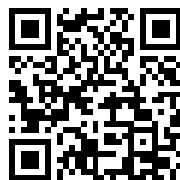

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O'BRIEN

THE LAWYER

1843

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THE
LAWYER,

HIS CHARACTER AND RULE OF HOLY LIFE:

AFTER THE MANNER OF

GEORGE HERBERT'S
COUNTRY PARSON.

BY EDWARD O'BRIEN,
BARRISTER AT LAW.

PHILADELPHIA:
CAREY AND HART.

1843.

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INTRODUCTION.

"So natural is the union of Religion with Justice, that we may boldly deem there is neither where both are not. For how should they be unseignedly just, whom religion doth not cause to be such; or they religious, which are not found such by the proof of their just actions? If they which employ their labour and travail about the public administration of justice, follow it only as a trade, with an unquenchable and unconscionable thirst of gain; being not in heart persuaded that justice is God's own work, and themselves his agents in this business; the sentence of right God's own verdict, and themselves his priests to deliver it; formalities of justice do but serve to smother right, and that which was necessarily ordained for the common good, is, through shameful abuse, made the cause of common misery."—*Hooker's Ecclesiastical Polity*, book v. c. 1.

THE Author of the following work was the late Edward O'Brien, third son of the late Sir Edward O'Brien, of Dromoland. He was born in the year 1808. After taking his degree at Trinity College, Cambridge, he became a member of the Irish bar. He died in 1840 of a fever caught in consequence of his exertions on behalf of some religious and charitable societies established in Dublin; exertions which, when added to his professional pursuits, were more than his strength was equal to.

In the composition of this book the author had no thoughts of fame, or what is called literary success. His impulse was simply the love of justice: his only motive was the desire to assist others in the performance of their duty.

I can truly affirm of this treatise that it is a sincere book. It came from the heart of its author, and embodies his most solemn convictions. A book so written is as the very soul of a man conversing with his fellow men: recording for their benefit the best thoughts of his best hours: presenting them in a brief space, with principles, the sifted and select result of all his studies, meditations, and experience: counselling them, exhorting them: witnessing for what he has known of truth; and putting it forth, with his prayers; that it may serve to the need of his brethren. Such a work, if read at all, should be read with attention and respect: unless we approach it in an ingenuous spirit, willing to understand before we criticise, deeming it possible that the objections which present themselves to our minds so readily, may have occurred to the author also, and been for good reasons put aside; desiring to stand, at least for the time, on the spot which he occupied, and contemplate the subject from his point of view; if we do not possess this small measure of self-command and philosophical docility, then there does not exist between our mind and that of the writer such a degree of moral conformity as is necessary for the appreciation of his work. We shall in such a case do ourselves least injury, and our monitor least injustice, by leaving his book unread.

I have offered this caution because at the present day books are often put forth in a trifling or mercenary spirit; and are therefore as petulantly condemned as they were corruptly written. The present work is particularly obnoxious to rash judgments, because it assails popular prejudices: and it can no longer be defended by him whose vigorous intellect might at a later time have further supported his present argument; whose consistent and upright conduct as a Lawyer would have proved the best vindication of his principles. It deserves, however, a candid consideration. It is the gift, alas! the legacy of one who did not write a single line without deep reflection and a worthy intention.

From his earliest years my lamented friend was remarkable for a scrupulous regard to justice. I have never known another person so entirely conscientious. On all occasions his first desire was to know what ought to be done, and do it. The great and invisible things which belong to truth, justice, and mercy, seemed with him ever present. On the other hand, the ordinary objects of selfish ambition appeared to him fantastic and unreal. It is not uncommon to meet men who inquire, as metaphysicians, into the first principles of right and wrong: but he followed justice into its minutest details: he believed the broken bread of justice to be the food of all social life, and reverently gathered up its very crumbs: nothing seemed to him trivial in which conscience had a part. While his faith was thus strong, he was, from natural disposition, and from habits of philosophical inquiry, unusually sceptical as to matters of the mere understanding. Those who remember his extreme caution will not be tempted to think that on so important a subject he had rushed precipitately into a system of his own.

His religious convictions were profound: he knew that moral principles have their root in divine truths, and can only be realized through aid from above. This will account for the christian tone that pervades his work: indeed, but for these convictions, I do not know

whether it would ever have been written. Justice is fond rather of upbraiding than assisting. It was christian zeal and christian charity which inspired him with an unceasing desire to maintain what he believed to be the cause of truth. In particular he was anxious to assist those young men of his profession, who with views in the main honourable, and average clearness of mind, are yet unequal to contend against the favourite corruption of the time, supported as it is, not only by personal interest, but by a very large number of specious sophisms offered to their choice, as well as a considerable weight of pretended authority and modern tradition.

His religion was eminently practical in the true sense of the word. It was his habit to observe the influence of christian principles as applied to the common detail of life. He disliked religious controversy; and occult dogmas, he thought, were to be believed in faithfully, not scrutinized impertinently. He loved the reflected light of christian truth; and remembered that if we fix a direct gaze too long upon the sun, our eyes are dimmed, and we walk in the dark. He meditated often on that text, "Thy word is a lantern unto my feet," and appeared to discover a spirituality in obedience which escapes the penetration of more speculative religionists. The consequence was such as might be expected. The professions, indeed all occupations by which men live, and which are permanent elements in society, seemed to him delivered from the secular character that belongs to them naturally. He did not consider the Christian commonwealth as consisting of statesmen, lawyers, physicians, farmers, and other classes of men, who, besides their social avocations, possess religious opinions: rather he viewed it as a body of Christians who are led provisionally to certain outward pursuits; who undertake them on christian conditions; who speak sincerely in naming each such pursuit a calling; ("the state of life to which it hath pleased God to call me"), and who regard it not chiefly as a means of selfish advancement, but as the sphere of those labours allotted to them by the divine command, and for the good of their neighbour. Such a doctrine must always appear to the world as visionary, because it requires us to become unworldly: nay, it carries the war into the enemy's camp: and seems to violate that silent truce by which religion, on condition of not trespassing beyond bounds, or interfering with the Babel-worship of the world, is permitted to remain herself unmolested—except by being superseded. Such, however, were the opinions which my friend maintained. Had he been a statesman or a physician, I doubt not that he would have particularly considered how the duties attaching to such callings might be fulfilled in a manner confessedly christian: and I am further of opinion that his devout inquiries would not have returned to him unsatisfied; and that, without incurring the charge of being either a fanatic or a simpleton, he would have strengthened many to walk along those tortuous paths as men not ashamed of their baptismal cross, or afraid to confess themselves in their daily walk of life the "servants and soldiers of Christ."

The opinions put forward in this book were frequently tested by the author in friendly discussions; for he was most anxious to consider whatever might be urged on the other side. As a lawyer he acted religiously on his convictions: and thus became fully assured that his principles were capable of being realized, though (as is the case with all other duties) not without self-sacrifice.

He did not think meanly of those who adopt the ordinary views of the legal profession. Believing their principles on this particular subject to be worthy of severe condemnation, he yet denied not that many who act on those principles are good, honourable, and wise men. They have inherited an error, and they propagate it. Some of the best men who lived three hundred years ago deemed it a duty to persecute with fire and sword. Three hundred years hence, men not worse than ourselves may do what we should be ashamed of doing. We are clear-sighted enough concerning that evil which is foreign to us; but we lack strength to wrestle with the error of the day. We cannot even discern its true proportions; much of it remains invisible: its outline is uncertain: it is everywhere diffused: it is consistent with the philosophy of the time; and we are all indirectly philosophers: it is associated with the remembrance of those whom we revere, and we all reason through the affections: we are probably committed to it by our past conduct; or it is congenial with the principles on which we act. Moreover, to put away a conviction long entertained is not like changing our clothes: it is a painful process more analogous to flaying off a diseased part of the skin; our principles not being adventitiously picked up, but silently exuded from within, like the bark of a tree, and gradually hardened by exposure.

The few points in my friend's character to which I have adverted will best explain the design of his book, and his motives in writing it. I have recorded them for that small but fit audience which alone he wished to gather round him. What degree of popular favour may await this work is of but little importance. The grave which has closed on its author does not more securely shield him from the arrows of fortune, and the sharp or flattering speeches of men, than did his own manly and modest nature: and those who remain will possess in this book a memorial of their friend more consoling than public

applause could be. In it his portraiture remains; stamped upon it they will find not his love of justice alone, but that kindness which made him seem, if injured, to remember justice only against himself: they will observe his fearless reverence for truth, and at the same time his respect for opinions long established; his slowness to oppose them; his candour in weighing them; his charitable desire to exculpate those who hold them, and that higher charity which stimulated him to combat their error: they will be reminded of his reluctance to give pain, and his greater fear of doing wrong; his distrust of his own judgment, and his invariable faith in the moral sense and the Divine commands; his indifference to promiscuous applause, and his solicitude for the esteem of those he esteemed, the love of those he loved. They will find many light traces, for memory to fill up, of his single-heartedness, his humility, his earnestness, and his courtesy. Some passages will bring back before their eyes the very gestures and expression of countenance with which he used to enunciate such sentiments.

The style of the following pages, though different from that of the present day, is entirely unaffected. The author's reading lay principally amongst old books, and he therefore wrote naturally in their manner. Should any passages be imperfectly expressed, the friendly reader will remember that this work was the only exercise which the author had in composition, and that it remains without his final corrections. Should exceptions be made against its statements in matters of detail, we must not allow our attention to be diverted by a trifle from the broad principles of the book. As for mere casuistical objections, it is a very shallow philosophy that takes fright at them. Such difficulties must ever be met in the circle of nature and duty. They are the eddying points of meeting and converse truths. Theoretic systems are easily made consistent; but their congruity does not prove their reality. The symmetry that can be measured is but a finite symmetry. That freedom from casuistical difficulties which we often find in human schemes, proves of itself that they form no part in the providential structure of things; that they possess only an isolated, arbitrary existence, and have been worked out by a single faculty of the human understanding.

For myself, I concur most heartily in the main doctrines of this book. If justice, mercy, and truth (the common root of justice and mercy), are to forego their obvious claims on man, in deference whether to a theory imagined or a course adopted by him, I do not know how these qualities can long continue to be venerated as the attributes of God; and as such only will they maintain their ground among men. If the law courts are necessarily so depraved that, to advance the interests of society, the barrister must violate his duty to his neighbour, then I should believe with the Quakers that Christians ought to abstain from legal proceedings. To consider the matter morally:—If the rights of the individual (when we can ascertain them with that assurance on which men act generally) are to be set at nought for the greatest good of the greatest number, then the first moral distinction is done away with, however unwittingly, that namely between persons and things; and morality itself ceases to exist.

To look at the question politically:—The legal profession is now the prominent one amongst us. It is closely connected with power, and the State. What then will be the probable consequence if lawyers are bound over by an imaginary necessity to devote the larger part of their time, thoughts, and energies to exertions in which right has not the first part? But few of the soldier's hours are spent in fighting: all the toils of the physician may be mitigated by pity and generous care: intellectual labours elevate the mind: mechanical employments leave the thoughts free. What then will be the lawyer's influence on society? What will be the consequence to the nation when those men preside over her affairs, of whom the least unfavourable account would be that they had qualified themselves for their senatorial duties, by working, during their apprenticeship, as senseless parts of a great machine? I think the consequences will at last be these. A public neglect of principle, a contempt of principle, a growing incapacity to understand or believe in principle: the deplorable spectacle of a nation reduced to a commercial establishment; denying her responsibilities, and betraying her trusts: a shifting, shuffling, state-craft of expedients: a beggarly catching at momentary devices: the observation of these corruptions by the people; the palliation, the imitation: mutual distrust: infinite covetousness: a dependance on mere mercantile credit substituted for that spirit of moral uprightness which was of old the life of England's strength, the source of her prosperity, and the cause of her great estimation among foreign nations.

Law is not the rival of justice, but an instrument for the attainment of justice. It was impossible to construct such an instrument so that it should not, if used unrighteously or even indifferently, work injustice. Thus we cannot forge a weapon to cut down an enemy, which may not also be used to murder a friend; we cannot raise an altar on which it is impossible to sacrifice to idols; we cannot discover a medicine which malignity or carelessness may not convert into a poison. In all such cases a good intention and good sense are

supposed on the part of those who are to use the resources they find prepared for their hand.

