him know, that this house is not satisfied with his carriage toward the Lord Holles in this business, and therefore has ordered, that he should make this acknowledgement, which is to be read by the clerk

as followeth, That he did not mean it of the Lord Holles when he spoke these words, (that it was foul contrivance,) and that he is sorry, that by his behaviour or expressions, he gave any occasion to interpret it otherwise, and asks the pardon of this house and the Lord Holles. Then the Lord Chief Justice of the Court of King's Bench was called to his place, and (the Lord Holles being also present,) the Lord Keeper performed the directions of the House, and the Lord Chief Justice read the acknowledgement aforesaid, only changing the style into the first person." (*Preface to the Life of Lord Holt, p. vi.*)

CHARACTER OF SIR SAMUEL ROMILLY.

" In reviewing the character of this great and good man, it is obvious, that the characteristic of his understanding was that rarest of all qualities, plain practical good sense. It is much more true than is generally imagined, that the highest exertions of the intellect depend, in a considerable degree, on the qualities of the heart. Without honesty of intention a man may be ingenious and subtle ; but the indirectness of his views will warp and weaken the operations of his mind, and whilst he is anxious to disguise some part of his thoughts, the current of the rest is impeded, the will becomes embarrassed, and that vigorous power of the mind, which realizes its embryo

schemes and converts thought into action, vacillates, and is reduced to uncertain sallies and discontinued efforts. It may, perhaps, be considered a happy provision of nature, that in most cases where malignity of purpose actuates the understanding, it corrodes it at the same time by the spirit of cunning, and dwarfs and cripples the mighty instrument, by this mean auxiliary. In Sir Samuel Romilly there was no obliquity of understanding. The objects which he wished to attain, he was never ashamed to avow. He viewed them openly, and only considered the most direct means of obtaining them. If his objects were really the most desirable, and the means which he employed the most effectual and adequate, he was, as far as human nature will allow, a truly wise man.

“ To those who are acquainted with the comprehensive views which he took into every subject on which he inquired, it would be deemed a matter of equal (if not greater,) praise, that Sir Samuel Romilly attempted no more than he did attempt, as that he effected what he did. For one who has studied the nature of man and of society philosophically, and considered the purposes of government, it requires no ordinary discretion, when proceeding to action, to take into consideration the various circumstances in which society in this country at present exists, to perceive the utility of ancient institutions, though

perverted in some of their bearings, or incumbered by the superstructure of time and corruption. It is the high praise of the subject of this Memoir, that it was his object rather to engraft than to root up, and to respect not only the reason of things, but existing passions and prejudices. *Retinuit, quod est rarissimum in sapientia, modum.* Though his mind was imbued with philosophy of the noblest kind, he retained in a singular degree his native discretion.

“ His sense of religion did not consist in the supposition of the importance of particular dogmas of faith, but in a deep feeling of sense and gratitude to a superintending Providence, and in an intimate conviction of his heart and of his understanding, that he best exemplified his faith and his gratitude, by following implicitly the sense of duty, which was strongly impressed on his enlightened conscience, and by acts of beneficence to his fellow-creature. Practical piety was in his mind strongly connected, and almost identified with practical benevolence; and any professions of religion which terminate in barren speculation, or in mere personal raptures, he considered as strongly stamped with marks of spuriousness, as any system of mere abstract and unsocial humanity. Religion, in his view, was the strong guardian and incentive to morality; it was something that ennobles the understanding, and

enlarges the heart, and communicates purity and activity, and intensity, to the social virtues.

“ That he was able to accomplish so much, both in his profession and in his public character, can be attributed only to the habit of sedulous and unremitting industry, which he formed early in life, and in which he persevered as long as nature allowed : he was extremely temperate, though no one enjoyed more than he did the freedom of unrestrained conversation, and those charms of elegant society, in which he occasionally indulged ; yet he never made any sacrifice of duty, whether professional or parliamentary, to these delightful recreations. In his manners in public, there was great self-possession and dignity, mixed, perhaps, with some appearance of reserve ; but in intimate society, there never existed a man, the blandness of whose manners were more engaging, or the effusions of whose mind in careless moments, were more delightful for their gaiety, or more captivating from their unstudied elegance. In his wit there was something of that tacit contrast and covert allusion, of which the archness is not, till the close, in any degree anticipated. It was often ironical ; but those who recollect him, either at the bar or in parliament, will remember, that his irony was sometimes closed with more direct attacks on imposture or vice ; and that his pointed sarcasms, when he did

indulge in them, were such as to evince that he did not refrain from employing them more frequently from any want of power, but because other methods suited better the courtesy and urbanity of his nature.

“ His attainments in general literature were considerable, and the knowledge which he incidentally showed of the history and antiquities of the country, in the discussion of constitutional questions, bespoke a mind richly and deeply stored, but entirely unostentatious of its treasures. In short, every feature of his mind bore the same impress of sincerity and simplicity; and his life exemplified, in an eminent degree, the honest motto of that noble constitutional lawyer and statesman, Lord Somers : *Esse quam videri*.

“ A man who, born the youngest son of a tradesman, in an obscure part of Westminster, by his merits alone attained the eminence of representing that wealthy and populous city in parliament; a lawyer who, in a corrupt age, preserved his integrity unsullied, and relinquished the emoluments and rank of a splendid office which he actually enjoyed, as well as the prospect of preferment, still more lucrative and dignified, rather than make any compromise of his political principles; a statesman who, when in office under the Crown, respected and asserted the cause of the people, and exerted the influence of his station to enact statutes of humanity and beneficence,

and who, even when out of office, succeeded in some degree, in mitigating the severity of the penal code, and was unwearied in urging further improvement; such a man, beloved as he was by his friends, admired by his coadjutors, and respected by his adversaries, deserves to be held in everlasting remembrance. When the courtly sycophants, and factious demagogues, and cunning chicaners of the age, shall have been alike forgotten, and all their intrigues and cabals, and cobweb sophistries swept into oblivion with the paltry occasions that excited them, the memory of Romilly will be revered as a man whose spirit breathed in a pure air, and formed to itself higher and nobler aims; and future ages will cherish and bless the name of the upright advocate, the genuine patriot, the friend and the protector of his fellow creatures." (*The Inquirer*, vol. ii. p. 318.)

#### LENGTH OF LEGAL INSTRUMENTS.

"The length of legal instruments is often owing to the necessity of providing for a multiplicity of contingent events, each of which *may* happen, and must, therefore, be both fully described, and fully provided for. Of the nature and extent of this multiplicity, the party himself is seldom aware; sometimes even his professional adviser does not feel it, until he begins to frame the necessary clauses. A gentleman, upon whose will the Reminiscent was

consulted, had six estates of unequal value, and wished to settle one on each of his sons, and his male issue, with successive limitations over to the other sons, and their respective male issue, in the ordinary mode of strict settlement; and with a provision, that in the event of the death and failure of issue male of any of the sons, the estate devised to him, should shift from him and his issue male, to the next taker and his issue male, and failing there, to the persons claiming under the other limitations. It was considered at first, that this might be effected by one proviso: then by two, and then by six; but upon a full investigation, it was found that it required as many provisos as there can be combinations of the number 6;— now—

$$1 \times 2 \times 3 \times 4 \times 5 \times 6 = 720 ;$$

Consequently, to give complete effect to the intention of the testator, 720 provisos were necessary.

By a similar calculation, if a deed, which the Reminiscent was instructed to prepare, had been executed, the expense of the necessary stamp would have amounted to ninety millions, seven hundred and twenty-two thousand pounds. Ten persons, each of whom was possessed of landed property, having engaged in a mining adventure, a deed of partnership was to be prepared, which was to contain a stipulation that, if any one or more



of the intended partners, should advance money to any other, or others of them, the money lent should be a charge, in the nature of a mortgage, upon the share or respective shares of the borrower, or respective borrowers, and overreach all subsequent charges,—and, therefore, the charges were to be considered as mortgages actually made by the deed. Thus in the contemplation of equity, the estate was actually to be subjected by the deed, to as many possible mortgages as there can be combinations of the number 10. Each of these possible mortgages being for an indefinite sum, would require the £25 stamp.

$25 \times 2 \times 3 \times 4 \times 5 \times 6 \times 7 \times 8 \times 9 \times 10 = 90,720,000.$  (*Butler's Reminiscences*, p. 63.)

HOW JOHN BULL LOOKED OVER HIS ATTORNEY'S  
BILL.

“ When John first brought out the bills, the surprise of all the family was inexpressible at the prodigious dimensions of them ; they would have measured with the best bale of cloth in John's shop. Fees to judges, puisne judges, clerks, prothonotaries, filacers, chirographers, under clerks, proclamators, counsel, witnesses, jurymen, marshalls, tipstuffs, criers, porters ; for enrolling, exemplifications, bails, vouchers, returns, caveats, examination, filing of writs, entries, declarations, replications, recordats, noli prosequis, certioraris, mittimus's,

demurrers, special verdicts, informations, scire facias, supersedeas, habeas corpus, coach-hire, treating of witnesses, &c. “ Verily,” says John, “ there are a prodigious number of learned words in this law ; what a pretty science it is !” (*History of John Bull*, ch. xi.)

## LORD MANSFIELD AND MR. DUNNING.

Mr. Dunning having resigned his office of solicitor general, appeared on Wednesday, 2nd May, 1770, being the first day of Easter Term, 10 Geo. 3, on the outside of the bar in the common ordinary bar gown. Lord Mansfield, after Mr. Dunning had made his first motion, addressed himself to him, and declared, that in consideration of the office he had held, and his high rank in business, he intended for the future, (and thought he should not thereby injure any gentleman at the bar) to call on him next after the King’s Counsel, Sergeants, and the Recorder of London.

Mr. Caldecot and Mr. Coxe, the two senior utter Barristers present, very readily assented to it, and said that they had thoughts of proposing the same thing themselves. (5 *Burr.* 2568.)

## LORD CHIEF JUSTICE HOLT.

In the character of Lord Chief Justice Holt, given in the *Tatler*, (No. 14) we find some severe reflections on the Justices of the Peace of that day.

“ It would become all men, as well as me, to lay before them the noble character of Verus the magistrate, who always sat in triumph over, and in contempt of vice. He never searched after it, or spared it when it came before him : at the same time he could see the hypocrisy and disguise of those who have no pretence to virtue themselves but by their severity to the vicious. The same Verus was in times long past, Chief Justice (as we call it amongst us) in *Felicia*. He was a man of profound knowledge of the laws of his country, and as just an observer of them in his own person. He considered justice as a cardinal virtue, not as a trade for maintenance. Wherever he was judge, he never forgot that he was also counsel. The criminal before him was always sure he stood before his country, and in a sort, a parent of it ; the prisoner knew, that though his spirit was broken with guilt, and incapable of language to defend himself, all would be gathered from him which could conduce to his safety, and that his judge would wrest no law to destroy him, nor conceal any that could save him. In his time there was a nest of pretenders to justice, who happened to be employed, to put things in a method for being examined before him at his usual sessions : these animals were to Verus, as monkeys are to men, so like that you can hardly discern them ; but so base that you are ashamed of their fraternity. It

grew a phrase, "Who would do justice on Justices?" That certainly would Verus. I have seen an old trial where he sat Judge on two of them; one was called Tricktrack, the other Tearshift, one was a learned Judge of Sharpers, the other the quickest of all men at finding out a wench. Trick-track never spared a pickpocket, but was a companion to cheats; Tearshift would make compliments to wenches of quality, but certainly commit poor ones. If a poor rogue wanted a lodging, Trick-track sent him to gaol for a thief: if a poor whore went only with one thin petticoat, Tearshift would imprison her for being loose in her dress. These patriots infested the days of Verus, while they alternately committed and released each other's prisoners. But Verus regarded them as criminals, and always looked upon men as they stood in the eye of justice, without respecting whether they sat on the bench, or stood at the bar."

LEGAL RECOLLECTIONS OF LONDON.—NO. III.

*(Concluded from vol. ii. p. 272.)*

Having traversed Chancery Lane and its vicinage, let us proceed down the Strand, towards Westminster. On the right-hand side, as we walk through Pickett-Street, we arrive at Clement's Inn, one of the Minor Inns, or Inns of Chancery, as they were formerly called. To these Societies

in former days the Student was consigned before he was thought worthy to make his appearance at the Inns of Court; and here, by diligent study and strict attention to the moots and exercises of the Society, he qualified himself for the more serious discipline of the Temples or Lincoln's Inn. Occasionally the youthful inmates of these Societies forgot the gravity of their calling, and exhibited symptoms of great unruliness, as we learn from Strype:—"Here, about this church (St. Clement's) and in parts adjacent, were frequent disturbances, by reason of the unthrifths of the Inns of Chancery, who were so unruly on nights, walking about to the disturbance and danger of such as passed along the streets, that the inhabitants were fain to keep watches. In the year 1582, the Recorder himself, with six more of the honest inhabitants, stood by St. Clement's Church to see the lanthorn hung out and to observe if he could meet with any of these outrageous dealers. About seven at night they saw young Mr. Robert Cecil, the Lord Treasurer's son, who was afterwards Secretary of State to the Queen, pass by the church, and as he passed gave them a civil salute; at which they said, Lo! you see how a nobleman's son can use himself, and how he putteth off his cap to poor men: our Lord bless him!" This passage the Recorder wrote in a

letter to his father, adding, "Your Lordship hath cause to thank God for so virtuous a child."

It was at Clement's Inn, also, that Justice Shallow spent his "mad days."

"*Shal.* By yea and nay I dare say my cousin William is become a good scholar. He is at Oxford still, is he not?"

"*Sil.* Indeed Sir, to my cost.

"*Shal.* He must then to the Inns of Court shortly. I was once of Clement's Inn; where I think they will talk of mad Shallow yet.

"*Sil.* You were called lusty Shallow then, cousin.

"*Shal.* I was called anything, and I would have done anything, indeed, and roundly too. There was I and little John Doit of Staffordshire, and black George Bare, and Francis Pickbone, and Will Squele, a Cotswold man—you had not four such Swinge Bucklers in all the Inns of Court again. I may say to you we knew where the bona-robas were, and had the best of them at commandment. Then was Jack Falstaff, now Sir John, a boy, and page to Thomas Mowbray, Duke of Norfolk.

"*Sil.* This Sir John, cousin, that comes hither anon, about soldiers?"

"*Shal.* The same Sir John, the very same. I saw him break Shogan's head at the Court gate when he was a crack not thus high: and the very same

day I did fight with one Sampson Stockfish, fruiterer, behind Gray's Inn. O, the mad days that I have spent ! and to see how many of mine old acquaintance are dead."

The pertinent observations of Falstaff upon the Justice's history of his early adventures, must not be omitted.

"Lord, Lord, how subject we old men are to this vice of lying! This same starved Justice hath done nothing but prate of the wildness of his youth and the feats he hath done about Turn-bull Street, and every third word a lie duer paid to the hearer than the Turk's tribute. I do remember him at Clement's Inn like a man made after supper of a cheese paring; when he was naked he was for all the world like a forked radish with a head fantastically carved upon it with a knife." (*Second Part of Henry IV. Act iii. S. 2.*)

We now descend into the Strand, which has witnessed many a stately legal solemnity. Through the Strand the new Chancellor was wont to ride in solemn procession, with all the Judges of England on horseback in his train. Lord Chancellor Shaftesbury was the last who insisted upon the ceremony being performed according to the ancient fashion, and the consequence was, as we have already related, the unhappy fall of the singularly well-learned Mr. Justice Twisden, who doubtless arose as he is sometimes represented by Saunders—*valde iratus*.

The Strand is quite a legal thoroughfare, whence the old ballad on the destruction of the cross at Charing-Cross during the civil war.—

UNDONE, undone, are the Lawyers all  
Who wander about the town ;  
Nor can find the way to Westminster  
Now Charing Cross is down.  
At the end of the Strand they make a stand,  
Swearing they're at a loss ;  
And chafing say, This is not the way,  
We must go by Charing Cross.

In the course of the Strand there are several sites interesting to the legal antiquary. Arundel Street, where Arundel House formerly stood, whither Selden used to resort to study the marbles then recently imported—Somerset House, renowned in the Popish plot—Exeter Change, where Don Pantaleon Saa, brother of the Portuguese Ambassador, assassinated an English gentleman, &c. &c.

Proceeding towards Westminster, we pass, on the borders of St. James's Park, the House of the infamous Jefferies. It was built for him when Lord Chancellor, and may be known by the flight of steps which his Royal master permitted to be made into the Park for the accommodation of his Lordship ; they terminate above in a small court, on three sides of which stands the house. On the left is a building which has been used as a chapel.



In the time of Jefferies it was the Hall in which he heard causes when it was inconvenient for him to go to Westminster Hall or to Lincoln's Inn. (See *Pennant's London*, p. 153.)

We now arrive at "Westminster Hall," the headquarters of "Law and Lawyers!" As we enter the venerable fabric what a host of legal associations press upon our minds! We almost expect as we traverse its spacious area to see "the creatures of Westminster Hall," John Doe and Richard Roe, incarnate and palpable, gazing upon us as we pass. As we approach the upper end of the Hall, that sacred *officina Justitiæ* where law and equity have been for so many centuries administered, all the blood of the Styles's rushes to our hearts as we gaze upon the places where Hale and Holt and Mansfield, where Clarendon and Somers and Hardwicke, presided. This splendid Hall has been dedicated for centuries to all magnificent purposes. From the earliest period it has been the throne of our national Justice. It has been the seat of our ancient Parliaments. It is the scene of those solemn impeachments which are instituted by the Commons of England; and lastly, it has been the witness of a King's Trial and condemnation.

SIR WILLIAM JONES, (THE ATTORNEY GENERAL.)

Sir William Jones appears to have been one

of the most honest lawyers of the reign of Charles II. a period when integrity was, indeed, a rare quality in the profession. Burnet, with whom he was acquainted, has left the following character of him:—"He was raised to that high post merely by merit, and by his being thought the greatest man of the law: for as he was no flatterer, but a man of a morose temper, so he was against all the measures that they took at court. They grew weary of him, and were raising Sir John King to vie with him; but he died in his rise, which, indeed, went on very quick. Jones was an honest and wise man: he had a roughness in his deportment that was very disagreeable; but he was a good-natured man at bottom, and a faithful friend. He grew weary of his employment, and laid it down; and though the Great Seal was offered him, he would not accept of it, nor return to his business. The quickness of his thoughts carried his views far, and the sourness of his temper made him too apt both to suspect and to despise most of those who came to him."

When the Bill for excluding the Duke of York from the Throne was proposed, Sir William Jones, who had an unconquerable aversion to Papists, supported it with great zeal. "Sir William Jones," says Swift, in his Appendix to the Third Part of Temple's Memoirs, "was reported one of the best speakers in the House, and was very

zealous in his endeavours for promoting the Bill of Exclusion. He was a person of great piety and virtue, and having taken an affection to Sir William Temple, was sorry to see him employed in the delivery of so unacceptable a message [that of January 4, 1681, against the Exclusion Bill,] to the House : the substance of what he said to the author upon it was this, that, for himself, he was old and infirm, and expected to die soon ; ‘ but you,’ said he, ‘ will, in all probability, live to see the whole kingdom lament the consequence of this message you have now brought us from the King.’ ”

It has been supposed, that Dryden alludes to Sir William Jones and the Exclusion Bill in *Ab-solom* and *Achitophel*.

“ ——— Bull-faced Jonas, who could statutes draw,  
To mean rebellion, and make treason law.”

But, according to some persons, *Winnington* is meant to be described in these lines.

A number of anecdotes respecting Sir William Jones may be found in the “ *Examen* ” of Roger North, who also mentions him in the *Life* of his brother, the Lord Keeper. The following character of Jones is taken from the *Examen*.