There are persons who imagine that if the conventional course of things be in any respect modified, the whole civil fabric must fall to pieces. It is not improbable that every evil which has not long existed, may have been so far overruled as to be made the means of some good: but surely a much higher though a different good must result wherever a moral evil is extirpated. Drunkenness, it has been said, swells the revenue; vanity stimulates to exertion: would a nation therefore suffer loss if men became sober and modest? The common interest of all will best be promoted where each person is careful to do his own duty simply. To apply this. An advocate is of course not a judge in the technical sense of the word. In a moral sense, circumstances must often enable him, sometimes compel him, to judge on which side lies the right and on which the wrong. If in such cases lawyers invariably accounted it base to insinuate error or conceal truth; to assist in violating justice and trampling the oppressed; nay, though all who enter the legal profession were to be governed therein by the same conscientious principles which direct them in their private relations, I cannot help thinking that society would sustain no greater calamity than it could bear.

In conclusion, I commend this noble and religious book to the careful attention of those, who, like its author, desire to follow the pursuits of this life in such a manner as will favour their growth in the life interior and eternal: especially I commend it to the younger members of the Bar; and to those whose opinions are not yet made up, or who have courage and candour, and patience to reconsider them. I would also recommend it to those, who, fatigued or discouraged by the laborious littleness of the law when followed as a trade, may not be unwilling to try it as a profession, in the hope that its aspect may become somewhat less dull when contemplated in a purer light, and its yoke less burdensome when taken up in the ancient spirit, with a single eye to God's glory, and a vehement desire to do good among men.

A. DE V.

THE LAWYER.

APOLOGY FOR THE WORK.

WHEN having penned the little work which follows, I thought of making it public in the hope that I might thus call attention to the principles it embodies; before I determined upon so bold a course I put it into the hands of a valued friend, whose counsel I esteemed not less highly than his friendship. In the main he commended my design; but warned me, if I would not have my book thrown aside as soon as opened, to add a preface by way of Apology for the principles contained in it: not because in truth he deemed they needed any excuse; but because they belong to a way now everywhere spoken against, though once in this land avowed and followed ere '*the useful*' and '*the expedient*' had usurped the place of '*the right*' and '*the honest*,' and ere the divine precepts of a Leighton, a Taylor, and a Barrow, had given way to the earth-born speculations of a Locke, a Paley, or a Bentham. I have listened to his counsel, and pray the patience of the reader while I attempt to comply with it.

The object of the following pages is to portray in outline the character of a British Lawyer; to suggest the motives which should animate him and the principles which should direct him in the exercise of his calling. And here at the outset I shall be asked—What need, at this period of our nation, for that which if ever necessary should have been accomplished centuries ago?—The answer to this question involves a censure on the present age, the justice of which it can scarce be expected to acknowledge readily. In earlier times¹ no manual (so far as I know) was offered to the Professors of the Law, to direct or control their conduct; to impugn false or to suggest right principles: the chivalric spirit of the profession,² which regarded the fee of the lawyer as the offering of gratitude, not as wages for labour, would have turned with abhorrence from a theory which makes a lawyer the mere implement of his client, to be used at his pleasure for good or for ill: and though doubtless there were but too many who by their accursed avarice and unjust arts gave occasion to the censures of the satirist and the moralist, such censures fell harmlessly upon the profession at large, which defended itself by repudiating the principles against which those attacks were directed. Now however that principles³ in morals generally, and particularly in regard to the professional conduct of advocates, which former ages would have shrunk from with disgust are openly avowed and commonly followed, it seemed not an idle task to set forth the portraiture of that character which once was, and, though too often ridiculed, I trust yet is the property of many; to the end that those who may never heretofore have thought seriously upon the deep responsibilities which attach to the calling of the lawyer, may look upon either picture and choose which they will for their own: whether they will consider themselves in the exercise of their calling as "under no obligation to speak the truth;"⁴ as "paid for affecting warmth when they have no warmth, and for appearing to be clearly of one opinion when they are in reality of another opinion;"⁵ as "men who with wigs on their heads and bands round their necks may without blame do for a guinea what without these appendages they would think it wicked and infamous to do for an empire;"⁶ or whether they will not rather on the other hand consider themselves as the agents of God in the work of justice;⁷ as

“the counsellors, secretaries, interpreters, and servants of justice, the lady and queen of all moral virtues;”¹⁸ as “orators bound to use the power of their tongue and wit to shame impudence, to protect innocence, to crush oppressors, to succour the afflicted, to advance justice and equity, and to help them to right that suffer wrong.”¹⁹

But let us descend to particulars and view more closely the theories which have enabled philosophers, moralists, and divines to look unmoved, ay! admiring, upon the hideous features of the former picture: and

I. *First*; let us examine that which represents the advocate as an instrument—a conduit pipe—a mere mouth-piece; whose office it is with all his powers to advance any claim, no matter how opposed to the laws of God or man, which may be committed to him; and in the exercise of this office bound, because paid, to put forward in the way of statement, argument, or opinion whatever may be suggested or enjoined by his client, no matter how false, sophistical, or unfounded. “Every member of society (it is said by those who adopt this view), whether accusing or accused, has a natural right to speak freely and fully for himself; and if either by a legal or natural incapacity this cannot be done in person, to have a *proxy* provided or allowed by the state to do for him what he cannot or may not do for himself,”²⁰ and this is alleged irrespectively of the justice or injustice of the accusation or defence which it may please him to make. The lawyer is the representative, the interpreter of his client, and if he does otherwise than the client bids or wills, the client is not properly represented.

The obvious error in this theory is the assumption that any one can have a *natural right* to ask the aid of another in doing what is unjust or wrong. It cannot even be asserted that a man when acting alone has a natural right to do wrong: he has, it may be, a *power* to do so; but he can have no right: much less can he have a right to ask assistance from his fellow man. And hence it would seem to follow as a necessary consequence of the above theory—a consequence which I believe is found its practical result—that a dishonest, base, and impious client should of right be represented by a dishonest, base, and impious advocate: a trusty, upright counsellor dare not—could not—with an unblushing countenance allege that as true which he believes to be untrue, or defend that as just which he knows to be unjust: and hence the duty of doing so—if duty it be—must of necessity devolve upon him, who, skilled in the ways of falsehood and fraud, can with composure act a part which habit has rendered easy to him. That in different ages there should have been found men, in all other relations of life listening with attention to the voice of conscience and earnestly seeking to obey its dictates, who, seduced by a false estimate of duty and mistaken feelings of humanity, have persuaded themselves that in the exercise of their calling they might without blame lay aside their moral nature, and, divesting themselves of the higher character of *men*, suffer themselves to be used as mere *things*—is a fact which, while it may not be denied, must ever be deplored, and which can be accounted for only by the technical habit of thought to which the study of positive law introduces its professors. For myself, I can imagine no more melancholy picture than that which is presented by an advocate, who when a client seeks his help, instead of using all his energies to deter a fellow being from the perpetration of injustice, assists him with his talents, his knowledge, and experience, in crime against man and sin before God: nor, however in its weakness the law of the land may omit him from its catalogue of criminals, do I see how the advocate who pursues such a course can, according to the verdict of right reason or of conscience, be guiltless in the eye of Heaven, until it shall be shown that the abettor in the breach of God’s laws is in his eyes less culpable, than in the eye of man is the accomplice in offences against human laws.

But it is asked—Why should it be accounted more immoral in an advocate faithfully to detail a case as stated to him by his client, without troubling himself as to the truth or falsehood of the facts contained in it, than it is in an interpreter?—The simple answer is that the advocate is not an interpreter—and the difference follows necessarily from the different parts sustained by the two characters. The interpreter is the minister of the court, and as such is bound faithfully to fulfil the part entrusted to him. The advocate, on the other hand, is the assistant, the counsellor,

the friend of his client, and as such is concerned that he for whom he acts do that alone which is just and right. Were the interpreter, as he sometimes is or may easily be supposed, the minister of the client and not of the court, it would be his bounden duty to his client in the exercise of his office to convey nothing to the court which he knew or was convinced was false.

II. But again:—It is said by some more careful for the common good and less tenacious of the liberty for every man to do that which is right in his own eyes— it is said:—“The advocate is part of the machine of justice,”¹¹ for the efficacious working of which there must be a due subordination of the different parts: each lever, chain, and wheel must perform the work allotted to it and none other; otherwise, confusion and destruction will be the result. The judge must not become advocate, nor the advocate judge; the jury may not declare the law, nor the judge decide the facts.” In this view it is alleged that “it is not the duty of the advocate to make statements which he knows to be false, or to urge arguments which he believes to be of no weight. He is to his client not a passive instrument but a moral representative, limited only in this;—that he is bound to appear and act for any person who may demand his services; and so acting to put forward that alone whether of law or fact which is favourable to his client; leaving it to the opposing counsel to state all that is of weight against him, and to the judge to decide between these conflicting statements: and should the case, as must often happen, be wrongly decided, either from the ignorance of the opposing counsel or the weakness and incapacity of the judge, this must be attributed to the imperfection of all human laws, and not charged on the advocate, who in urging to the best of his power whatever was to be said on the side of his client has fulfilled his allotted part; and who, had he done more, would have been guilty of a breach of professional duty. Thus for example—that advocate would be blameless who should rely upon a will executed in the presence of the required number of witnesses, though he might be well aware that the signature affixed to it was that of an idiot or a madman; or who should quote a decided case in law, without alluding to decisions which weaken its authority.”

If by this mode of stating the case it were merely intended to assert that the lawyer must often, within the sphere of action in which he is placed, be witness of evil which it is not in his power to prevent without himself doing wrong, there would be no need to quarrel with the position. The whole world thus regarded is but a vast machine of which each individual is a part, with a limited sphere of action assigned to him. But if it is thereby intended to represent the advocate as divested of moral responsibility, because acting as part of a system which tends on the whole to produce good results, and therefore *useful*, and because *useful right*; the theory is as untenable as the philosophy under which it is included is unsound and debasing. I will not here enter into an examination of that withering system of morals, which beneath the whited mask of *utility* conceals within dead men's bones and all uncleanness. This has been done too often of late years¹² to render such a course necessary. I shall merely consider it as it stands applied to the particular case we have now in hand.

“The lawyer,” it is said, “is part of the machine of justice:”—Be it so:—he is still a *man*; and as man is endowed with a sense of what is *right* and *wrong*, of what is *true* and *false*, of what is *just* and *unjust*; and being so endowed is bound to the utmost of his power to advance what is right, true, and just, and to oppose what is contrary to these. Now suppose that a lawyer entrusted with a client's cause—good, bad, or indifferent as the case may be—puts forward to the court that alone which is favourable to his client, carefully suppressing all that weighs against him; and so from the ignorance of the opposing counsel or of the judge, causes that more be adjudged to his client than he knows or believes to be just: though it be alleged that, looked at in regard to *general consequences*, that is the course in the main best calculated to promote the ends of justice, however it may have failed in the particular instance; is it (I ask) the course in which the lawyer has done what is right? If a client in person be admitted to plead his own cause, conscience requires, and no law forbids that he demand that alone which he

believes to be just. Why then should the lawyer standing in the client's place do otherwise? If he does so at the instance of his client, he becomes a willing accomplice in a premeditated act of injustice. If he does so against the wish of his client—what excuse has he to plead for thus making his client an involuntary instrument of evil? Not the necessity of the case, for no such necessity exists: not the obligation of the law,¹³ for the law does not attempt to impose any such obligation. His only plea is *utility*; and utility can never be accepted as an excuse for doing or aiding in doing what is morally wrong. "Is it then," it is asked, "is it the bounden duty of the lawyer to state to the court every thing that can be said by either party, and to argue both sides of the case?" This by no means follows: one state of facts excludes another, and one view of law negatives that which is contrary to it. The lawyer professedly makes an *ex-parte* statement of the case and law applicable to it: but this is a very different thing from a garbled or *part* statement. For example: Titus by bond binds himself and his heirs for the payment to Timothy of a certain sum of money, with a condition (expressed in a separate instrument) that in case Titus or his heir at law be in London on the 29th day of February, 1801, the bond shall be void. Titus dies and his heir at law comes to London on the 1st day of March, 1801, but is wholly ignorant of the transaction. Whereupon Timothy sues him for the money mentioned in the bond; but makes no mention of the separate instrument whereby it was conditioned to be void. This is a *part* statement, and under ordinary circumstances would be wholly unjustifiable. But had Timothy sued the heir at law of Titus, alleging that he was not in London on the day required to make void the bond, this would be an *ex-parte* statement, and if maintainable would exclude the opposite statement, *viz*: that as there was no 29th day of February in the year 1801, the day intended must have been the 1st day of March. So again to omit in arguing a law case the mention of a statute directly referring to the matter in hand would be a *part* statement of the law: while to contend that the case, though coming within the statute, came also within some exception contained in it, would be an *ex-parte* statement, the other side contending that it did not come within such exception.