“ I am persuaded,” says he, “ that being in place he was very weary of the Plot prosecution, as he was afterwards of being among the heads

of a faction against the court in which he served the former was obnoxious to uneasy reflections, that, if out of ardour he exceeded, innocent blood might be in the rear of him, and the other touched his reputation, as not consistent with the decorum of a servant, who, though never so ill-used, should not publicly fly in his quondam master's face : all which matters must needs be weighed by one of his penetration and judgment, and who was no ill man at the bottom, though unhappily mistaken in his conduct. And, I verily believe, that all along he aimed at a certain post in the law, then filled by the Lord Chief Justice North, and directed all his steps towards it, proposing to himself, in acquiring that, to compass his final and retired settlement ; but he was disappointed, and that increased the uneasiness of his mind, according as the proffers he had made towards it were violent and irregular : all which mystery I hope to resolve clearly before I have done. After the Oxford Parliament, he did not appear much abroad. He hated Shaftesbury, and, notwithstanding party-work, would not willingly come into the room where he was. His personal gravity and virtue was great, and he could not bear such a flirting wit and libertine as the other was. He had a great value for Mr. Hampden, and used to magnify his father as the greatest man for sense and foresight that was concerned against King Charles

I, and not without reason, for he knew all that litigating in Parliament would, (as was intended,) end in open rebellion, therefore he was in with the first, and took a regiment, but was killed betimes, else he might have had the post of Cromwell upon more generous terms. Sir William Jones was at a meeting at Mr. Hampden's house in Buckinghamshire, where several of the most confiding men of the faction assembled, to consult of the common affair, whether before or after the Rye discovery, I cannot tell; but either way, it must sit hard upon Sir William Jones's spirits; who, being a lawyer, and, as I said, in the general no bad man, was for doing his work the formal way, and hated violence. So, knowing the horrid consequence and hazards of that plot, which could be no secret to him, the thoughts of it were a burthen to his mind, and, it is said, an unaired bed gave him a great cold, under which infliction, having lead at his heart, nature wanted force to master the distemper; so it turned to a malignant fever and carried him off.

“ He was a person of a very clear understanding, and, if possible, a clearer expression, wherein he was assisted with an extraordinary opinion he had of both, as also of his own general worth, for that was his foible. He was extremely proud and impatient of competition, and much more of being left behind, as it was his chance to

be in the course of his preferment, whereby he missed of his desired post. And that partly occasioned a sort of restlessness, which made him commit several gross errors in the main chances of his life. His felicity was never to be disturbed in speaking, nor by any audience or emergence, put by the forecast and connexion of his thoughts; but dilated with a constancy, steadiness, and deliberation, admirable in his way; so that in speaking as counsel, one might mistake him for the judge. He affected somewhat of the rustic phrase of his own country, which was Gloucestershire; as to instance in a word, althoff, instead of although, as we pronounce, which was no disadvantage, but rather set him off. He studied the law in Gray's Inn, and rose first in the King's Bench practice. He affected also general learning, as History and Theology, and, as great men usually have their vanities, his was to profess of that sort more than belonged to him. And, accordingly, he chose his company, who were for the most part, divines, such as were most eminent in his time, as Tillotson, &c., and, I dare say, they profited more in his company than he in theirs. I have touched his felicities; his infelicity was a penchant towards the anti-court, or rather republican party; and, consequently, must be a favourer of nonconformity; for opposites to government of all kinds seem to make but one party. Whatever his thoughts were,

it is certain this course was wholly out of the way of his aims. He had another great disadvantage, which was timidity; he could not support himself under any apprehension of danger. Once being at his house at Hampstead, about the beginning of Oates's discovery, whether for real or affected fear he knew best, but it is certain he sent an express to his house in London, to have all his billets removed out of his cellars into his back yard, lest the papists, with fire-balls thrown in, should set his house on fire. And as he was apt to be dejected upon melancholy reflections, so on the other side, he was commonly elated and triumphant when he had fairer prospects. But his greatest misfortune was his mistaken politics, for he thought the Crown must needs, at length, truckle to the House of Commons: but this error being common to the whole faction with whom he conversed, it is no wonder it infected him. (*See Howell's State Trials, vol. viii. p. 174.*)

#### THE LAW OF WAGERS.

The general rule is, that wagers are lawful, and that the Courts will enforce them against the party who has lost. There are, however, certain exceptions to this rule,—as where the wager is of so ludicrous and frivolous a nature that it would be beneath the dignity of the Courts to notice them. In the Civil Law such wagers were called

*Sponsiones Ludicræ*, of which no judicial cognizance could be taken. In our own Courts of Justice, however, actions upon very frivolous wagers have been established. Thus in *Pope v. St. Leger*, 1 *Salk*, 344, an action was tried before Lord Holt, upon a wager "whether a person playing at backgammon, having stirred one of his men without moving it from the point, was bound to play it." So Mr. Justice Lawrence held that the plaintiff might recover in an action upon a wager of "six to four that Bob Booty should win the plate, at the New Lichfield races." (*M'Alister v. Haden*, 2 *Campb.* 436.) So it was held that an action was maintainable on a wager of a rump and dozen, whether the defendant was older than the plaintiff. It was strongly urged by Mr. Sergeant Vaughan, the Counsel for the plaintiff, that instead of any public prejudice arising from the thing betted, it was for the public benefit to promote conviviality and good humour. The Court of Common Pleas were not very decided in their opinion on the legality of this wager. Sir James Mansfield, with a coyness and modesty very graceful in a Chief Justice, declared that "he did not judicially know the meaning of a rump and dozen."\* But Mr. Justice Heath had the can-

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\* It seems, however, that the Court is bound to take judicial notice of the meaning of a rump and dozen, as



dour to say, " We know very well privately that a rump and dozen is what the witnesses stated, viz. a good dinner and wine, in which I can discover no illegality;" and said Chambre J. " The witnesses have explained the rump and dozen to mean a good dinner, and this is sufficiently certain. Then where is the immorality? Is it impossible for people to sit down to a good dinner without being guilty of excess?" (*Hussey v. Crickett*, 3 *Campb.* 168.) But in one case, Lord Ellenborough refused to try an action upon a wager on a cock-fight, observing that it was impossible to be engaged in ludicrous inquiries of this sort consistently with that dignity which it is essential to the public welfare that a Court of Justice should always preserve. (*Squires v. Whisken*, 3 *Campb.* 140.) So Lord Loughborough refused to try an action on a wager " whether there are more ways than six of nicking seven on the dice, allowing seven to be the main, and eleven a nick to seven." (*Brown v. Leeson*, 2 *H. Bl.* 43.) In the case of *Henkin v. Gerss*, 2 *Campb.* 408, which was assumpsit on a wager " whether a person may be lawfully held to bail on a special original for a debt under £40." Lord Ellenborough requested to see the record, and, having perused it, " threw

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they are bound to take notice of all English words though merely provincial, and of *vocabula artis*.

it down," as the report states, "with much displeasure." (In fact, he is said to have thrown it at the head of the plaintiff's attorney.) "I certainly will not," said he, "try this cause. I sit here to decide points of law that arise incidentally before me, and the decision of which is necessary for the purposes of justice, not to state my opinion upon any question submitted to me from idle curiosity.—I consider the attempt extremely indecent."

Indecent as this attempt was, others certainly more indecent have occasionally been brought before the Courts. Thus an action was brought on a wager of "200*l.* to 100*l.* that Joanna Southcote would be delivered of a male child before the 1st day of Nov. then next ensuing;" but it appearing that Joanna was unmarried, Gibbs, C. J. refused to try the cause. (*Ditchburn v. Goldsmith*, 4 *Campb.* 152.) So it was held that a wager on the sex of the Chevalier D'Eon was illegal. (*Dacosta v. Jones*, *Cowp.* 729.) It is laid down by Lord Mansfield, in this case, that where the wager is an incitement to a criminal act, as, "I lay you a wager that you do not beat such a person," or where the subject matter of it is a violation of chastity, or an immoral action, as if "I lay I seduce such a woman," it is illegal.

Wagers against the general policy of the State, or of the Law, are illegal; as, a wager upon the

contingency of a peace between this country and a state with which it is at war. (*Lacaussade v. White*, 2 *Esp.* 629, 7 *T. R.* 535 *S. C.*)

There is a singular case of a wager reported in 12 *Mod.* 416. Grover laid a wager with Wall that he would walk to *High Park Corner* in such a time, but there being no such place as *High Park Corner*, but *Hyde Park Corner*, he could not walk to a place that was not in being, and therefore the Court held that Grover lost his wager.

A bet on the ages of the respective fathers of the parties is good, although one of the fathers is dead at the time, that fact not being known to the parties. (*Earl of March v. Pigott*. 5 *Burr.* 2802.)

#### NOVEL MOTIONS.

A young gentleman newly called to the Bar, and not thoroughly acquainted with legal contractions, had a brief put into his hands with the following indorsement upon it:—

<i>Nokes</i>	}	Instructions.
v.		
<i>Styles.</i>		

Mr. Leatherhead,  $\frac{1}{2}$  gua.

“To move for a *Common* to examine witnesses.”

The young gentleman accordingly moved the Court, “My Lords, I humbly move your Lord-

ships for a common to examine witnesses.”  
 “What, Sir?” said the Chief Justice. “I humbly move for a common to examine witnesses.”  
 “Pray, Sir,” said the Chief, “are your witnesses numerous?” “Yes, my Lord.” “Then take Salisbury Plain.”

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It is not unusual upon circuit for the *desœuvrés* gentlemen to amuse themselves with hoaxing one another. At the Chester Assizes a juvenile gentleman, who had just joined the circuit, received a brief to the following purport: “Mr. ——— To move to set aside the common recovery on the usual affidavit of the death of the Tenant in tail.” An application to this effect would certainly have been made to the Court, had not Mr. ——— discovered that “the usual affidavit” was not annexed to his instructions.

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A very learned gentleman within the Bar, is said to have moved the King’s Bench for two *Mandami*, an application which probably astonished the Court as much as when they were asked to quash a writ “quia improvide *Emanaverunt*.”

AMENDMENT OF THE LAW DURING THE  
COMMONWEALTH.

In a former part of these volumes, a cursory notice was taken of the attempts which were made to effect a reform in the system of our judicature in the time of the Commonwealth. (*Ante*, vol. i. p. 17.) We shall now give a few details relative to the same subject, which, in compiling our former observations, were overlooked.

In 1651, a Committee was named by Parliament to consider what inconveniences there were in the Law, and how the mischiefs which grew from delays, and the changeableness and irregularities in Law proceedings, might be prevented. This Committee met several times, and desired the Judges of the different Courts to return to them a list of their officers, what fees they received, and what work they did for them. "A project of infinite use," says Oldmixon, (p. 402,) "and fit for the wisdom of the nation to bring to perfection."

In the following year the Committee presented to the Parliament draughts of the following Acts :

1. For taking away fines upon Bills, Declarations, and Original Writs.
2. Against customary oaths of fealty and homage to Lords of Manors.
3. For taking away common recoveries and the

unnecessary charge of fines, to pass and charge lands intailed as lands in fee simple.

4. For ascertaining arbitrary fines upon descent, and alienation of copyhold of inheritance.

5. For the more speedy recovery of rents.

6. Touching Pleadings, and their fees.

7. For the more speedy regulating and easy recovery of debts and damages, not exceeding 4l. and under.

It will be observed, that several of these amendments have been subsequently adopted, particularly Nos. 4, 5, and 7, either by the Courts or by the Legislature; but at the period when they were first introduced they experienced great opposition from the lawyers themselves, who have always imagined themselves interested in upholding the abuses of their profession. "The reformation of the Law went on but slowly in Parliament," says Ludlow, "it being the interest of the Lawyers to preserve the lives, liberties, and estates of the whole nation in their hands; so that, upon the debate of registering all deeds in each county, for want of which within a certain time fixed after the sale, such sales should be void, and being so registered, that land should not be subject to any incumbrance, the word *incumbrance* was so managed by the Lawyers, that it took up three months' time before it could be ascertained by the Committee of Parliament."

In the year 1659, a debate took place in Parliament on the regulation of the Law, and a Bill was ordered to be introduced "to reform abuses in Clerks, Attornies, Solicitors, and Lawyers." It was also referred to the Council, "to take care that the people should not be wronged by Bailiffs and Juries." If we may believe Oldmixon, the conduct of the Lawyers upon this occasion, was not only discreditable but dishonest. "The two parties, viz. the Lawyers and Clergy of that time and stamp, being equally concerned to perpetuate the abuses amongst them, became equally sensible of their common danger, and in order to prevent it, Whitelock and St. John for the Lawyers, Dr. Owen and Mr. Noye for the Clergy, had at this time frequent meetings at the Savoy, and entered into a private treaty with the principal persons of the Wallingford House party, offering to raise 100,000*l.* for the use of the army, upon assurance of being protected by them in the full enjoyment of their respective advantages and profits, whereby we were left destitute of hope to see any other reformation of the Clergy than what they themselves would consent to, nor any other regulation of the Law than what the Chief Justice and the Commissioner of the Great Seal would permit."

The interest which the country at large took in the amendment of the Law at this period, has been already alluded to. It should, however, have

been added, that the Ordinance for the introduction of the English Language in all Law Proceedings and Reports was the subject of several petitions from the soldiers and country farmers. (*See Kennet, vol. iii. p. 197.*)

## LORD ELDON AND SERGEANT COCKLE.

On the 4th of July, 1800, a cause was tried in the Court of Common Pleas, against a Sheriff's Officer, for an escape. From the evidence it appeared, that the officer had taken the debtor in London, where the writ was sued out; that the debtor made his escape, and got into the county of Middlesex, where he was again taken; but, in consequence of a mob assembling and threatening the bailiff, with glass bottles, brick-bats, &c. he let go his prey. The defence which the bailiff set up, was, that he had not arrested the debtor in London, and, therefore, could not detain him when he took him in Middlesex. Sergeant Cockle, the counsel for the plaintiff, in his reply, said, that had the officer, instead of alleging a falsehood, come fairly forward, and thrown himself on the mercy of the jury, by saying, it was true he had taken the debtor in London, and, after the escape, had retaken him in Middlesex; but that, from the threats of the mob, he had been obliged to let him go; he, (the counsel,) would have had *his mouth shut*.—He was prevented from proceeding



by Lord Eldon, who observed, " My brother Cockle will excuse me if I interrupt him ; he will, I am certain, always do his professional duty in as good-natured a way as any I know ; but I cannot give full credit to his present assertion. Had the officer adopted the exact line pointed at, I am very well satisfied, that my brother Cockle, provided he had on his brief the same number of guineas which now are endorsed on it, would not have had his mouth so easily shut."

## SINGULAR FORGERY.

" A Clerk of the Chancery joined two clean parchments fit for letters patents so close together with mouth glew, as they were taken for one, the uppermost being very thinne, and did put one labell through them both, then upon the uttermost he writ a true patent, and got the great seale put to the labell, so the labell and the seale were annexed to both the parchments, the one written and the other blank. He cut off the glewed skirts round about, and took off the uppermost thinne parchment (which was written, and was a true and perfect patent,) from the labell, which, with the great seal did still hang to the parchment, then he wrote another patent on the blank parchment, and did publish it as a good patent." (3 *Inst.* 16. See *Co. Rep.* xii. 15. *Kyl.* 80. 138. *Hale's Hist. pl. Cor.* 1. 182.)

Sir William Blackstone observes on this case, that the knavish artifice of this *lawyer*, much exceeded that of the *divine*, who, by taking wax bearing the impression of the great seal off from one patent, and fixing it to another, thereby procured a dispensation for non-residence; and that Sir Edward Coke mentions it with some indignation, that the Chancery Clerk was living at that day. (*Black. Comm.* iv. 83.)

## POINTS OF HINDU LAW.

Having already given some account of the Gentoo Code, (*vol. ii. p. 127.*) we shall follow up our researches into Indian jurisprudence, by selecting a few points from the Hindu Laws, which have been presented to us in an English dress, by Sir William Jones in his translation of the Ordinances of Meun.

In the Hindu Law of Baron and Feme, we find many judicious enactments. Thus every Hindu is enjoined not to marry "a girl with reddish hair," or "with inflamed eyes," or who is "immoderately talkative," but one who "walks gracefully like a phenicopteros, or like a young elephant." By way of ensuring respect for the Feme in the married state, the Baron is very properly forbidden "to eat with his wife, or look at her eating or sneezing, or yawning, or sitting carelessly at her ease." The gentleman is also him-

self enjoined not "to read lolling on a couch, nor with his feet raised on a bench, nor with his thighs crossed, nor having lately swallowed meat."

The mode of recovering a debt is much the same as under the Gentoo Law. "By whatever means a lawful creditor may have gotten possession of his own property, let the King ratify such payment by the debtor, though obtained even by compulsory means. By the mediation of friends, by suit in court, by artful management, or by distress, a creditor may recover the property lent, and fifthly by legal force."

On questions of evidence the Hindu Code is very diffuse. Many persons are rejected as incompetent witnesses, as cooks, public dancers, and singers, priests of deep learning in scripture, and students in Theology, "one extremely grieved," or one convicted of theft. The punishment denounced against perjury is indeed terrific. "The witness who speaks falsely, shall be fast bound under water in the snaky cords of Varuna, and be wholly deprived of power to escape torment during a hundred transmigrations," and again: "Headlong in utter darkness shall the impious wretch tumble into hell, who, being interrogated in a judicial inquiry, answers one question falsely."

Occasionally we meet with some singular coincidences between the Hindu and our own Code. Thus the law, that "a pledge to be kept only, must not

be used by force," is very like our rule, that a horse taken damage feasant cannot be ridden. So in both Codes, "a contract made by a person intoxicated or insane, is utterly null." So with regard to goods sold in market towns.

Amongst the penal enactments of the Hindus, we find one which we do not remember to have met with elsewhere; a very severe punishment for giving impertinent advice—"Should a man, through pride, give instruction to priests concerning their duty, let the King order some hot oil to be dropped into his mouth and ear." The punishment for adultery is, in some cases, dreadfully severe; the woman is condemned "to be devoured by dogs in a place much frequented," and the man to be "placed on an iron bed well heated, under which the executioner shall throw logs continually until the sinful wretch be burned to death." We shall conclude with the following singular catalogue of persons who "are to be avoided with great care."

"Physicians, image worshippers for gain, sellers of meat, and such as live by low traffick, must be shunned in oblations, both to the deities and to progenitors.

"A public servant of the whole town, or of the prince, a man with whitlows on his nails, or with black yellow teeth, an opposer of his preceptor, a deserter of the sacred fire, and an usurer.

“ A phthisical man, a feeder of cattle, one omitting the five great sacraments, a contemner of *Brahmin*, a younger brother married before the elder, an elder brother not married before the younger, and a man who subsists by the wealth of many relations.

“ A dancer, one who has violated the rule of chastity in the first or fourth order, the husband of a sudra, the son of a twice married woman, a man who has lost one eye, and a husband in whose house an adulterer dwells.

“ One who teaches the *veda* for wages, and one who gives wages to such a teacher, the pupil of a *sudra*, and the *sudra* preceptor, a rude speaker, and the son of an adulteress, born either before or after the death of the husband.

“ A forsaker, without just cause, of his mother, father, or preceptor, and a man who forms a connexion, either by scriptural or connubial affinity, with great sinners.

“ A house-burner, a giver of poison, an eater of food offered by the son of an adulteress, a seller of the moon plant, (a species of mountain rue,) a navigator of the ocean, a poetical encomiast, an oilman, and a suborner of perjury.

“ A wrangler with his father, an employer of gamblers for his own benefit, a drinker of intoxicating spirits, a man punished for sin with ele-

phantiasis, one of evil repute, a cheat, and a seller of liquids.

“ A maker of bows and arrows, the husband of a younger sister married before the elder *of the whole blood*, an injurer of his friend, the keeper of a gaming house, and a father instructed in the *veda* by his own son.

An epileptic person, one who has the erysipelas, or the leprosy, a common informer, a lunatic, a blind man, and a despiser of scripture, must all be shunned.

“ A tamer of elephants, bulls, horses, or camels, a man who subsists by astrology, a keeper of birds, and one who teaches the use of arms.

“ He who diverts water-courses, and he who is gratified by obstructing them, he who builds houses for gain, a messenger, and a planter of trees, for pay.

“ A breeder of sporting dogs, a falconer, a seducer of damsels, a man delighting in mischief, a *Brahmin* living as a *sudra*, a sacrificer to the inferior gods only.

“ He who observes not approved customs, and he who regards not prescribed duties, a constant importunate asker of favours, he who supports himself by tillage, a clubfooted man, and one despised by the virtuous.

“ A shepherd, a keeper of buffalos, the husband of a twice-married woman, and the remover of

dead bodies, *for pay*, are to be avoided with great care. (*Sir W. Jones's Institutes of Hindu Law*, p. 71.)

TRESPASS FOR INTERMEDDLING WITH A FEME.