III. At this point intervene a third class of theorists, who say: "A suit at law between individuals is like a war between nations, in which artifices have always been adjudged lawful. Nations at peace may not deceive one another, but when once embarked in war they may employ stratagems to destroy their enemies. So in law a man may by himself or his advocate deceive another who is seeking to inflict a wrong upon him." As to the parallel here attempted to be drawn between the cases of war and law, it is to be remarked, that in war the same principles which give me a right to kill, give me also a right to mislead; and as on the one hand killing is no murder, so on the other deceit is no lie. But in law no such liberty of injuring another is conceded. At the bar of justice, justice alone may be sought: the evil deeds of others will not justify us in doing the like; and the rules of action must be the same which govern the intercourse of men in the common conduct of life.

"Is then," it is asked, "is no concealment, no stratagem of any kind allowable in repelling the attempts of wicked men to work injustice?"¹⁴ This question is one of the most difficult in the whole range of casuistry, and has ever perplexed those who have sought to lay down rules for human conduct applicable to all cases. It will often happen that by silence a fact is made known to another who has no right to demand a knowledge of that fact, and who having obtained such knowledge will forthwith proceed to make an ill use of it; to rob, plunder, or murder. May I under such circumstances speak so as to mislead? and if so, why may I not directly tell a lie? tell a lie to attain a useful end? do evil that good may come? It is told of one Hooker, a puritan, in the days of Charles the First, that being pursued by some of the prelatist party, a friend in whose house he was, when interrogated by his pursuers "Whether Hooker was in his house?" replied, "What Hooker? Do you mean Hooker who once lived at Chelmsford?" The pursuers replied "Yes, that is he." "If it be he whom you look for," replied his friend, "I saw him about an hour ago at such a house in the town," which was strictly true, though said with

the intent to mislead, and was all one as if he had said "He is not in my house." Are such evasions lawful under any circumstances? and if they be, does it not necessarily follow that *utility* will justify any act, no matter how wrong in itself?

The escape from this dilemma lies here:¹⁵—In every evil act there must be, to a greater or less extent, an evil intent—in *murder* there must be *malice*; in *theft* the injurious taking of another's goods; in a lie the intent wrongfully to mislead. To this it may be replied, "If the intent consecrates the act, those were justifiable who perpetrated the horrors of the Inquisition: they did it to make converts. Who is to judge of the intent whether it be good or bad?" The only answer is that the all-seeing eye of God alone is to judge infallibly. Man may judge to a certain extent, but his judgment is always liable to error; the only infallible judge is God. To him all must one day account, and then shall it be known whether he who has misled another has done so to his hurt or to his good; whether the advocate who has aided him in so doing, has done so for the sake of charity or of his fee. This consideration will sufficiently restrain those whose endeavour it is in all things to conform to the holy will of God, and at the same time offers a sufficient answer to the theories of those who would make the advocate a mere instrument or part of a machine; inasmuch as it supposes that no man is at liberty to do any act without a conscientious intent, or with an intent to effect good through the means of ill.

"What then," it will be asked, "are the limits within which it is lawful to mislead or to use artifice?" The only reply is, that in this as in all other departments of morals, it is impossible to lay down express rules by which to bind the conscience in every possible case. All that can be done is to suggest approximate rules, which, however they may be cavilled at by the unconscientious, will form an assistance to those striving to act conscientiously. This caution premised, the following would appear to me just limitations to be proposed as to the matter in hand.

1. As to *concealment*: If not interrogated by lawful authority, I am at liberty to conceal that which it would be unconscientious in another to take advantage of. There is in almost every title something or other wanting, yet of such a nature that it would be unconscientious for those who might by law do so, to take advantage of the defect; as for instance:—I may be in possession of property under a deed not properly stamped; which defect, originally perhaps caused by an oversight, might, if known, subject me to much trouble and inconvenience: such deficiencies the principles of morality as expounded by the best divines and casuists have always permitted the possessor of property to conceal, unless where the attempt to do so would involve him in falsehood or equivocation.

2. As to *artifice*: Where it is lawful by force to repel an attempt to take my goods or to injure my life, I may by artifice do the same. If a murderer knocks at my door and asks whether my guest is within, I may shoot him if I have a gun in my hand: if I have not, I may mislead him by telling him that he is not. Surely I have a right to mislead where I have a right to kill. Or again, if one seeking to rob me of my purse ask me if it is in my possession, I may answer "It is not," even though it is. Not so, however, where I am questioned by one who, as a judge, has a right to demand from me the fact; and to whom should I declare what was contrary to it, I should sin against truth.

IV. But *fourthly*, it is said by some: "The standard to which the advocate refers the cause of his client is not the law of reason or of God, but the law of the land. His peculiar and proper object is not to prove the side of the question which he maintains morally right, but legally right. The law offers its protection only on certain preliminary conditions: it refuses to take cognisance of injuries or to enforce redress, unless the one be proved in the specific manner, and the other claimed in the precise form which it prescribes: and consequently, whatever be the pleader's opinion of his cause, he is guilty of no breach of truth or justice in defeating the pretensions of the persons he opposes by evincing that they have not made good the terms on which alone they could be legally entitled, or on which alone they could suppose themselves entitled to success." As the notion expressed in the above quotation—that it is the duty of the advocate to concern himself solely with the law of the land—is one very generally current in the present day; before enter-

ing upon an examination of the last-mentioned theory, it may be well to premise that the above notion derives authority neither from the law of the land—for that law does not attempt to lay any such obligation upon the advocate: nor from the universal practice of the profession—for many of high name in the history of our own and of other countries can be cited who have entertained opinions and adopted practices altogether at variance with it. It remains, therefore, to inquire whether there are any grounds in the nature of the thing which, according to the dictates of right reason, compel us to embrace this now generally received notion. In determining this question it will be of use to consider for a moment the origin and the object of human laws; which done, we shall more easily perceive the error of a theory which would impose upon the advocate, as a duty, the necessity of using in every case his utmost powers to give effect to those laws in all their consequences.

God in the beginning formed man after his own image;⁴⁶ and to fit him for that state of society to which the command "Increase and multiply" had destined him, He implanted in his breast the family, the social, the political affections. What was due to every one he knew by an intuition which needed no instructor, and practised with a will which needed no corrector. Love to God which reigned in his heart, by a natural and irresistible generation, begat and nourished love to his fellow-men: and the commands of the law of love (the only law then known) were obeyed implicitly because loved intensely. But man by disobedience fell from his high estate: the characters of the inner law, which before were deep and clear, became now effaced: the voice of conscience, which before spoke with the sound of the sweetest music, now jarred with harsh severity upon the diseased ear: all became disordered, and mutual distrust and jealousy and fear divided each man from his fellow. In this unhallowed state, where right even when known was disregarded, it became necessary that obedience, not yielded for conscience sake, should be enforced by wrath: the ungrateful precepts of the parent must be enforced by the rod of correction: the angry sword of justice must compel an outward conformity to the letter of human laws. Had the parent asked only what was kind and reasonable; had the ruler enjoined only what was just and right; the case had not been altogether desperate. But alas! the ingratitude of children was rivalled by the cruelty of parents, the rebellion of subjects by the tyranny of rulers. If in this state of moral anarchy a sage had arisen, and taught his disciples that the measure of obedience they should yield to the law of the land was that alone which wrath compelled and the letter enjoined—that aught else was weakness and folly: he would have found an excuse, if not a justification in the circumstances by which he was surrounded. Yet even here God did not so leave himself without witness⁴⁷—did not so wholly withdraw his grace from the sons of men—but that many (even among those who were not, as the Jews, favoured with a particular revelation) bore witness to the promptings of an inner law, which to disregard they accounted impious. Were such men but visionary dreamers? Assuredly not: they lived in the twilight of that bright day, which we as Christians joy to behold: of which the promise was, that God would "put his law in their inward parts, and would write it in their hearts:" Jer. xxxi. 33, of which the privilege, the condition, and the participation now is, "that God should be loved with all the heart, and our neighbours even as ourselves."

"To what ends," it will be asked, "in this state of light and life serve the laws of man?" If all obeyed the dictates of the inner law, little need there were for anything beyond. "The law is not made for a righteous man, but for the lawless and disobedient." 1 Tim. i. 9. But because all obey not the law of God, and of those who most earnestly seek to do so, the obedience is at best but imperfect: therefore it is still necessary that to the law of God human laws be superadded, not to supersede or absolve from obedience to that higher law, but so far as may be to enforce an outward conformity to what it enjoins, and to supply rules for the converse of men one with another, which the reign of perfect love, did it exist, would have rendered needless. And here are to be kept in mind two sources of imperfection which attach to all human laws, *one* the imperfection of the lawgiver; the *other* of the law itself,⁴⁸ which can indeed reach the outward man, but cannot like the holy

law of God penetrate and reach the inner man; so that he who will obey the law of man, according to the will of God, must still ever look to this higher law to give life and spirit to the letter of human laws, and to determine the measure of regard that is due to them: to some a full and heartfelt obedience, as being a pure transcript of the law of God; to others a measured and limited obedience, as made for temporary ends; to others again, an unwilling and firm disobedience, as contravening the more perfect law of God.

If what is here stated be a true account of the position in which men stand to the law of the land: if there be indeed (as is conceded even by many of those who adopt the last-mentioned view of professional duty) a higher law than the law of the land, and one which anterior to and independent of all human laws demands our most hearty obedience, on what grounds of right reason can it be contended that any man, at any time, or under any circumstances, is at liberty to act as if there were no such law? or how will that advocate be excusable who, under colour of the law of the land, assists his client in trampling under foot that higher law? In reply it is said:—"Every man to whom the law of the land gives a right, is entitled to be put into possession of that to which he has such right, without reference to the use he may make of it when in possession: and the lawyer, belonging to a profession whose business it is to help men to attain their legal rights, is bound to assist him in the assertion of that right, and is no more responsible than is the judge for the ill use which may be made of it." As to the assertion that every man has a right to be put into possession of that which the law of the land gives him, the observations above made respecting the relative positions of the law of God and the law of man, supply (if just) a sufficient answer: the law of man being merely subsidiary to the law of God, and not primary; so that wherever a contest arises between these two laws, the law of God must at once prevail. Thus if I have been paid a debt due to me, but have given no receipt, I may by the law of the land demand the money again, but I am forbidden to do so by the law of God. Who will assert that I have in any sense a right to make such a demand? That there are in practice many cases of so complicated a character that it is impossible for the individuals themselves concerned, much less for their advocates, to adjust the claims of natural equity; and consequently that the readiest remedy is to adopt that approximation to right which the law of the land gives; this I readily admit. But this is not the question: the question is, Whether the position in which the lawyer is placed be such as to make it his duty to omit all consideration of the moral and to look only to the legal character of the case. And if in any instance he is to look to the moral character, why not in all? No limits can be placed. He must, if his own conscience be alive to the distinctions of right and wrong, he must in every case take these into his consideration. How they will lead him to act; whether altogether to reject a case, or to lend it only a lukewarm and hesitating support, or to prosecute it with all his powers and energies; these are questions that can be determined only by the character of each individual case that comes before him.

But it is asked, "Why if the judge, without being guilty of an offence against God's law, may give judgment according to the law of the land, though well aware that his decision will work injustice, why may not the advocate in like manner without offence plead according to the law of the land, without regard to its moral consequences?" In cases where the law of the land is directly opposed to the law of God, it is agreed on all sides that the judge is not bound to follow it. In cases where the law is in itself good, and only works injustice by reason of the imperfection of the letter, there has been much controversy whether the judge ought or not to mitigate the rigour of the law by considerations of equity. In many countries this is done by the command of the legislature, and with the general consent of the nation. In England from very early times a different practice has prevailed; and the judges of the courts of common law have felt themselves constrained by the requirements of the constitution, and in some cases by their oath of office, to judge strictly according to the letter of the law, even though contrary to the spirit; leaving it to the courts of equity, in certain cases which come within their cognisance, to modify the rights of the parties according to conscience. Is it then justifiable for

the judge to accept office upon the condition that he will thus give judgment simply according to the letter of the law? or will not he who for the sake of office and emolument enters into such an engagement, be guilty of the injustice which he may afterwards be called upon to work? Though the affirmative of this question has in it something both plausible and probable, the negative must be embraced, and for this reason: the judge is the servant of the prince, and the prince is subject to the law, and even if he would, he could not delegate to the judge an absolute control over the law which he does not himself possess: and hence, if there are to be judges at all, they must judge according to the letter of the law, unless (which in our country it has not done) the law itself should invest them with power in each case to mitigate and control its rigour. Hence the case is one not of expediency or of utility, but of necessity; and the judge is in the same plight as the witness, whose evidence will not be received unless given according to the forms of law, albeit these forms may cause that the impression conveyed by it shall be other than what the witness would have. But then, being as is shown a case of necessity and not of choice, our best and most conscientious judges have ever, where opportunity offered from doubt as to the meaning of the law or from other sufficient causes, leant towards the side of equity; and where obliged in judging according to the letter of the law to work injustice, have done so with pain and grief, and with reprobation of those who have thus perverted to evil ends the good intent of the law. The case of the advocate is altogether different: he is not so much the servant of the law as of his client, who is bound in conscience to use the law only for good ends; and if he seeks to pervert it to bad ends, the advocate who knowingly assists him in doing so becomes a partaker in the crime: and just in proportion as the law of the land makes it imperative upon the judge to follow the letter of the law even where that letter works injustice, in the same proportion is it incumbent upon the client and his counsel to take care that they abuse not the strength of iniquity to overthrow the weakness of equity. That this distinction is one which has its foundation in the nature of the thing, and is not a merely arbitrary line drawn for the purpose of argument, will be evident if we for a moment imagine an advocate coming forward with language such as we constantly hear from the lips of British judges, denouncing the conduct and character of those in whose favour nevertheless they are constrained to give judgment. If the lawyer were the minister of the court and of the law, his course of duty would be clear, and he would follow the same rules as the judge. But he is not such: he is the minister of his client, though subject to the control of the court, and therefore it cannot be otherwise than immoral¹⁹ in him to lend his aid to that which he believes in his conscience to be morally wrong. This seems a harsh conclusion, when opposed to a theory supported by the practice of men the very mention of whose names commands respect, and inclines to an uninquiring acquiescence in any course supported by their authority. Yet if the relative position of the law of the land and the law of God be what is above represented, the conclusion appears inevitable, and the theory which I have maintained, that the advocate is bound to regard the moral as well as the legal merits of his client's case, becomes the only one that can be maintained, notwithstanding all the objections²⁰ which have been urged against it. These objections I will now proceed to examine: but before doing so I would guard myself against an exaggerated statement which is often put into the mouths of those in whose opinion I concur, as though it were contended by them that the advocate is in every case to assume that his client is morally wrong, until he shall have proved himself morally right; and as though it were attempted to impose upon him a scrutiny into the motives and intentions of his client, such as belongs to the all-seeing eye of God alone. No such assertion as this is made: all that is maintained is, that the advocate has a right to expect what every person who calls upon another to aid him in any undertaking is bound to give, an assurance that the object he is called upon to co-operate in effecting is such as may morally and lawfully be sought. This premised, I will now proceed to consider the objections usually made to this view of the lawyer's duty. And

1. *First:* It is objected "that the dimness which clouds our discernment of right

and wrong, and which scarcely permits us to judge for ourselves how we ought to act, wholly incapacitates us from imposing upon others in their conduct, our notions of right and wrong. It is the hidden thought and intent of the heart which determines the character of any act: these in our own case we may know something of; but in the case of others who shall reveal to us all the windings and turnings, all the hollownesses and dark corners of the human heart? And without a knowledge of these, how shall we be able to form a right judgment of any case?

I freely admit the existence of the difficulty which is suggested in this objection, which must often involve the lawyer in great perplexity, and must at all times make him diffident in declining to undertake the conduct of a cause in which a client asserts the justice of his side. But great as are the difficulties which the lawyer must encounter on this ground, they are not greater than many which in the conduct of life beset us at every turn. The larger number of our actions are determined by moral probabilities, the balancing of which is often as difficult as in the case proposed. It is the duty of the physician to judge of his patient's symptoms, and accordingly to give his advice. Shall he refuse to act upon information received from the patient because that patient is liable to misrepresent and misinform? It is the duty of the minister of the gospel to warn the froward. Shall he never upbraid any until he have been proved guilty by a verdict of his countrymen? It is the duty of all men to discourage vice no less than to relieve distress. Shall we therefore never be charitable because, in the ignorance in which we must be of the character of the subjects seeking our aid, we cannot be certain what results will flow from our bounty? In these, and a thousand other cases men act on moral probabilities, according to the best judgment they are able to form after careful examination. Why shall the apothecary be commended for refusing to sell a poisonous drug to one whom on moral probabilities he believes about to make an ill use of it? or a bookseller, for declining to sell books of an immoral tendency? or a vender of arms for refusing to supply them to those whom he believes to be traitors to his king and country?—and the lawyer alone be excluded from the privilege of exercising his calling with conscience towards God and his fellow men?

In reply to this it is sometimes said—"If, indeed, the cause have an aspect so dark as to leave to the advocate no reasonable doubt of its being founded in iniquity, he is bound to decline it: but where this is not the case, his general rule should be to withdraw his eyes from all but what is technical in the case, refusing to listen to what the conscience of the client would suggest." To the good man who adopts the last-mentioned theory of professional duty this follows, I admit, as a necessary consequence. But is it, I ask, a happy consequence? Is it beneficial to the client? Is it beneficial to society? Is it right before God? It is none of these. *It is not beneficial to the client*—for it often invites him to the perpetration of wrong under the belief that if his cause were as bad as he deems it, a good man, such as he believes his counsel to be, would not stand forward to advocate it. *It is not beneficial to society*—for it perverts the general sense of right and wrong among mankind, when they see men of probity, honesty, and integrity in all other relations of life appearing at the bar of justice, the aiders, the abettors, the advocates of fraud, injustice, and wrong. *It is not right before God*—for if the advocate who might but will not search out judgment shall say, "Behold, I knew it not!" He that pondereth the heart considers it, he that keeps the soul knows it, and he shall render to every man according to his works. *Prov. xxiv. 12.*

2. But *secondly*: it is objected—"Supposing that we were able to collect before us all the materials for forming a correct judgment, different minds form very different estimates of what is right and wrong, and what one may deem unlawful another may deem lawful and right. As for example, one man may think it wrong to defeat the clear intentions of a testator though informally expressed; another may think that there is no harm in doing so: one may think that he may without scruple or violence to his conscience evade the performance of a promise not in writing, by pleading the law which requires that certain promises to be binding must be in writing; another may think otherwise: so of the statute of limitations and many other cases that might be put."

To this objection the answer is clear: My conscience and not that of my client is to determine my actions. It matters not to me that another man deems this or that lawful: if I deem it unlawful, I may not aid him in it. The experience of every day tells me that thousands will think lawful, or act as though they thought lawful, things which I cannot think so. If I am a person of a morbidly scrupulous conscience, ready to suggest captious doubts and difficulties respecting every course of conduct that can be proposed (as doubtless many such are found), I may fairly expect that clients will not come to me for counsel and advice: but if I am not so—if my judgment is generally such as straightforward, honest men would form, then, should my avowal that I will not aid others in what I deem wrong drive away clients from me, I may fairly suppose that they are such as it is well for me to be quit of.

3. But *thirdly*: it is objected—"If the advocate is to take upon himself to reject the conduct of causes which he thinks wrong, he in fact constitutes himself judge, and takes upon him an office to which he has no right:" and this objection, because often repeated and confidently urged, is accepted by many as conclusive of the point in question. But is it not, after all, a mere sophism? One of the forms of fallacy technically termed *fallacia equivocationis*, an attempt to apply a proposition, true in one sense, in a sense altogether different. It is true beyond dispute that a lawyer is not to set himself up as judge: he cannot, if he would: he cannot assume the robe of justice or the ermine of office: he cannot invest himself with the sacredness of the judicial character derived from Heaven through the appointment of the prince; but he may, he must, he ought to regard the moral character of each case on which his counsel is asked, and having judged to the best of his ability what is lawful, right and just, and having advised accordingly, he should send to other more or less worthy advocates those who are unwilling to abide by his counsel. If he is not to do this—if he is indiscriminately to advocate every case which any client may put into his hands, he may knowingly be made the instrument for perpetrating the most gross injustice. He may be called upon to state as true matters which he has before him the clearest evidence to convince him are false; and to put forward as sound in law propositions which he is persuaded are altogether untenable—to rely upon an act of Parliament which he knows to have been repealed (though the judge may possibly not know it to have been so), or to quote as undoubted law a decided case which he all the while knows to have been expressly overruled. Undoubtedly a heavy responsibility lies upon a lawyer who refuses to state a case, as believing that to be false which his client asserts to be true, or that to be not law which his client asserts to be law: but the responsibility is infinitely greater of him who at the sacred bar of justice asserts for and in the name of another what he is morally convinced is false, or who demands for another that to which he is assured the other has no moral right.

4. But *fourthly*: it is objected—"Acting as I contend the advocate should act, he judges before hearing. Many cases are of such a character that their real merits cannot be known till the facts on both sides have been fully investigated, and their various bearings duly considered. So obvious is this, that it not unfrequently occurs that judgment is given in favour of a party to whom his counsel, the very same perhaps who advocates his cause, had previously given a discouraging or even adverse opinion."

That there are many cases such as that above supposed is unquestioned; and in such the young advocate who acts upon the principles I have maintained will probably find his experience agree with that of Sir Matthew Hale, of whom it is recorded by his historian, Bishop Burnet, "that as he advanced in his practice he slackened much of his former strictness of refusing to meddle in cases upon the ill circumstances that appeared in them at first." But it will not therefore follow that he will adopt the opposite alternative of undertaking every cause, no matter what its character. He will bear in mind still that if a client's case appear not just upon his own showing, it can scarce be expected to appear so upon the showing of his adversary, and though it may sometimes, it will not often happen, that the favoura-

ble features of a case remain concealed from the view of the party whose interest it is to be acquainted with them.

5. But *fifthly*: it is objected—"If advocates be allowed to prejudge the causes of their clients, and having done so to decline the conduct of those causes which they suppose unjust, clients must often be left without counsel to represent them: contrary to the sacred rule of nature and of reason, which demands that none should be condemned until he be heard."

To this I reply: The only case in which a client can be thus unrepresented is where he seeks to obtain something which the law of God forbids; and in such cases he has no better right to demand the aid of his fellow men than has the thief, the adulterer, or the murderer. In every case, except where something at variance with God's law is sought, I admit to the fullest extent the duty of the advocate to take up the cause of every client, no matter how poor, how unfortunate, how criminal; and to the utmost of his ability to watch that no more be exacted and no less be given than the claims of justice demand. But it is said, "the lawyer may be *mistaken*: he may consider that dishonest which is in reality honest, and that contrary to the law of God which is nevertheless in strict conformity with it." I answer—If this be so—if the advocate be indeed mistaken, the client will have little difficulty in finding another to plead his cause. "True (it is replied), yet even admitting this, the consequence will often prove most disastrous to the client. As, for instance: suppose a brief put into a lawyer's hands in a cause with which he is before utterly unacquainted, just in time enough for him to prepare himself on the law of the case and state it to the jury; but not in time enough for him to return it (if he think its rejection necessary) and thus enable the attorney to hand it to another counsel, by whom, perhaps, the same process is to be gone through."

In the present cumbrous and complicated state of our legal institutions this objection has considerable weight, but not such as to give to the course of conduct I suggest that character of impracticability which it is attempted to impose upon it. For *first*, in almost every cause there is at least one counsel who has from the commencement advised respecting it, and declared it a fit one to be undertaken: and next, such a state of facts as that above suggested is generally the consequence of negligence and delay on the part of the client or his attorney, for which it is only right they should be subject to the inconvenience attending upon it: inconvenience which an upright lawyer would never wantonly cause, but which, in the extreme case above supposed of more than one counsel rejecting the same case, can scarce be supposed to have been caused wrongfully.

Let, however, the weight of this objection be considered as great as it may, it is more than counterbalanced by the benefit which would result from a thorough sifting of the case to the conscience and good fame as well of the client as of the advocate; both of which are endangered when counsel, by advice hastily given, draw before the tribunals of the country causes which, on a more full examination, reflect disgrace on their authors and their patrons.