There are some curious decisions in the old books relative to this point of law, with which it may be useful to be acquainted. In *Br. Ab. Tresp.* 40, it is said that a man may aid a feme who falls upon the ground from a horse, and so if she be sick, and the same if her baron would murder her. And the same *per Rede* if the feme would kill herself. And *per Fineux* a man may conduct a feme on a pilgrimage. So where a feme is going to market, it is lawful for another to suffer her to ride behind him upon his horse to market. (*Br. Ab. Tresp.* 207.) And if a feme says that she is in jeopardy of her life by her baron, and prays him (a stranger) to carry her to a justice of peace, he may lawfully do it. (*Br. Ab. Tresp.* 207.) But where any feme is out of the way, it is not lawful for a man to take her to his house, if she was not in danger of being lost in the night, or of being drowned with water. (*Br. Ab. Tresp.* 213.)

JEFFERIES AND DR. FAIRFAX.

In the dispute relative to the election of the President of Magdalen College, Oxford, when the Fellows resisted the commands of James II. to

elect Farmer, a man of bad reputation, who had promised the King to declare himself a Papist, Jefferies was one of the ecclesiastical commissioners, before whom the Fellows were cited to appear. Several of the Fellows offered their reasons on paper to the Lords Commissioners, but Dr. Fairfax not consenting to it, desired their Lordships to hear him apart, and to take his reasons why he could not subscribe. "After the reading of the answer, the Lord Chancellor Jefferies being in hopes he would submit, gave him leave to speak, saying, "*Aye, this looks like a man of sense, and a good subject; let's hear what he will say.*" But finding his mistake, and that Dr. Fairfax chiefly insisted that in ecclesiastical causes there should be a *libel given to the party appealed, that he may know what he is accused of; that he desired that libel, and did not know what he was called there for, and that the matter did not lie in that court, but in Westminster Hall.* The Lord Chancellor endeavoured to baffle his plea, by telling him *He was a Doctor of Divinity, but not of Law.* To this the doctor replied, *that he desired to know by what commission and authority they sate,* which put Jefferies into such an excessive passion as made him cry out, *Pray, what commission have you to be so impudent in court? This man ought to be kept in a dark room. Why do you suffer him with-*



*out a guardian? Pray, let the officers seize him."*  
(*Kennet's Complete History, vol. iii. p. 504.*)

SETTLING A CAUSE OUT OF COURT IN IRELAND.

A suit, involving some family transactions, having come on for hearing before Lord Manners, "Pray, Mr. ———," said his Lordship, addressing himself to the counsel, "should not this cause be settled out of court?" "That's just my own opinion, my Lord," exclaimed the defendant, starting up, "and is'nt it the way I always wished to settle it? Was'nt it this morning I sent my friend to my cousin the plaintiff, to tell him I was ready to give him satisfaction, if he thought I had'nt properly administered my father's will? and did'nt he *refuse* to meet me?"

THE END.

# INDEX.

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## A.

ANECDOTE of Sir Thomas More, i. 28. Of Mr. Bacon, i. 31. Of Sir Nicholas Bacon, i. 32. Of Sir Edward Coke, i. 32. And his Coachman, i. 55. Of Mr. Justice Catline, i. 180. Of Lord Cowper and Richard Cromwell, i. 259. Of Sir Matthew Hale, i. 127, 190. Of George Hardinge, i. 179. Of Lord Kenyon, i. 148. Of Lord Keeper North and the Recorder of Colchester, i. 94. Of a Judge and a Sailor, i. 189. Of Sir Matthew Hale, i. 190. Of Mr. Howland, i. 191. Of a Thief, i. 200. Of Lord Kaimes, i. 206. Of Sir Nicholas Bacon, i. 211, 215. Of Chief Justice Willes, i. 258. Of Lord Keeper North and the Rhinoceros, i. 274. Of a notorious Rogue, i. 288. Of Judge Markham, ii. 16. Of Sir William Noy, ii. 22. Of Sir Edward Coke, ii. 37. Of Sir Thomas More, ii. 37. Of a Prisoner, ii. 39. Of the former Sir Thomas More, ii. 41. Of Lord Chief Justice Holt, ii. 48. Of Horne Tooke, ii. 93. Of him and Mr. Beaufoy, ii. 93. Of him and Mr. Pitt, ii. 94. Of Lord Thurlow, ii. 97. Of Dunning and Wallace, ii. 100. Of Mr. Curran, ii. 104. Of Sir Thomas More, ii. 118. Of Lord Keeper Williams, ii. 119, 146. Of Sergeant Davy, ii. 137. Of Lord Coke, ii. 147. Of Lord Thurlow and Sir Thomas Davenport, ii. 179. Of Sir Thomas More and Erasmus, ii. 192. Of a Scotch Judge, ii. 204. Of Dean Swift and Sergeant Bettesworth, ii. 209. Of Judge Jefferies, ii. 212. Of Lord Avonmore and Curran, ii. 219. Of Sir Thomas Plumer, ii. 221. Of Lord Ellenborough, ii. 221. Of Lord Chancellor

- Northington, ii. 258. Of Mr. Garrow, ii. 287. Of Mr. Graham, ii. 288. Of Sir Julius Cæsar, iii. 35. Of Lord Shaftesbury, iii. 39. Of Lady Hardwicke, iii. 69. Of Mr. Fearn, iii. 94. Of Judge Powis and Mr. Yorke, iii. 105. Of Sir Thomas More, iii. 107. Of Mr. Sergeant Maynard, iii. 138. Of Mr. Erskine and Judge Buller, iii. 153. Of Lord Kenyon, iii. 155. Of Lord Mansfield, iii. 168. Of Mr. Curran, iii. 205, and Lord Clare, iii. 209. Of Sir W. Blackstone, iii. 244.
- Advocate, the Good, ii. 34.
- Amendment of the Law. See LAW.
- America, state of the Law in, ii. 152. Rapid increase of their Law Reports, iii. 25.
- Anglo-Saxons, Law of Assault and Battery among, iii. 101.
- Avonmore, Lord, Anecdote of him and Curran, ii. 219.
- B.
- BACON, Mr., Anecdote of, i. 31. Sir Nicholas, the Lord Keeper, Anecdote of, i. 32. Lord Bacon's Quarrels with Coke, i. 60. His Letter to Coke, i. 61. His attempts to ruin him, i. 62. His presentation to him of the *Novum Organum*, *ib.* Anecdote of Sir Nicholas, i. 211. Lord Bacon's Corruption, i. 230. Horne Tooke's Opinion of it, ii. 95. Character of Sir Nicholas, ii. 109. Lord Bacon's Emoluments, iii. 74. His Life, a *Desideratum* in Legal Biography, iii. 215. By Mallet, very defective, iii. 216. Meditated by Mr. B. Montagu, *ib.*
- Burke, Edmund, and Lord Thurlow, i. 41. Sarcastic Observations of Burke on Lord Thurlow's Speech, *ib.* His Opinion of Lawyers, i. 55. His Reply to Mr. Erskine on the Trial of Warren Hastings, *ib.* His Character of Mr. Grenville, ii. 228.
- Bail, satisfactory, ii. 137.
- Bicaud, the, or Two-tailed Gabbler, ii. 40.
- Billingsgate of the Law, i. 45.
- Blackstone, Sir William, a Poet, his Verses on the Death of Frederick, Prince of Wales, i. 50. His *Farewell to his Muse*, *ib.* Horne Tooke's Opinion of his Commentaries, ii. 95. *Biographical History of*, by a Gentleman of Lincoln's Inn, iii. 225. Anecdote of him and the Bookseller, iii. 244.
- Bathurst, Lord Chancellor, Character of, ii. 111. Stric-

- tures on his Life and Character, iii. 133. Patronizes Sir William Jones, iii. 137.
- Bettesworth, Sergeant, and Dean Swift, ii. 135, 209.
- Barreter, the Common, ii. 50.
- Benevolence, Mode of raising, i. 133.
- Burnet, Bishop, his Recommendation of the Law, ii. 37. His Dismissal from the Chaplaincy of the Rolls, ii. 267. His Account of Lord Russell's Execution, ii. 271. His Account of More's Persecutions, iii. 54. His Life of Sir Matthew Hale, iii. 222. His Character of Sir William Jones, the Attorney General, iii. 265.
- Burnet, Mr. Justice, Account of, i. 261. His Conduct in Youth, ii. 4.
- Buller, Mr. Justice, Account of, iii. 149. His Dispute with Mr. Erskine, iii. 153.
- Butler, Mr., his Advice on the Study of the Law of Real Property, i. 104. His Observations on the length of Legal Instruments, iii. 254.
- Burrow, Sir James, his Reports, iii. 19.
- Brunton, Mrs., her Description of the Sheriff's Warrant, iii. 185.
- Biography, Legal, iii. 209. Of Sir Thomas More, iii. 210. Of Lord Keeper Williams, iii. 213. Of Selden, iii. 214. Of Lord Ellesmere, *ib.* Lord Bacon and Lord Coke, iii. 215. Of Lord Clarendon, iii. 216. Of Lord Chancellor Jefferies, iii. 218. Of Lord Keeper Guilford, iii. 219. Of Lord Somers, iii. 221. Of Sir Matthew Hale, iii. 222. Of Chief Justice Holt, iii. 223. Of Lord Mansfield, *ib.* Of Sir W. Blackstone, iii. 225. Of Sir John Eardley Wilmot, iii. 226. Of Mr. Curran, *ib.*
- Bayley, Mr. Justice, his Objections to the reporting of *Nisi Prius* Decisions, iii. 24.
- Bull, John, how he looked over his Attorney's Bill, iii. 256.

## C.

- COKE, Sir Edward, Anecdote of, i. 32. His Conduct in the Case of Commendams, i. 44. Anecdote of him and his Coachman, i. 55. His Quarrels with Bacon, i. 60. His Verses in the Presentation Copy from Bacon of the *Novum Organum*, i. 63. His Opinions on Witchcraft, i. 78. His Account of Henry V. and the Chief Justice, i. 91. His Eloquence, i. 116. His

- Conduct to Sir Walter Raleigh, i. 128. His Language on passing Judgment, i. 133. His Remarks on Benevolences, *ib.* His Opinion on the Use of Torture, i. 167. His Address on being elected Speaker, i. 266. Anecdote of, ii. 37, 147. His dislike to Innovation, ii. 230. His Disputes with Dr. Cowell, ii. 255. His Reports, iii. 9. His method of reporting, iii. 13. His Gains, iii. 74. Account of his public Life, iii. 108. Singular Conference with James I. iii. 110, 112. Opposes James's Pretensions, iii. 116. His Opposition to the High Commissioners, iii. 117. To the Practice of consulting the Judges extra-judicially, iii. 119. To Benevolences, iii. 120. His Quarrel with Lord Ellesmere, iii. 122. Charges preferred against him. iii. 122. He is disgraced, iii. 123. Restored to Favour, iii. 124. Opposes the Crown, and is dismissed from the Privy Council, iii. 125. Frames the Petition of Rights, iii. 126. Denounces the Duke of Buckingham, *ib.* Retires from public Life, iii. 129. His Life, a *desideratum* in Legal Biography, iii. 215. Account of him in Biographia Britannica, *ib.* Original Letters in the British Museum, *ib.*
- Calling to the Bar, iii. 57.
- Camden, Lord, notice of, ii. 105.
- Cæsar, Sir Julius, Master of the Rolls, Character of, iii. 33. Anecdote of, iii. 35.
- Charles II. his visit to the Temple, iii. 63. To Lincoln's Inn, iii. 96.
- Code Napoleon, ii. 189.
- Canning, Elizabeth, the Trial of, for Perjury, ii. 160. Cross-examination on her Trial, i. 255.
- Candour of an Irish Deponent, i. 54.
- Chapter of the Double Mistress, i. 63. The Production of Fortescue Aland, Master of the Rolls, and Dr. Arbuthnot, i. 64.
- Common Baylers, i. 68.
- Certainty to a certain Intent in every Particular, i. 111.
- Ceremonies formerly observed on the Creation of a Judge, i. 112.
- Clare, Lord, and Mr. Curran, Anecdote of, iii. 209.
- Crewe, Lord Chief Justice, his Eloquence, i. 117.
- Catline, Mr. Justice, i. 180.
- Clarendon, Lord, outrageous Attack upon him, i. 154. Account of him and his Friends, iii. 156. His Auto-

- biography, iii. 216. His excellent Appointments to the Bench, iii. 218.
- Corruption. See Judicial Corruption.
- Cross-examination on Elizabeth Canning's Trial, i. 255. Ridiculed by Foote, i. 256.
- Cowell, Dr., his Disputes with Sir Edward Coke, ii. 254.
- Cowper, Lord Chancellor, Account of, i. 220. Anecdote of him and Richard Cromwell, i. 259.
- Cowper, the Poet, his Poetical Reports, i. 101. His Verses to Lord Thurlow, ii. 124. Regrets his Neglect of the Law, ii. 225.
- Customs, curious, of Manors, ii. 23.
- Curran, Mr., Anecdote of, ii. 103. Story of the Sligo Cats, ii. 104. Anecdote of him and Lord Avonmore, ii. 219. His *Bon Mots*, iii. 205, 209. His *Life*, by his Son, Mr. W. H. Curran, iii. 226.
- Chinese Indictment for High Treason, iii. 180.
- Croke, Sir George, his Reports, iii. 17.
- Clement's Inn, iii. 259.
- Cockle, Sergeant, Anecdote of, iii. 279.
- D.
- DAVIES, Sir John, Account of, i. 246. Bastinadoes Richard Martin in the Middle Temple Hall, i. 247. His Reputation as a Poet, *ib.* Appointed Chief Justice, i. 248. His Wife, Character of, i. 249. His Conduct in Youth, ii. 4.
- Davenport, Sir Thomas, Anecdote of him and Lord Thurlow, ii. 179.
- Dunning, John, Lord Ashburton, his early acquaintance with Horne Tooke, ii. 81. Anecdote of him and Mr. Wallace, ii. 100. Character of, by Sir N. Wraxall, ii. 113. By Sir William Jones, ii. 171. Lord Mansfield's Courtesy to him, iii. 257.
- Douglas, Mr., his Reports, iii. 20.
- Davy, Sergeant, Anecdotes of, ii. 137. iii. 168.
- Day, the Dumb, ii. 240.
- Dyer, Sir James, his Reports, iii. 8.
- Durnford and East, their Reports, iii. 20.
- E.
- EQUITY, Singular Bill in, i. 124.
- Estuis, The, or Bordelloes, i. 145. Suppression of by Henry VIII. Laws against, i. 147.
- Evidence, Circumstantial, Harris's Case, i. 148. Jennings's Case, ii. 272.

- Ejectment, Extraordinary, ii. 39.  
 Epigram, on the Chancery Bar, ii. 248.  
 Ellenborough, Lord, Anecdote of, ii. 221.  
 Edgeworth, Miss, her discouraging Picture of the Law, ii. 236. Her Technical Mistakes, iii. 186.  
 Entries, Singular, ii. 282.  
 Egerton, Sir Thomas, Baron Ellesmere, Lord Chancellor, his Observations on Coke's Reports, iii. 11. His Life, by a Member of the Bridgewater Family, iii. 214.  
 Examination of a learned Apothecary, iii. 82.  
 Erskine, Mr., Anecdote of him and Mr. Justice Buller, iii. 153.  
 Eldon, Lord, Notice of, ii. 125. Anecdote of him and Sergeant Cockle, iii. 279.
- F.
- FEARNE, Mr., Anecdotes of, iii. 94.  
 Ferrers, Lawrence, Earl, Trial and Execution of, i. 276.  
 Festival at the Inner Temple, iii. 142.  
 French Lawyer, Opinion of, on an English Case, i. 253.  
 Forgery, Singular Instance of, iii. 280.  
 Feme, Trespass for intermeddling with, iii. 286.  
 Fairfax, Dr., Anecdote of him and Jefferies, iii. 286.
- G.
- GARROW, Mr., Anecdote of, ii. 287.  
 Gentoo Laws, Points of, ii. 127.  
 Gibbets, the Law of, iii. 227.  
 Goods, Identification of stolen, i. 252.  
 Graham, Mr., Anecdote of, ii. 288.  
 Grimstone, Sir Harbottle, Master of the Rolls, ii. 267. His Edition of Croke's Reports, iii. 17.
- H.
- HENRY V. and the Chief Justice, i. 90. Mr. Luder's *Tracts*, *ib.* Account of this Transaction by Sir Edward Coke, i. 91. Scene with the Chief Justice, from *Old Play*, i. 92.  
 Hale, Sir Matthew, his Conduct in the Prosecution of Witches, i. 88. His Apparel, i. 126. Anecdotes of, i. 127, 190. His Integrity as a Judge, i. 232. Renounced going to Plays, ii. 8. Character of, by Burnet, iii. 128. Life of, by the same, praised by Johnson, iii. 222.  
 Hardwicke, Lord Chancellor, Character of, by Lord Chesterfield, iii. 59. Account of, from Mr. Cooksey's Sketches, iii. 67. Character of that Work, iii. 222.

- Hardwicke, Lady, Anecdote of, iii. 69.**  
**Hetley, Sir Thomas, his Reports, iii. 15.**  
**Hobart, Sir Henry, his Reports, iii. 14.**  
**Hardinge, George, Character of, by Miss Hawkins, i. 178.**  
 Anecdote of him and Messrs. Triphook and Company,  
 i. 179. Sonnet addressed to him by Sir William Jones,  
 ii. 194.  
**Howland, Mr., Anecdote of, i. 191. His Death regretted**  
 by Lord Mansfield, i. 202.  
**Hill, Mr. Sergeant, his Treatment by Lord Mansfield, i.**  
 202. His Remarks on Lord Mansfield's Speech in  
 Wilkes's Case, i. 210.  
**Holt, Lord Chief Justice, Anecdote of, ii. 48. A Bio-**  
 graphical Account of him wanting, iii. 223. The  
 Work intitled his *Life*, deceptive, iii. 223. His Cha-  
 racter, from the Tatler, iii. 257.  
**Hargrave, Mr. and Cicero, ii. 106. His curious Pane-**  
 gyric on the Hon. Charles Yorke, ii. 107.  
**Harris's Case, i. 148.**  
**Horse Pleas, iii. 243.**  
**Hindu Law, Points of, iii. 281.**
- I.
- INNS OF COURT, Revels of the, iii. 43. Solemn and Post**  
 in the Middle Temple, iii. 46. Described by Dugdale,  
*ib.* In Lincoln's Inn, iii. 48. The last Revel in the  
 Inner Temple, iii. 50. Readings in the, iii. 162.  
**Ignoramus, the Comedy of, iii. 193. Acted before King**  
 James I. at Cambridge, *ib.* Extracts from, iii. 191.  
**Versus Legales, iii. 199.**  
**Ireland, Mode of settling a Cause out of Court there, iii.**  
 288.
- J.
- JUDGE, The Good, Character of, i. 26. Integrity of**  
 Judges in Elizabeth's Reign, i. 36. Ceremonies for-  
 merly observed on the Creation of, i. 112. The Re-  
 verend, Character of, i. 273.  
**Judges, Salaries of, in former Times, iii. 27. Their Du-**  
 ties formerly light, iii. 31.  
**Jews, Laws against, i. 211. In Reign of Henry III. i.**  
 213. Of King John, i. 214.  
**Jefferies, Lord Chancellor, and Richard Baxter, i. 119.**  
 Charges of Corruption against, i. 237. An assiduous  
 Student, ii. 6. Anecdotes of, from Mr. Seward's Col-



- lection, ii. 212. His last Days, ii. 259. His Biography, iii. 218. Tracts and Memoirs relating to him, *ib.* His House in St. James's Park, iii. 263.
- James I., his Notions of Prerogative, ii. 256. Proclamation, *ib.* Conference with Lord Coke, iii. 112. Is opposed by him, iii. 114. His Visit to Cambridge, iii. 193.
- Jones, Sir William, Attorney General to Charles II., his Pronunciation, i. 148. His Character, by Burnet, iii. 265. By Swift, *ib.* By Roger North in his *Examen*, iii. 266.
- Jones, Sir William, his first Speech in Court, i. 204. His Law Manuscripts, ii. 138. His Eulogium on Special Pleading, ii. 168. His Character of Dunning, ii. 171. His Sonnet to George Hardinge, ii. 194. His Professional Life, ii. 195. His View of the Labour required by the Profession, ii. 222.
- Jones, T. the Reports of, iii. 18.
- Judicial Corruption, History of, i. 223. In the time of Alfred, i. 224. Sir R. Hengham, i. 226. Sir Thomas More's Honesty, i. 227.—At the Commencement of the 16th Century, i. 230. Bacon's Corruption, *ib.* In the Reign of Charles II. i. 232. Sir Matthew Hale's Integrity, *ib.* Charges against Lord Keeper North, i. 231. Against Jefferies, i. 237. Abolition of New Year's Gifts in the Court of Chancery by Lord Cowper, i. 238.—Corruption in other Countries, *ib.* At Athens, *ib.* In France, *ib.* Impeachment of Lord Macclesfield, i. 240. Its Extent in the Reign of James I. ii. 215. Integrity of Lord Keeper Williams, ii. 216.
- Judicial Anticipation, ii. 243.
- Judicial Politeness, iii. 56.
- Juries, Deliberations of, i. 180. On the Trial of the Seven Bishops, *ib.* Of Mr. Bodkin and the Times Newspaper, i. 182.
- Jury, a New, ii. 243. A London, Hang Half and Save Half, ii. 263. A Dignified Grand, ii. 283.
- Justices of Peace, Corruption of in the Reign of Elizabeth, i. 242. Description of, in *Hudibras*, ii. 286.
- Jennings's Case, ii. 272.
- K.
- KENYON, Lord, his Criticism, i. 148. His early Intimacy with Horne Tooke, ii. 82. His Latinity, iii. 155.