6. But *sixthly*: it is objected—"If it be your rule that the justice or injustice of each case is to determine you whether you will or will not undertake it, the greater number of causes must be at once laid aside; for the greater number are such in which it is very doubtful upon which side justice lies, and consequently all such cases must be at once rejected, in accordance with the generally received maxim in casuistry "*in dubiis nil agendum*."

This objection is plausible, but cannot be maintained, and for this reason: The question which the lawyer is called upon to decide is not whether he will or will not take up the case of a client; but whether he will or will not abandon the case of one who has already reposed in him a special confidence—has revealed to him his private affairs—has, in short, placed him in the position of a friend. Shall the lawyer, upon a mere surmise that his cause is unjust, turn round upon such a one and say, "I suspect you are a rogue, and will have nothing further to say to you." Assuredly not. Before he would be justified in doing this he must have strong and clear grounds for adopting such a course. *In dubiis nil agendum* must be his maxim: that is—if he be in doubt whether what his client be in quest of is honest

or dishonest, having commenced his intercourse with him upon the assumption that he is seeking what is honest, he is bound to continue it till he has clear reasons for believing the contrary. Undoubtedly if a client should (as many I believe will to an advocate who deems himself bound to undertake every case) openly profess that he is indifferent to the right or wrong of the matter in hand; and that he seeks that, whether just or unjust, which the law will give him, the advocate has in such a case a full right to act upon his own estimate of the moral character of the case; and if he thinks good, to decline all further co-operation in it. But if the client (as happens in the majority of cases) declares his belief in the justice of his cause, the advocate must, generally speaking, persevere in it; and the very fact above objected—that the right or wrong of each case depends upon the inward thought and intent of the heart—will form a reason why, without clear grounds to convince him of the iniquity of a cause, he may not lay it aside. The conflict which takes place in a lawyer's mind under such circumstances may be illustrated by the case of a parent who, having discovered some act of mischief to have been done in his house, and having strong reasons to suspect one of his children of having done the act, accuses the child of it. If the child deny that it is guilty, no matter how strong the suspicions of the parent may be, he may not punish the child—he may not openly act towards it as though it were guilty: all that he can do is to lay up in his mind the grounds of his suspicion, and to wait and see whether future events may not throw light upon the matter.

7. But *seventhly*: it is said—"If the theory you maintain were consistently carried out, a lawyer would be bound to refuse his aid to a man in recovering property that justly belongs to him, if convinced that, when recovered, he would make an ill use of it—would employ it in promoting treason or rebellion, or would squander it wickedly in riot and debauchery. If the civil right which the law gives to a man is to be in any degree fettered by the moral judgment of the advocate, why may it not be altogether taken away?"

Without asserting that there is no case in which it would be the duty of the lawyer to act as is here suggested, I reply that in the great majority of instances the cases thus supposed are clearly distinguishable by the judgment of sound sense and the common understanding of mankind. The civil right to property which the law gives to a man is not separable from the moral right which he has to such property in the same manner that the right to *have* is separable from the right to use. In all cases (except those in which the law of the land is in itself wicked and contrary to the law of God) the law of the land either comes in aid of the moral right, or itself constitutes and creates it; so that in no case can a civil right be conceived to exist, independent of a moral right existing either antecedently to, or created by the civil right. Not so the right to the possession of, and the right to use property. The man who has not yet obtained possession of property may have formed no idea of the way in which he will employ it; or he may destine part of it to a good and part of it to a bad use; or he may use it well one day and ill the next. Could a case be supposed in which, at the same time that I vindicated for another a right to property, I necessarily and by the very same act secured the application of that property to what is sinful, I might justly decline to meddle in such a case. The question that here arises is of the same nature as that which occurs in respect to the levy and payment of taxes. If a ruler levy a tax generally, his subjects are bound to pay such tax without inquiring to what use it is to be applied; and they have the example of our Lord and Saviour to justify them in so doing. But if, instead of levying a tax generally, a ruler commands me to give my labour or my money directly to the maintenance of irreligion or idolatry, it becomes a question of conscience, and I am bound to disobey his commands: with the apostle of old I must say, "Whether it be right in the sight of God to hearken unto you more than unto God, judge ye?"

8. But *eighthly*, it is objected—"That to allow the advocate the liberty here sought would open the door to the greatest abuses: that avarice, indolence, and cowardice would never want excuses to decline the cause of the poor, the oppressed, the weak—that the consciences of advocates would be made the absolute measure of the consciences of all their fellow men; and a liberty would be given to them,

under the pretence of moral sensibility, to trample under foot the laws and statutes of the realm."

That the utmost caution is necessary on the part of the advocate not hastily to reject a cause because of its supposed dishonesty—that he should ever be jealous and watchful over his own heart lest indolence, love of gain, or caprice, should tempt him to decline the defence of any cause, they who know best the infirmity of human judgment and the deceitfulness of the human heart will be the most ready to acknowledge, and acknowledging the most careful to practise: and so long as generosity, integrity, and courage shall adorn but one member of the order, so long shall the poorest, the weakest, the most oppressed, seek not in vain the aid they need.

9. But *ninthly*, it is said—"The course of conduct which you prescribe for the advocate is contrary to that which in the present day has been generally considered his line of duty; and while the great majority of the profession pursue the generally received course, it is manifest that the client of those who adopt a different one will labour under undue disadvantages. He must waive a right which the law of the land gives him, where that right is contrary to equity and conscience; and yet he must acquiesce in the law of the land where it deprives him of that to which he is in conscience entitled."

That this will often be the case I do not hesitate to admit; but it is no harder lot than the Christian is constantly exposed to in regard to his temporal affairs. Were this world the ultimate scene of our existence; were there no hereafter—no resurrection—no judgment to come; were the doctrine of the Sadducee the doctrine of truth; it would be difficult to find an answer to the objection. But if the eye of faith looks with no vain confidence across the waste of this world to the fair regions of another in which we shall receive, in our bodies, according to that we have done, whether it be good or whether it be bad: if the momentary triumphs of the wicked man here below only raise him on high to make his fall the more fearful, the disciple of Christ has a ready and unanswerable reply to those who would tempt him to swerve from the precepts and example of a suffering Master.

10. If, after all, it shall be asserted "that the course proposed, however beautiful in theory, is in practice utterly visionary:" I appeal from such a statement to the experience of those nations in which the civil law has been received; in most of which an oath is required from the advocate that he will defend none but just causes, and those only by just arts: and till the whole bodies of advocates in those countries shall, by better evidence than mere surmise, be proved guilty of the crime of continued and continual perjury, I fearlessly deny the assertion in the same latitude in which it is made. That difficulties will arise in the path of the advocate who seeks to carry out the principles I propose, it is impossible to deny. But these difficulties are only the same as those which every one will meet who, professing himself the friend of others, yet assumes to himself the right of denying his assistance to a friend in any undertaking which he deems wrong. The fee which the advocate receives does not alter the nature of the case, unless, forsooth, it shall be considered "that a motive sordid in its nature can so hallow a cause of cursed iniquity as to render it fit for any man to prostitute his tongue in its behalf;" and so long as it shall be right for a man to decline to participate in the evil enterprises of one whom he has heretofore deemed his friend, so long shall it be lawful for the advocate to decline the conduct of causes which he deems unrighteous. It is true, the advocate is only in a qualified manner and for limited purposes the friend of his client: yet so far as he is, the principles which should regulate the conduct of friends one with another are applicable to him; and though it may sometimes happen that a dishonest client will apply for aid to an honest counsel, and find his expectations disappointed, the injury to the client (if injury it be) is one that will occur but rarely; inasmuch as, when the principles of an advocate are known, those whose intended conduct is such as to make them dread the contact with what is highminded and conscientious, will avoid the man who himself acts upon honest principles, and counsels others to do likewise. This view of the question will not satisfy some: that the upright client, attorney, and advocate should consort together will not content those

who embrace the levelling principles of utilitarian morality. Should this rejection of clients by advocates be permitted, "the suitor would be prejudiced in proportion to the respectability of the advocate who had shrunk from his defence, and the weight of character of the counsel would be evidence in the cause."—*Erskine's Speech.*

But is it not a law of the moral world that the character of an individual may be known from his companions? The tones of philosophers and the proverbs of the simple alike bear testimony to this law, and mark the moral judgment of mankind upon the matter: and if, as a necessary consequence, the unhappy suitor who commits his cause to a disingenuous counsellor is prejudiced by the character of its supporter, it is no more than common sense and common honesty might beforehand have informed him. But common sense and common honesty seldom lead to this association. Dishonesty naturally seeks out the dishonest—infamy the infamous: not, as true wisdom would teach, seeking by penitence and restitution to make atonement for past transgressions, but miserably adding crime to crime, and filling to the full that cup of wrath which, if they repent not, advocate and client must one day drink together to the very dregs.

If, then, the image of God in which he has been created will not suffer the lawyer to be driven like a beast or used like a tool: if the voice of conscience, never silent in the good man's breast, refuses to accept the plea of *general utility* as an excuse for doing less or more in any case than duty demands: if there be indeed an inner law, antecedent and paramount to the law of man, which demands our first and willing obedience, and to which the law of man is but subordinate and assistant; what remains for the lawyer, but that asserting for himself (though it may be in opposition to the general practice of his age, and the specious reasonings of a philosophy falsely so called) the attributes of a man, and fulfilling with conscience towards God and his fellow-men his duties as a Christian, he go forward boldly, seeking as in all other things, so also in the exercise of his calling, to imitate the infinite perfections of Him whose minister he is, in working out with truth and mercy the holy work of justice.

Thus much premised, I pray the regards of the reader to the portrait of a good man's life which I have here attempted to draw: nor will I conceal my anxious wish that the principles which, on the authority of holy men of our own and other nations, I have sought to embody in the following pages, may be embraced and acted upon by every member of that noble order whose high and holy office it is to uphold the fabric of the state—a fabric second only in importance to that loftier one of the church—which latter shall, as is our hope and trust, include within itself that former one then when "the kingdoms of this world shall have become the kingdoms of our Lord and of his Christ, and he shall reign for ever and ever."—*Rev.* xi. 15.

THE LAWYER.

THE AUTHOR TO THE READER.

BEING desirous, by the mercy of God (whose we are and whom we ought in all things to serve), to devote to him my labours in that calling in which it hath pleased him to place me; and considering with myself the many temptations to which the practice of the law daily exposes its professors, and the obloquy and contempt^t to which the evil practices of some among them have at all times subjected that noble calling; I resolved to set down, as best I might, the form and character of a faithful Lawyer, noting by the way those cases which have most perplexed the consciences of good men; that so I might have a mark at which to aim, and a standard whereby to measure my own performances. Not that I deem it possible exactly to define by written rules the duties of this or of any other of the callings which Providence has allotted to man: but as the anxious mariner, traversing the trackless ocean, finds in the faint glimmerings of the distant stars enough to guide him in safety to his desired haven, so have I sought herein to find some high and bright marks whereby to steer among the shoals and quicksands of the law. The which I here present to my fellow-labourers, if haply they may meet from any of them a like regard. And that I might not, in a matter of so great moment, depend entirely upon my own judgment, I have in an appendix (which I commend to the reader as the worthier part this little book) set down the thoughts of men whose opinions may not be slighted, whatever be thought of my own comment. Of each I ask, if in anything I have judged amiss, to correct my errors and supply my deficiencies: and may He from whom all holy desires, all good counsels, and all just works do proceed, grant unto us all both that we may perceive and know what things we ought to do; and also may have grace and power faithfully to fulfil the same.

E. O'B.

CHAPTER I.

THE LAWYER.

A LAWYER is the servant of his fellow-men for the attainment of justice: *in which definition is expressed both the lowliness and the dignity of his calling; the lowliness—in that he is the servant of all, ever ready to assist as well the meanest as the loftiest; the dignity—in that the end whereto he serves has among things temporal no superior or equal. For justice is nothing less than the support of the world whereby each has from all others that which is his due; the poor their succour; the rich their ease; the powerful their honour. For it were governments framed, and powers ordained of God: flourishing it cheers, and languishing it dejects the minds of good men: and in its overthrow is involved the ruin and fall of commonwealths. That justice should ever be contemned or trodden under foot is a grief to God and angels: how glorious then is his calling whose work it is to prevent her fall, or to raise her fallen! Truly the lawyer, while the servant of earth, is the minister of heaven; while he labours for the good of his fellow-men he works none other than the work of God.

CHAPTER II.

THEIR DIVERSITIES.