- Kaimes, Lord, Anecdote of, i. 206.  
 Keilway, Mr., his Reports, iii. 8.  
 Kelynge, Chief Justice, reproves the Sergeants for the weight of their Rings, iii. 173. His Quarrel with Lord Holles, iii. 247.

## L.

LAW, the Language of the, i. 1. Introduction of the French Language, i. 2. Its Disuse, i. 3, 4. Its Abolition by Ordinance, i. 5. Is resumed on the Restoration, i. 7. Abolition of the Latin in the Reign of George II. i. 8. Motives of the Lawyers in employing a dead Language, *ib.* Language of the Statutes, i. 9. Language of the Court, i. 10. Projects to Reform, *ib.* During the Reigns of the Plantagenets and Tudors, i. 11. Formal Proposal of Bacon, i. 12. His offer of a Digest to James I. i. 15. Reforms during the Commonwealth, i. 18, iii. 276. Dreaded by Sir Matthew Hale, i. 19. His "Considerations," *ib.* Ordinances during the Commonwealth, i. 20. Proceedings on the Restoration: Sir Matthew Hale's Views, i. 21. In the Reign of Queen Anne: Burnet's Remarks, i. 24. In the last Century: Sir William Young's Motion, i. 25. Recent Select Committee to amend the Criminal Law, *ib.* The Billingsgate of, i. 45. The Perils of, in Ireland, i. 57. Mr. Butler's Advice on the Study of, i. 104. The Student at Law of former Days, ii. 1. Burnet's Recommendation of the, ii. 37. Gentoo, Points of, ii. 127. The State of the, in America, ii. 152. Projects to Reform, continued, ii. 187. Code of the French, ii. 189. Locke's Advice on the Study of, ii. 207. Its Effects upon the Mind, ii. 227. Upon the Happiness of its Votaries, ii. 234. Remarks on the Profession of the, by Mr. W. H. Curran, iii. 87. Of the Anglo-Saxons, iii. 101. Of the Novels, iii. 185. Of Gibbets, iii. 227.

Language of the Law. (See LAW.)

Lawyer and Sawyer, iii. 66.

Lawyers, Eloquence of the early English, i. 114. Lord Bacon's Remarks to Sir Henry Montague, i. 115. Baron Clarke, i. 116. Sir Edward Coke, *ib.* Lord Chief Justice Crewe, i. 117. The Lawyer, i. 273. Servility of, in the Reign of the Stuarts, ii. 232. The Common, excluded from the Chancellorship, by Elizabeth and James I. iii. 42. The Character of an Honest

- Lawyer, iii. 75. The ancient Practice of retaining, iii. 166.
- Law Books, Licensing of,—In James II.'s Time. Illegal Patent for printing of: Its Disadvantages, i. 33. Disuse of licensing, i. 34. Presentation of Copies to the Judges, i. 35. Price of, in former Times, iii. 191.
- Laws, the Blue, of Connecticut, i. 38. Against the Witches, i. 77. Against the Jews, i. 211.
- Legal Vulgar Errors, i. 64. Recollections of London, i. 191. ii. 266. iii. 259.
- Legal Character, Remarks on the, ii. 221.
- Legal Biography. (See *Biography*)
- Legal Instruments, Length of, iii. 254.
- Littleton, Lord, his Tenures, i. 104.
- Lutwyche, Extract from his Reports, i. 104. Nelson's Abridgement of, ii. 261.
- Locke, his Advice on the Study of the Law, ii. 207.
- Lincoln's Inn, ii. 270. Lincoln's Inn Fields, *ib.* Charles the H.'s Visit to, iii. 96.
- Leonard, his Reports, iii. 18.
- Lane, Lord Keeper, iii. 162.

## M.

- MORE, Sir Thomas, Anecdote of, i. 26. His Austerities, i. 148. His Execution, i. 216. His Integrity, i. 227. Anecdote of, ii. 37. Anecdote of, ii. 44. Erasmus's Character of Sir Thomas, ii. 110. His Question to the Foreign Doctors, ii. 118. Anecdote of him and Erasmus, ii. 192. Did he persecute Heretics? iii. 53. His Income, iii. 73. Anecdote of, iii. 107. His Life, written by different Hands, iii. 210. By Stapleton, *ib.* By an Anonymous Hand, iii. 211. By Thomas More, *ib.* By Hoddesdon, *ib.* By Roper, iii. 212. By Dr. Warner, *ib.* By Cayley, *ib.* Mr. Dibdin's Biographical Introduction, iii. 213.
- Macclesfield, Earl of, Impeachment for Corruption, i. 240.
- Madan, Mr., his Thoughts on Executive Justice, iii. 169. Animadverted on by Sir S. Romilly, iii. 236.
- March, Reports of, iii. 16.
- Mansfield, Lord, Character of, by Mr. H. Hawkins, i. 201. His Treatment of Mr. Sergeant Hill, i. 202. His celebrated Speech at the Time of Wilkes's Riots, i. 207. Mr. Sergeant Hill's Remarks on it, i. 210. His Conduct during the Riots, i. 268. Character of, ii.

87. *Fries Horne Tooke, ib.* His Retirement from the Bench, ii. 101. Character of, by the Bishop of Worcester, ii. 150. His Wit, ii. 167. An avowed Enemy to Special Pleading, ii. 168. His *Life*, by Mr. Halliday, unfavourable Character of, iii. 223. Meditated by Mr. Ruffhead, but declined by Lord Mansfield, iii. 224. Sketch of his Professional Life, by Mr. Butler, *ib.* His Courtesy to Mr. Dunning, iii. 257.
- Markham, Sir John, Lord Chief Justice of the King's Bench, Character of, ii. 12. An upright Judge, ii. 16. His Salary, iii. 30.
- Manors, curious Customs of, ii. 23.
- Marlborough, the Duke of, his Prosecution of William Barnard, for sending threatening Letters, ii. 58.
- Maynard, Mr. Sergeant, Account of, by Roger North, iii. 137. Anecdotes of, iii. 138. Clarendon's Opinion of, iii. 162.
- Multiplication, the Crime of, iii. 202. *Eden and Whately's Case, ib.* Commission to inquire into the Philosopher's Stone, iii. 203.

## N.

- NORTH, Lord Keeper, Earl of Guilford, his Conduct on Trial of Witches, i. 84. Anecdote of him and the Recorder of Colchester, i. 94. His Character in early Life, i. 107. His Mode of Dress, i. 128. His Marriage, i. 134. Charges of Corruption against, i. 234. Anecdote of him and the Rhinoceros, i. 274. His Biography, by Roger North, iii. 219.
- North, Roger, his *Examen*, iii. 218. His Life of Lord Keeper Guilford, iii. 219. His Character as a Biographer, iii. 220.
- Northington, Lord Chancellor, his Character, ii. 257. Anecdote of, ii. 258.
- Norkott, Jane, Remarkable Case of the Murder of, ii. 180.
- Noy, Sir W., Attorney General to King Charles I., Anecdote of, ii. 22.
- Nelson, his Abridgement and Translation of the Cases in Lutwych, ii. 261.
- Novels, the Law of the, iii. 186.
- Novel Motions, iii. 274.

## P.

- PROJECTS to Reform the Law. (See Title LAW.)
- Poets, Legal, i. 48. Lord Clarendon, Sir Matthew Hale,

- Lord Bacon, Sir Edward Coke, *ib.* Lord Harcourt, Lord Somers, Lord Mansfield, Lord Hardwicke, Charles Yorke, Sir John Davies, i. 49. Lord Chancellor Hatton, Sir William Blackstone, i. 50. Poetical Reports, i. 99. Wills, i. 237.
- Pettifogger, Character of, i. 265.
- Pillory, Punishment of, ii. 17. The Case of the King v. Beardmore, ii. 19. Of Dalton and Griffiths, ii. 21.
- Perrys, Remarkable Case of the, ii. 45.
- Parr, Dr., his Observations on the Reform of the Law, ii. 187. Three Judicial Portraits, drawn by him, ii. 204. His Character of Lord Thurlow, iii. 245.
- Physicians, Fees of, ii. 55. Case of Dr. Chorley against Wood, ii. 56.
- Palmer, Sir Jeffrey, Attorney General to Charles II., Character of, ii. 115. He Converts his Lady from Popery, ii. 117. Clarendon's Opinion of, iii. 162.
- Parliamentum Indoctum, iii. 72.
- Pleading, Special, ii. 168. Discountenanced by Lord Mansfield, *ib.* Praised by Sir William Jones, ii. 169.
- Pleader, Special, Description of, ii. 284. Poetical Portrait of, iii. 90.
- Pembroke, Earl of, Extracts from the Will of, ii. 218.
- Plumer, Sir Thomas, Anecdote of, ii. 221.
- Park, Mr. Justice, ii. 243.
- Powis, Mr. Justice, the Duke of Wharton's Lampon on, iii. 81. Anecdote of him and Mr. Yorke, iii. 105.
- Plowden, his Reports, iii. 8.
- Professional Emoluments, iii. 73.
- Prescribing for a Right of Robbery, iii. 154.
- Popish Plot, Trials for the, iii. 178.
- Pemberton, Sir Francis, Chief Justice of the King's Bench, Character of, by Roger North, iii. 187. By Burnet, iii. 190.
- Paul's, the Pervise of, iii. 204. Frequented by the Lawyers for the Purpose of consulting with their Clients, *ib.*
- R.
- READINGS in the Inns of Court, iii. 162.
- Reports, Poetical, i. 99. By Cowper, i. 101. Versification of Sir Edward Coke's, i. 103. Of Poor Law Case in Burns' Justice, *ib.* Specimen of Scriblerus's, i. 283. Of Masters in Chancery, ii. 218. History of the, iii. 1. The Year-Books, *ib.* Of Plowden, iii. 8.