OF those called Lawyers^t there are in this kingdom several diversities, all having, for one common origin, the complexity and difficulty of laws. In the infancy of the earth, when laws were few and patriarchs judges, every man was his own lawyer, and needed not an attorney to write, or an advocate to plead for him; but himself demanded at the hands of the judge what of right he deemed his own. Afterwards, when kingdoms became vast, and laws many, and the forms of law complicated, and the administration of laws tedious, and labour divided; necessity was that some should be set apart to demand for others from the ministers of justice, that which want of time and knowledge and opportunity would not suffer them to ask for themselves; and hence arose advocates, barristers, proctors, attorneys, and many other attendants upon courts of law, whose several duties it needs not now to define. What I shall here offer being intended chiefly of those in our courts of common law and equity, commonly termed Barristers; to whom properly it appertains legally and in order to set before judges and juries that which the diligence of the attorney has gathered from the complaint of the client; so that the whole together—barrister, attorney, and client—make as it were one man, whom of right one spirit of truth, justice, and mercy should move and animate. But as in a clock or watch the fingers may point a wrong hour though the wheel that next moves it be exactly true, if but some notch of some inferior wheel be out of order; so, let the client be false, or the attorney deceitful, or the pleader crafty, the others shall not be able by their best care to prevent but that sometimes justice shall be perverted, innocency oppressed, and guilty men justified. Wherefore, as he shall one day give an account before the Searcher of all hearts, let not the client who is to choose an attorney be careless in whom he reposes so great a confidence: let not the attorney put in jeopardy the conscience of his client by entrusting his cause to a faithless lawyer, who, in his behalf, will do that which for worlds he would not himself do: let the lawyer look well that he lend not himself heedlessly to become a fellow-worker with others in the ways of falsehood and fraud; but let the righteous client, attorney, and lawyer, strong in the confidence of an upright cause, go forward with cheerful assurance that a threefold cord so twined together shall not by the utmost malice of evil men be easily broken.

CHAPTER III.

THE LAWYER'S CHOICE OF A CALLING.

THE lawyer sometimes, though but slightly gifted with those talents which the calling of the law requires, finds himself by the will of God in the choice of parents, or in the disposal of other events over which he has himself had small control, bound thereto in such a manner, that he may not without strong reasons excusing, abandon it to follow other pursuits; but must, with what talents he has, fulfil as best he may its duties and requirements. When however it happens otherwise, and the young man at entrance upon life finds himself free to elect in what calling he will labour (for some calling he must needs have, wherein at once to bear the curse and reap the blessing pronounced upon our first parents), if so be the example of holy judges fearing God and hating covetousness, or the good report of noble advocates renowned in the defence of their country's liberties or venerated in the memory of the destitute and the oppressed, stir up in him high desires to minister at the altar of justice: ere yet he presents himself a probationer before the guardians of her temple, he pauses and weighs well his fitness for so high and holy a calling.

And *first*, he asks; if he have bodily health sufficient hereto? Intense study over the midnight oil, or by the first light of morning's dawn, the disquietude of hot and crowded courts, the exhaustion of long and arduous addresses to judges and to juries, the care and anxiety attendant upon the conduct of complicated and weighty causes, demand from the lawyer a bodily frame strong, enduring, and elastic. Be it he have this;

Secondly, he asks, has he strength of mind sufficient hereto? Not alone the infinite mazes of artificial laws are to be mastered in books; not alone the ill-digested facts of complicated causes are to be seen through and disentangled, and again in lucid order detailed to the judge or the jury: but the weapons of sophistry wielded by the arm of perverted talent, and the artful devices of chicanery, falsehood, and fraud, sustained by intellectual strength and moral turpitude, are to be warded off and defeated. Be it he have strength of mind for this;

Thirdly, he asks, has he moral strength sufficient hereto? Has he patience to undergo, in diligent accumulation of legal store, the tedious discipline of unemployed and unrewarded years: has he temper to endure the irritating attacks of opposing counsel, or the harsh and unmerited reproofs of petulant judges: has he courage to persevere in a good cause against the false affirmations, the wily insinuations, the audacious practices of wicked and ungodly men?

Let him come thus equipped, though but in inferior degree, and he shall not be rejected at the portals of the sacred temple of justice.

CHAPTER IV.

THE LAWYER'S LIFE.

THE lawyer having once enlisted in the service of Justice, the queen of all virtues, upon whom all other virtues wait as handmaids, strives that he may in all things approve himself a faithful follower of so good a mistress. And as without diligence all virtues do pine and languish, the lawyer's life is one of unwearied exertion; except at those times when the usage of his calling bids him rest awhile from his labours, and yield himself to the festive joys of the Christmas, or the soberer thoughts of the Easter season; or sends him to drink in bodily health and mental energy amid summer's delights. At other seasons, when clients demand not his time, he employs so much of it as is seasonable, in increasing his stores of legal knowledge, from whence as from a treasure-house to draw out sound counsel in time of need. When in health, he is ever at his post, that he may not disappoint those who, confiding in his judgment and knowledge, are in the habit of entrusting him with the conduct of their affairs: and such principally he seeks not alone that they may with the more readiness disclose to him their whole case, but that he may with the more confidence rely on their integrity and veracity. His doors are ever open to the poor as well as to the rich; and though he knows well that labour is the lot of man and the labourer worthy of his hire, yet having proposed the holy name of Justice as the object of his labour's worship, he embraces as willingly the cause of the poor as of the rich, and strives no less earnestly for him who is unable to reward, than for him who is able and willing to reward him liberally. Yet he does not here forget the deceitfulness of the human heart, nor the eager love of gain which lies deep at its root. He knows that here an enemy lurks, and he is ever on his guard against him; striving that not only in each individual case he may forget whether it be profitable to his purse or not, but that the whole tenor of his mind may be diverted from thoughts of gain. To this end he is careful so to order his affairs that his expenditure may be confined far within his income, lest want make him careless as to the means he employ to supply it. As in the affairs of others, by his counsel and his conduct, he dissuades them from seeking more than is their due; so, in his own affairs, he is exact to avoid even the appearance of evil; as knowing that for him to defeat in his own case the ends of justice by the forms of law,

would not only bring twofold condemnation on himself, but subject him to solicitations to do the same for others. As business often brings him into converse and sometimes into co-operation with men of principles widely differing from his own; while he studies to be courteous to all, he is careful that he be not led by the suggestions or example of others to countenance what he himself disapproves: and when practices are proposed to him by which justice, truth, and honour would be wounded, if youth commands from him diffidence and distrust, he dissents with modesty yet firmness; if age gives him the liberty of rebuke, he censures with warmth and energy. Surrounded from the nature of his calling by evil, and forced to be ever and anon a witness to the workings of the bad passions of our nature, he relies not on his own strength alone to bear him unscathed amid the tempest that surrounds him, but ever as-returning morn summons him to his daily task, he breathes forth an especial prayer to the Giver of all good that the labours of the day may be of justice, mercy, and truth, serving to the glory of God and the good of his fellow men; and whenever in the providence of God he has been made the means of succouring the oppressed, or by prudent management of relieving those distressed as to their worldly affairs, he takes not to himself the praise, but gives glory to Him from whom all power descends, to whom all praise is due.

CHAPTER V.

THE LAWYER'S KNOWLEDGE.

THE lawyer having proposed as the object of his labour the attainment of justice, the first aim of his studies is a knowledge of those laws upon which all justice depends: for justice is well defined to be "That by which we have our own in such sort as law prescribeth."* Now of laws to which mankind are subject, omitting here the mention of laws *domestic*, some regard them as members of civil communities or *states*, some as members of spiritual communities or *churches*—of the former some appertain to the converse of men one with another in particular states: some to the converse of states with one another. These last which are generally termed the laws of nations, the lawyer after a cursory study thereof remits to the care and consideration of the statesman as more properly belonging to his department of labour. Those laws which regard the converse of citizens one with another (and which are the proper and peculiar study of the lawyer) he finds to be derived either immediately or mediately from God: *immediately* those written at the creation on the hearts of men, and which when sin had obscured their characters, the love of God in Christ writes anew by the power of his Spirit, and witnesses in the conscience of his reasonable creatures: *mediately* those ordained by them to whom God has committed authority confirmed and testified by his own immediate law, to act in this behalf: as are in each state those—whether princes, councils, or parliaments—to whom in the providence of God has been committed by the constitution of the country the power of framing laws.

Those laws which proceed immediately from God—and which are indifferently termed the *law of God*, the *natural law*, the *moral law*—he finds, as in their immediate origin, so also in their distinguishing characteristics the more excellent. He finds them to be—universal and perpetual, binding all persons everywhere, and always; in private as in public; the secret thought as well as the outward act; requiring to be earnestly inquired after and eagerly and actively obeyed, though loss of fortune or of life should on such obedience wait. These laws he seeks for diligently in the recesses of his own heart, and in the written records, and from the living ministers of God's holy word. To these last he is ever ready to resort in all cases of difficulty and perplexity, esteeming highly of that part of divinity which is conversant about cases of conscience. In addition to these primary sources of this

* Aristot. Rhet. I. 9. Δί ην τα αυτου εκαστοι εχουσι και ως ε νομος.

transcendent knowledge, he has studied with pains the works of those who have made the natural law their study: nor does he contemn those inferior aids which are supplied by laws dictated by the natural conscience of man. Therefore he is familiar with the principles of equity embodied in the Roman law and thence embraced by a large portion of Christendom: and thus when occasion requires he is enabled to illustrate and confirm the precepts of religion and philosophy by the usages of nations.

To those laws which proceed *mediately* from God, and which in contradistinction to those divine laws before named are termed *human* or *positive*; in unison with their inferior origin the lawyer finds these characters incident—that they may in no case ordain anything contrary to the divine law—that they continue no longer and extend no further than the authority which imposes them continues and extends—that they may be altered, suspended and abrogated—and may cease to bind by contrary reason, by conflicting enactments, by extraordinary emergencies, and intolerable inconvenience. Of positive or human laws he notes two kinds by the learned Hooker, termed the one *mixedly*—the other *merely human*: the former such as by temporal sanctions enforce an outward conformity to the immediate law of God; the latter such as in diminution of the natural liberty of men, impose restraints concerning matters before indifferent. As to the study of *natural* law, the lawyer invokes the powers of his reason and moral being; so to that of positive law, he brings the patient exercise of his intellectual faculties; and full scope he finds for them high though they may be. The general usages of the realm in which he lives, and the peculiar customs of each part of it, as approved, recorded, and handed down in the successive decisions of judges from the earliest times: the written acts of the legislature, confirming, altering, or abrogating these customs and one another; and the interpretation of these acts by the judges of the land, must be sought out with care and studied with diligence—a wide labyrinth in which without landmarks to guide and direct it can scarce be but he lose his way. To obtain these he has surveyed the positive laws of his country, as well in the order of time as of their subject matter; tracing on the one hand their gradual rise and progress in the history of his country, and again on the other marking and collecting the principles from which they have sprung and the ends towards which they tend. Moreover in the course of this study he has noted in what matters the laws of his own country accord with or deviate from the maxims of natural law and the laws of other states: and thus not only is he enabled to expound with power and clearness the characters of existing laws; but should the events of his life give him at any time a place in the legislature of his country, he is qualified with wisdom and prudence to propose new laws or to amend the old wherever they may be defective.

In this study of his country's laws, the lawyer notes, what in his practice he ever keeps in mind, the necessary imperfection of all positive laws. For though the inner law which reaches to the thoughts and intents of the heart, had been sufficient, if obeyed, to answer every need of social life; and the intent of human laws be to bring men back to this inner law: yet so infinite is the complexity of human affairs that outward laws can never by their letter provide for every case that may arise, in such manner as that the perverse ingenuity of man shall not often find occasion to set them at nought: whence it comes that he who in heart desires to be conformed to the perfect will of God must look to the spirit rather than to the letter of human laws, and seek occasion to fulfil rather than to evade their requirements.

Of those laws which pertain to the converse of men as members of spiritual communities, and which are therefore termed laws ecclesiastical, some are framed by churches for their own internal discipline and order; and these of themselves are bound upon the members of such churches by no other power than that of conscience; ministers ecclesiastical having in themselves no right to enforce their commands by the exercise of temporal power: others again are ordained by the civil power for the preservation to churches of temporal goods; or for the enforcing by temporal sanctions their rules for internal discipline. The latter kind the lawyer has need to study with the same diligence that he does other laws ordained by the temporal power, inasmuch as though pertaining to religion they are drawn within

the jurisdiction of the courts in which he practises: the former kind, though he needs not, except in his own particular church, to have so perfect a knowledge of them, yet inasmuch as the other kind of ecclesiastical laws necessarily require a knowledge greater or less of these also, he may not altogether omit to study.