- Of Sir James Dyer, *ib.* Of Mr. Keilway, *ib.* Of Sir Edward Coke, iii. 9. Of Sir Henry Hobart, iii. 14. Of Sir Thomas Hetley, iii. 15. During the Commonwealth, iii. 16. Of March, *ib.* Of Style, iii. 17. Of Sir George Croke, *ib.* Of Rolle, Leonard, T. Jones, and Vaughan, iii. 18. Of Sir Edmund Saunders, iii. 19. Of Lord Raymond, and Sir John Strange, *ib.* Of Sir James Burrow, *ib.* Of Mr. Douglas, iii. 20. Of Durnford and East, *ib.* Of the present Day, and Remarks upon them, iii. 21. Authority of various Reports, iii. 22.
- Reporters, Stipendiary, iii. 15, 25.
- Raleigh, Sir Walter, his Treatment by Sir Edward Coke, i. 128. Judgment upon him, i. 133.
- Raymond, Lord, his Reports, iii. 19.
- Rolls, the, ii. 267.
- Retaining Lawyers, the ancient Practice of, iii. 166.
- Rolle, his Reports, iii. 18.
- Russell, Lord, his Execution, ii. 271.
- Revels. (See *Inns of Court.*)
- Romilly, Sir Samuel, Memoirs of, iii. 229. His early Life, iii. 230. His Call to the Bar, iii. 233. His Success, iii. 236. His Observations on Mr. Madan's Pamphlet, *ib.* His Marriage, *ib.* His Promotion to the Solicitor Generalship, iii. 237. His Amendments of the Law, iii. 238. His Parliamentary Conduct, iii. 240. His Election for Westminster, iii. 241. His Illness, iii. 242. And Death, iii. 243. His Character, iii. 249.
- S.
- SAUNDERS, Sir Edmund, Character of, by Roger North, i. 70. His Origin, Person, and Education, i. 71, 72. His Abilities and Manners, i. 73. His Reports, iii. 19.
- Scriblerus, his Reports, i. 283. His Memoirs, ii. 120.
- Scroggs, Lord Chief Justice, Portraits of, by Roger North, iii. 174. His Conduct during the Popish Plots, iii. 175, 176. Articles of High Misdemeanours exhibited against him, iii. 177. His Character, by Burnet, iii. 178.
- Smith, Sir Thomas, his Observations on the Use of Torture in England, i. 171.
- Sergeant's Inn, Chancery Lane, ii. 266.
- Sergeants' Rings, iii. 171.

- Student at Law of former Days, ii. 1.  
 Striking in the King's Palace, ii. 52. Case of Sir Edmond Knevet, ii. 53.  
 Shaftesbury, Lord Chancellor, a Freak of, ii. 98. Account of his Judicial Conduct, ii. 99. Anecdotes of, iii. 39.  
 Somers, Lord, Character of, ii. 139. Panegyric of, by Horace Walpole, ii. 141. Character of, by Swift, ii. 142. By Addison, ii. 145. Life of, by Mr. Maddock, ii. 146. iii. 222. Memoirs of, by Mr. Cooksey, iii. 221. By an Anonymous Hand, *ib.*  
 Style, Reports of, iii. 17.  
 Shakspeare, did he ever Study the Law? ii. 278.  
 Strange, Sir John, his Reports, iii. 10.  
 Selden, Mr., his Character, by Lord Clarendon, iii. 158. His Biography, by Dr. Wilkins, iii. 214. His Life, by Dr. Aikin, *ib.*

## T.

- THURLOW, Lord, and Burke, i. 41. His Defence of himself in the House of Peers, i. 42. Character of, ii. 85. Prosecutes Horne Tooke, *ib.* A Frolic of his, ii. 97. Notice of, ii. 108. Character of, by Sir N. Wrasall, ii. 120. Verses addressed to, by Cowper, ii. 124. Anecdote of him and Sir Thomas Davenport, ii. 179. His Character, by Dr. Parr, iii. 245.  
 Tooke, Horne, and the Bar, i. 59. His Rejection by the Benchers of the Inner Temple, *ib.* Horne Tooke and the Law, ii. 80. His Acquaintance with Mr. Dunning, ii. 81. With Lord Kenyon, ii. 82. Abandons and resumes the Law, ii. 84. Is tried and convicted, ii. 85, 89. Is rejected from the Bar, ii. 89. View of his Situation, ii. 90. Is tried for High Treason, and acquitted, ii. 93. Anecdote of, *ib.* Of him and Mr. Beaufoy, *ib.* Of him and Mr. Pitt, ii. 94. His Opinions on Arrest for Debt, *ib.* Of Blackstone's Commentaries, ii. 95. Of Lord Bacon, *ib.*  
 Temple, the burning of the, in the Great Fire, i. 75. The Crest of the, i. 97. Epigrams on it, i. 98. Sumptuary Laws of, respecting Dress, i. 125. The Church of, i. 172. The Master of, i. 177. Middle Temple, i. 192. The Hall, i. 193. Garden of the Inner Temple, i. 196. The Hall, i. 198. The Church, i. 199. Charles II.'s Visit to, iii. 63. Festival at the Inner Temple, iii.

142. The Church of, frequented by the Lawyers, for the Purpose of Consultations, iii. 204.
- Torture, Use of, in Judicial Proceedings, i. 160. In the Reign of Henry VI. *ib.* In Navarre and Biscay, in Lucca, i. 161. In Sir Walter Raleigh's Case, i. 162, 168. In Prussia, i. 163. Sir Samuel Romilly's Inquiries, i. 164. Tortures inflicted on the Knights Templars, i. 165. Blackstone's Observations, *ib.* Used in the Reign of Elizabeth, i. 166. Of James I. i. 167. Against the Jesuits, i. 168. Defence of its Use, by Sir Robert Wiseman, in Reign of Charles II. i. 169. Observations of Sir Thomas Smith, i. 171. The Use of, in Judicial Proceedings, continued, ii. 177. Warrant from Queen Elizabeth for racking two Men, *ib.* Mr. Rose's Error on this Subject, ii. 179.
- Tovey, Dr. his *Anglia Judaica*, i. 211.
- Twisden, Mr. Justice, his Fall, ii. 97.
- Throgmorton, Sir Nicholas, his Trial for High Treason, ii. 264.

## V.

- VAGABONDS in the Reign of Elizabeth, ii. 249.
- Vaughan, Sir John, Lord Chief Justice, his Reports, iii. 18. Character of, by Lord Clarendon, iii. 160. By Selden, iii. 161.

## W.

- WEST, the Friend of Gray, his Feelings on the Subject of the Law, ii. 224.
- Witches, Laws against, i. 77. Statutes of 33 Hen. VII. c. 8. 1 Jac. I. c. 12. i. 78. *Demonology* of James I. i. 79. Numbers of Witches executed, i. 80. Decline of this Superstition, *ib.* Trial before Mr. Justice Raymond, i. 81. Sinclair's *Satan's Invisible World discovered*, i. 83. Trial before Lord C. J. North, i. 84. Case of Mary Smith, i. 86. Conduct of Sir Matthew Hale, i. 88. Of Lord C. J. Holt, i. 89. Of Lord C. J. Parker, *ib.* Hopkins, the Witch-finder, i. 89. Selden's Justification of these Laws, *ib.*
- Wills, Poetical, ii. 237.
- Whitelocke, Sir James, Account of his Attainments; his Death, ii. 185.
- Whitelocke, Bulstrode, Clarendon's Opinion of, iii. 162.
- Wilmot, Sir Eardley, his narrow Escape, i. 143. *Memoirs of his Life*, iii. 226.



- Willes, Chief Justice, Anecdote of, i. 258.  
 Wiseman, Sir Robert, his Defence of the Use of Torture, i. 169. His Contest with Mr. Hickeringill, ii. 112.  
 Wallace, Mr., Anecdote of him and Mr. Dunning, ii. 100.  
 Wedderburne, Lord Loughborough, Character of, ii. 108.  
 Williams, Lord Keeper, Anecdote of, ii. 119. His Notion of the Fleet, ii. 126. Anecdotes of him and James I. ii. 146. Character of, by Arthur Wilson, ii. 149. His Last Days, ii. 169. His incorruptible Integrity, ii. 215. Distribution of his Time, iii. 31. His Elevation and diligent Study, iii. 42, 43. His Life, by Dr. Hackett, iii. 213. By Ambrose Phillips, iii. 214.  
 Westminster Hall, iii. 264.  
 Wagers, the Law of, iii. 270.
- Y.
- YEAR-BOOKS, iii. 1. Their Commencement, *ib.* Their Authors, iii. 3. Their Character, iii. 6.

---

 ENGRAVINGS IN VOL. I.

	PAGE.
Chart of eminent Lawyers . . . . .	face Title.
Lord Bacon . . . . .	60
Lord Littleton . . . . .	104
Sir Walter Raleigh . . . . .	128
Lord Mansfield . . . . .	202

## VOL. II.

Nomodendron, or Law-Tree . . . . .	face Title.
Sir Thomas More . . . . .	110
Lord Camden . . . . .	105
Lord Eldon . . . . .	125

## VOL. III.

Autograph of eminent Lawyers . . . . .	face Title.
Lord Hardwicke . . . . .	60
Sir Edward Coke . . . . .	108
Sir Matthew Hale . . . . .	128
Lord Clarendon . . . . .	156
Mr. Selden . . . . .	158