CHAPTER VI.

THE LAWYER'S ACCESSORY KNOWLEDGE.

THE lawyer despises no knowledge; for there is no knowledge but serves either positively as it is, or else to illustrate some other knowledge. Yet some knowledges there are more peculiarly subservient to the exercise of his calling, and these he has not neglected. By a moderate skill in the art of logic he has learned to state with clearness those arguments which bring conviction to his own mind, and to detect and expose the dark sophistries of those Belial tongues which "drop manna and can make the worse appear the better reason." Rhetoric too he has studied, that he may not by the awkwardness of his manner, the obscurity of his speech, or the ill arrangement of his subject prejudice the cause of truth and justice which he has undertaken to defend. And as these are as it were the accessory implements with which he is to work, so he has studied the material upon which his labour is to be exercised; and to this end has acquainted himself as widely as may be with the rudiments of those arts and sciences which are of most common occurrence in the affairs of life, and are of consequence often drawn before the tribunals of justice. But above and before all he has made mankind, their thoughts, passions, and actions, a principal study; and is much versed in noting the countenances and outward manners of men; by deep and constant observation of which he has penetrated to a more than ordinary knowledge of their thoughts and feelings. Nor is he content with a general study of human nature, but has carefully observed the genius and character and the peculiar manners and customs of his own countrymen. Thus armed and equipped he issues forth to the contest with falsehood and wrong, prepared with every weapon both of defence and attack.

CHAPTER VII.

THE LAWYER'S DUTIES.

THE lawyer finding (as is observed by the pious Leighton) "that particular deceptions are usual in several callings, and are incorporate with them through long custom, and become a part of the mystery of those callings; and therefore men dispense with themselves in them as the inseparable sin of their calling, and have no remorse for them;" and finding moreover his own calling obnoxious to this charge, and that many consider themselves bound by the rules of their profession to act in ways which he condemns; is careful that all who employ his ministries should know what services they may expect from him. This he makes known, as well by an open profession of what he will not do, as by a patient endeavour to fulfil what he considers his duty.

1. *And first* he makes it known that he will undertake the conduct of none but *just* causes; and here he esteems those causes alone to be just which natural law, or positive laws, not contradicted by natural laws, do make such. For not every cause which the forms of law may sanction is therefore just. I have paid a debt; and yet because I have not a legal discharge to show, he to whom the debt has been paid may again demand it from me. But since it is not easily to be defined what are just causes, and some persons will therefore have the lawyer to undertake every cause, and such has now become a practice very commonly allowed and followed,

the lawyer sets not up his own judgment in this matter without being able to give weighty reasons which move him thereto. And *first*, he contends that so to act is to become a partaker in other men's sins. The judge is appointed to administer the laws, according to their letter: he is bound so to do by the command of his prince and the oath of his office; and if at any time he is obliged to give judgment which he knows must work injustice he does so against his will. But the lawyer who being to counsel and assist his client, willingly, no law compelling him, counsels and assists him in that which is unjust, becomes before God a partaker in his client's evil deeds. If one reply that he is no judge but an advocate, and that till the judge have given sentence he knows not whether the cause be just or unjust: he replies by distinguishing: that some causes there are which even the sentence of the judge cannot make just, and these no law obliges him to advocate: others again are doubtful, and in these he applies to the judge for the solution of the doubt, stating to him the case as in truth he believes it to be, and fairly opening to him the difficulty thereof: others again are manifestly just, and to the defence of these he brings with zeal and diligence whatever powers God has given him. *Secondly*, he considers that the maxim *qui facit per alium facit per se* has place here; and that for him standing in the place of his client to put forward on his behalf an unjust claim would reflect upon his client the heavy judgment pronounced by the apostle: "Let no man go beyond or defraud his brother in any matter, because the Lord is the avenger of all such." Yet because from the complexity of human affairs and the ignorance in which clients sometimes are of their rights, and in which the lawyer must often remain of those thoughts of the heart upon which before God the justice or injustice of the cause depends, it is not easy to judge of the real merits of a cause: and since moreover in a doubtful case it is the right of him who is in the possession of property to retain such possession until deprived of it by judgment of law; as on the other hand it is the right of him who believes he has a lawful claim to ask his rights from the ministers of justice, the lawyer will not hastily reject a cause because on the first view of it it appears weak: in this matter he recollects that which is related of Sir Matthew Hale, "that being in the beginning of his practice very cautious not to undertake ill causes, he afterwards abated much of his scrupulosity; observing that many causes which in the beginning seemed unjust, when the cause was sifted and the evidences heard, turned out to be just."

Again, the lawyer observes that there are cases in which though somewhat is due and admitted so to be, yet more being demanded than of right ought to be—as if one should seek to take both my house and lands when he had only title to my house—it is sometimes necessary for the lawyer to aid in resisting the whole demand; and having done so, to leave to the conscience of the client willingly to give up what justice requires.

2. *Secondly*, the lawyer makes it known that he will not even in a just cause make use of unjust arts: he may not do evil that good may come, for real good he is assured can never grow out of evil, to him who works it: much less will he use unjust arts in an unjust cause. Sophistry in argument—misquoting of cases—misstating of evidences—browbeatings of simple witnesses—these and all other arts by which truth is perverted or justice defeated he regards with abhorrence, as lessons learned in the school of the father of lies. And here he denies that it is his duty, let the cause be what it may, to put forward that part of it alone which is favourable to his client, suppressing all else and leaving it to the opposing counsel and the judge to find out what they can; and so if the counsel be ignorant, or the judge simple, to snatch all he can for his client. This he thinks all one as if a man should take to himself his neighbour's lost goods, because his neighbour knows not where to look for them: and this he knows is not for him to do whose rule it is to love his neighbour as himself. If it be objected that thus acting the advocate betrays his client—his answer is ready: if the cause be such that it cannot bear the broad light of day it were better it remained in darkness. He has agreed with his client not to defend his cause whether just or unjust, but to serve him for the attainment of justice. Yet in this matter of the conduct of causes something will depend on the nature of the cause and the character of the adversary; and that which against an honest fellow

citizen would be unlawful, against a highwayman may be just, since in such cases it is reason that the exactness of natural laws be mitigated by equity. Every man is bound to restore his neighbour's goods; yet if a man call for his sword to kill his neighbour withal, the sword ought not to be surrendered. "So he who attempts by the formalities of law to set up an unjust claim may rightly be defeated with his own weapons, so however that truth be ever observed even to an enemy. Thus, should an heir at law attempt against conscience to defeat the clear intent of an informal will, he whom the testator intended to benefit may rightfully resist the claim. So again in those smaller matters in the conduct of causes in which by negligence or inadvertence mistakes have been made of which it were inequitable for the opposite party to avail himself; these I may rightly hide, though I may not by falsehood deny or by fraud conceal them.

What the lawyer will do for his client is seen in the diligence with which he studies his case—the assiduity with which he watches that no unfair advantage be taken—that no unnecessary expense be incurred—that he be advised of the difficulties he must encounter and the doubts which attend the issue. In one word, the lawyer regards himself as put in his client's place to do for him whatever he might do for himself (had he the lawyer's skill) consistently with truth and justice: more than this he will not do; and he desires not those for his clients who dare not trust him to act with the same prudence, integrity, and zeal, as if the cause were his own.

CHAPTER VIII.

THE LAWYER ADVISING.

WHEN the lawyer is to advise, he considers how great a trust and confidence is reposed in him, and seeks to discharge it with becoming fidelity. And here principally he avoids the unrighteous example of those who to serve the avarice of faithless attorneys and to increase their own gains, hastily involve their clients in hopeless suits, taking for facts whatever a client may let drop in the heat of passion. He remembers that which the wise man notes (*Prov. xviii. 17*), how that "*he who is first in his own cause seemeth righteous*" though in truth he be not so—and lest according to the same wise man "*his neighbour should come and search him out,*" he himself examines and pinches the case when he fears it is foundered; and having as best he can informed himself fully of the facts, he looks at them in every point of view, not omitting to weigh well the claims of natural justice, and to observe whether he who asks his advice be careful to fulfil its obligations. If on any occasion he suspects the case to be falsely or insufficiently stated—important facts to have been omitted or latent weaknesses glossed over—he requires to be made more fully acquainted with all that belongs to it. Sometimes, if the case on which his opinion is sought be one of difficulty, he is not content to advise the institution of a suit upon written instructions alone, but will (though it consume much of his time and cause him much additional trouble) seek a conference with him whose rights are to be determined, as knowing how self-interest and passion are wont to blind the eyes of men. This done, if he finds that natural and positive justice unite in giving light to his client, he acquaints him with the strength of his case—advises (if with prudence it may be done) that it be laid open to his opponent, and that restitution be demanded; which if he refuse to make, then, and not till then, he advises an appeal to the tribunals of justice. If, on the contrary, positive law alone, according to the letter, reluctantly yield to his client an advantage which the law of God peremptorily forbids him to seize, the lawyer, though he conceal not the iniquitous strength of his case, dissuades from further prosecution of it in such manner, that either he must bring new matter to show that his is other than at first it appeared, or must seek another instrument whereby to prosecute his work of injustice. If upon a consideration of the whole matter the case appears to the lawyer to be one of doubt, he states plainly his reasons for so considering it, and recommends if the claim be small

that it be abandoned, or that at all events means of amicably terminating it be first tried. He knows well, for he has oft witnessed it, with how many subtleties and arts, suits at law are managed, what danger there is of miscarriage, what anxiety for the event, what animosities intervene, how many sins are secretly insinuated into the heart and thence communicated to the actions: and knowing these he will not hastily advise a frail fellow man to place himself in the way of such strong temptations.

CHAPTER IX.

THE LAWYER DRAWING PLEADINGS.

THE lawyer is skilled in all the forms of pleading, which to the unwary and ignorant are so many traps and pitfalls wherein justice may be caught and killed. To abuse them to such purposes he regards with abhorrence: yet has he not therefore omitted the knowledge of them. For, not only are the established rules of pleading agreeable to the judge, and when honestly used adapted to the good conduct of causes; but it behoves him that he give not an unconscientious opponent the opportunity through his ignorance of wounding the cause of justice. In the matter of pleadings he endeavours—*first*, that his pleadings be as concise as the nature of the case will allow; not letting them run out to an interminable length to save himself trouble, or to please those attorneys who, loving their client's purse better than his interests, will have long profits to flow from long pleadings. *Secondly*, that they be such as shall on the trial be supported by the evidence. He is not content that the attorney instruct him—“*Counsel will please draw this or that plea.*” He requests that the state of the case be made known to him: and frames his pleadings in such manner that what he therein alleges may be established at the mouth of witnesses. *Thirdly*, he will not take trivial demurrers to gain time and to harass the opposite party and put him to expense; nor will he draw false pleas in the hope that the evidence which the other side shall bring may prove defective, or that he may abuse his opponent into a belief that his cause is stronger than it really is. He considers that pleadings however technical, are the formal allegations of the parties, to be supported by evidence according to their legal intent; and hence, to plead that which he knows to be untrue, though it be clothed in the robes of form, he considers not on that account as less unjust, but rather an aggravated falsehood. In this matter he is the more constrained to exactness by those rules of the judges which require that the signature of counsel be affixed to all pleadings; being assured that this was intended not alone as a security that pleadings should be as far as may be conformable to law, but that they should in all other respects be agreeable to the rules of right and honesty. In those pleadings which the court requires to be verified by the oath of the party he is more particularly careful that they be exactly conformable to the truth; and so far from encouraging his client to think that the oath which he takes is a matter of form merely, he impresses on him the necessity of his being convinced of the truth of that to which he sets his seal, and points attention to those matters wherein his knowledge of the case makes him think that his client might be unwarily entrapped into a misstatement of facts, remembering ever that “*Lying lips are an abomination to the Lord, but they that deal truly are his delight.*” *Prov. v.*

CHAPTER X.

THE LAWYER ADVISING ON EVIDENCE.

THE lawyer, when he has himself advised the undertaking of a cause and drawn the pleadings in it, has little difficulty when he comes to advise on evidence. For

having from the first stage of the cause carefully sifted all the facts of it, and assured himself that they are such as justify the proceedings which he has recommended, he is not forced when advising on evidence (as those too often are who hastily and without due examination counsel the undertaking of suits), to bid his client sound a retreat now after the loss of so much time, trouble, and expense; because forsooth the evidence which he can bring will not support his case: nor is he tempted to advise—as it is to be feared they too often are who counsel proceedings at law without sufficient caution, that doubtful or uncertain or it may be even false matters be put forward as evidence. Nevertheless in advising on evidence much judgment and good sense is required of the lawyer, that on the one hand he omit not to bring before the court any matter of proof which may be of weight toward the right decision of the cause; and that on the other he heap not upon his client unnecessary expense, by indiscriminately advising every witness to be called who can give evidence, no matter how trivial, concerning the matter in hand: doing like those unskilful marksmen who shoot many shafts at a venture, where a single one well directed had hit the mark.

CHAPTER XI.

THE LAWYER IN CONSULTATION.

THE lawyer, when he receives a summons for consultation with those engaged together with him in the conduct of a cause, regards not the meeting as a mere form whereby to put an additional fee into his purse. When properly conducted, consultations, which for the most part are then had when the pleadings are perfected and the evidences of the cause laid open, prove often a means of terminating doubtful suits by a just compromise, or hastening just suits to a favourable issue. To this end the lawyer in consultation looks at his client's case in the most unfavourable point of view, and weighs well that which appears against him, so that he may not be taken by surprise on the hearing of the cause, or startled by a new view of the case which proper diligence would have before presented to him. And herein much is required of the young lawyer. For consultations being in part for the instruction of the leading counsel in the facts of the case, which from want of time he may not so sift and examine at this stage as may the younger counsel; it behoves him to have well weighed and studied all that belongs to the suit and with readiness to impart what he has discovered; that if weighty it may be urged on the court by the character and experience of the elder counsel, or if weak may be suppressed—forasmuch as weak arguments often injure a strong cause.

In consultation the young lawyer is sometimes perplexed. For it may be he shall hear advice given, or schemes for the conduct of the cause proposed, by those elder than himself, which he cannot but deem to deserve reprobation. Yet inasmuch as from the complexity of causes that which to him appears wrong, to another not less conscientious shall appear right, he will not, unless when he is in his own mind fully persuaded, hastily dissent from that which those older than himself advise; since thereby he might seem to censure his betters: but will calmly propose his doubt, which should it not be entertained, he considers not himself therefore bound by the judgment of his seniors (should the conduct of the cause in their absence devolve upon him) to follow that which he considers wrong, but puts forward that alone and in that way which he esteems just and righteous. Yet because thus acting upon his own opinion he may seem to censure others, and those whom he would hope fellow labourers with himself in the work of justice, this when it happens grieves him sorely and distresses his mind, lest in thus condemning others he have been himself guilty of pride and arrogance.

CHAPTER XII.

THE LAWYER PLEADING IN CIVIL CAUSES.

THE lawyer when he rises to speak is full of his subject and empty of himself. He thinks not with himself, How shall I best gain the applause of the bystanders? but, How shall I best set forth according to truth and justice the cause which I have undertaken? and this communicates an earnestness to his manner which fixes the attention of his hearers and causes the judge to lend an attentive ear to all that he advances. Not that he uses the same warmth of speech in all causes, pretending always that his side is clearly right, and the other as clearly wrong; but according to his judgment of the cause so he speaks; his heart ever going along with his tongue, and his countenance being an index to his mind. If the cause appear to him just, he omits no honest act of elocution to commend it to the judge and the jury, showing that not alone the law of the land but that natural equity and good faith are with him, and endeavouring to enlist as well their feelings as their reason on this side. If his judgment is doubtful, so is his speech: he attempts not, by garbled statements and specious arguments, to make his cause appear better than it deserves; nor will he, as artful speakers sometimes do, endeavour to make a perplexed case appear more doubtful than it really is, in the hopes that his side, though the weaker, may amid the confusion prevail. If the counsel opposed to him be young, or insufficiently informed of the facts or law of the case, and if he thinks that any matter material to the merits of the case has been inadequately stated, then (as is recorded of Sir Mat. Hale), he rather mends such defective statements than avails himself of the ignorance or imbecility of his opponent to give his own cause a better colour than it deserves. He considers that to conceal a small matter in a doubtful case, is as great a sin as to conceal a great matter in a clear case: he deems it alike wrong to take a grain or a pound from the trembling scale of justice; and this because he ever denies *expediency* to be the measure of right and wrong, and utterly abhors the Spartan law of theft, which commended him who pilfered let him only do it undetected. In a word, the lawyer keeps in mind that his powers are entrusted to him by God, to be used for his glory; and he dares not prostitute them to abuse credulity or to maintain falsehood, to justify the wicked or to condemn the just. Such things he knows to be abominations in the eyes of the Lord and master whom he serves; and such they ever are in his own.

The lawyer likes best to plead those causes which he has himself advised the undertaking of: for as it is not his fee alone which makes the labour of his calling sweet to him, but the thought that he may thereby serve the ends of justice, he has a confidence in the equity of those causes which before entering upon publicly he has sifted in private. But as from the multiplicity of courts, the complexity of affairs, and the difficulty of causes, it is often necessary that several counsel be retained to plead the same suit, and it would be an intolerable burden to the client that each of these should be consulted concerning the cause in all its stages, it sometimes happens either from the exigency of the case or the carelessness of the attorney that the lawyer shall not get his brief till the cause be on the point of being heard. When this happens the lawyer has not that liberty which he always wishes he may have, of dissuading from the further prosecution of the cause or rejecting the conduct of it, if the party asking his aid will not do what is right. For in the hasty way in which he is obliged to study the case he dares not confide in the judgment he forms concerning it. As often therefore as this happens, the lawyer walks warily in his conduct of the cause, not warranting its soundness beyond what it plainly appears to him to deserve.

While fulfilling his duty to his client, the lawyer forgets not what is due to the community; and as in all commonwealths it behooves that laws be not only just and equitable, but fixed and certain; he seeks in his practice to be consistent with himself, not one day advocating principles in law which the next he is to oppose;

but determining to the best of his judgment what is expedient, and endeavouring to co-operate with the judge in building up good laws upon sure foundations.

CHAPTER XIII.

THE LAWYER OF COUNSEL FOR THE CROWN.

THE lawyer when appointed to aid the ministers of justice in visiting on evildoers the punishment due to his country's broken laws, seeks that as far as in him lies justice may be truly and indifferently ministered to the punishment of "wickedness and vice, and to the maintenance of true religion and virtue;" ever remembering by whom was committed to the hands of his prince that sword of justice which he helps to wield. Now in the discharge of this office the lawyer is watchful that he be not led on the one hand by an undue regard for power and wealth to extenuate the guilt of the rich; nor on the other hand by a love of popular applause unrighteously to spare the poor offender, or more heavily than justice demands to lean on the rich oppressor. When crimes arising out of the zeal of conflicting parties are to be prosecuted, he is especially careful lest the bias or affection of his own mind cause him either to aggravate or palliate the fault of the accused; and when, as must at times happen, he has been led at first to think worse of a case than it deserves, and so to state it to the court; if afterwards he see reasons for changing his mind, he will not from love of mastery endeavour to support the false colour he may have given to the case, but will candidly acknowledge himself to have been mistaken. When those who have been injured in their persons or their property come to offer evidence against the offenders; if at any time he sees them inflamed by passion on account of the wrong committed, while in the discharge of his duty he proceeds with the prosecution of the offence, he warns them that they forgive the injury done to them even as themselves hope to be forgiven of God their many sins against his holy law. When justice has pronounced the sentence of condemnation, if the criminal be penitent and the nature of the case permit, in the midst of justice he forgets not mercy; but when he knows aught that may extenuate the guilt of the prisoner, he makes it known to the judge, and prays that the punishment be as light as may be: for the rest he is so kind and tender in his manner even towards the most hardened offenders (for the worse they are the more he pities them) that they who by his means have been found guilty not only willingly forgive but even love and reverence him.

CHAPTER XIV.

THE LAWYER OF COUNSEL FOR PRISONERS.

THE lawyer, when engaged in the defence of persons charged with crime, is filled with a grave sense of the duty laid upon him. If the prisoner declares himself innocent and brings proofs thereto agreeing, the lawyer is careful lest by the weakness of his advocacy he may prejudice the righteous cause of his client; and again, if the prisoner be guilty and so confesses himself, the lawyer is perplexed to know how he ought to act. "The law of the land obliges not but yet expects of the prisoner when asked "guilty or not guilty?" that he answer to the question: yet if he will not do so but stands mute, it allows that he be considered innocent till proof be brought to the contrary. "Now when the prisoner declares to his counsel that he is guilty, the lawyer reflects whether he shall advise him to keep silence or to confess his guilt. "Did the law imperatively demand an answer, there were no alternative but he must confess: but now that the law, though it dislike that silence be kept, yet attaches no penalty, he is in doubt whether the accused may without

blame assume that liberty which the law permits even while it condemns. On the one hand he reflects, that to refuse an answer savours of contumacy and rebellion; and that the law affixes not a penalty to this contumacy, rather in mercy to him who if obliged to answer would add to his other crime, the guilt of falsehood; than to encourage him to silence, who penitent for his past fault knows and wills to do what is right. Again, if the prisoner confess not his guilt, but stand mute, and is through defect of evidence acquitted, how great temptations to sin beset him on every side! For, either he must confess to all with whom he lives, that though pronounced innocent by the voice of the judge he was in truth guilty; or he must ever after wear a mask of falsehood, pretending that the verdict by which he was acquitted was a rightful verdict, and shifting upon others the suspicion of that crime which was his own. On the other hand the lawyer reflects, that the general voice of mankind and the consent of all laws require not that the guilty, unpursued by the ministers of justice, render himself willingly into their hands, but permit him to remain unpunished, so only that he do so without adding sin to sin. Why then, he asks, may not the accused stand silent, if the law permit it; provided by so doing he injure not his neighbour nor offend against truth; especially if he have aught to plead in extenuation of his fault which yet the rigour of the law would forbid the judge to regard? On the whole, therefore, though the lawyer forbid not that the prisoner, if he have courage so to do, confess openly his guilt, and often rather encourages him thereto, than dissuades him therefrom; yet if he will stand mute he refuses not to undertake his defence, so it be not supported by witnesses suborned, or any other art of injustice; and that there be, as it were, a tacit confession of the fault.

The embarrassment of the lawyer is yet greater, when the prisoner, though knowing himself guilty, asserts that he is innocent. For as in such case the lawyer is bound to suppose that his client tells him the truth, and to examine witnesses in such manner as he would do if he were innocent, he is often thus made rather the condemner than the advocate of his client.

Another question which in criminal matters it much perplexes the lawyer to resolve, is whether he may in every case take advantage of any mistake which the prosecutor in pleading makes, thereby to effect a way of escape for the prisoner. Pleading in civil causes he is compelled by that divine law which bids us do to others as we would have others do unto us, to make no objection which does not serve the ends of justice. In criminal matters no law restrains, but he may take for his client that measure of mercy which the law permits and the judge awards. And yet if the prisoner, conscious of his guilt and penitent for it, will submit himself rather to the spirit than to the letter of the law, and deems it an insult to the majesty of justice to defeat its substance by relying upon its forms, the lawyer rather commends than blames such thoughts; and takes occasion therefrom to recommend to the mercy of the judge the criminal who has given to his country so sure a pledge that he has repented him of his crime against its laws.

CHAPTER XV.

THE LAWYER EXAMINING WITNESSES.

THE lawyer, as knowing that the temple of justice must be built on the pillars of truth, esteems highly of the examination of witnesses; in that by means of it when skilfully managed, falsehood is unmasked, truth revealed, and the cause of justice aided and vindicated. To this part of his duty the lawyer brings as well the wisdom of the serpent as the harmlessness of the dove. He is wise as the serpent; for here he has to engage with falsehood Proteus-like assuming—now, the confidence of assured certainty—now, the meekness of calm conviction—now, the ardour of enthusiastic belief—now, the hesitation of ingenuous diffidence.—He is harmless as the dove; for here he meets with certainty, mistrusting its own convictions—truth

unsuspecting, entangled in the labyrinthine mazes of doubt—ingenuous diffidence, betrayed into the hesitation of fraud—ignorant simplicity, unable to explain to others what it knows itself. The knave, the fool, the daring, the diffident, the cunning, the simple, all in turn present themselves. Now the lawyer has carefully studied the different phases of truth and falsehood, and exerts his powers to reveal the one, and unmask the other: his eye is single, and his course straight; truth is his game and his heart is in the chase, and with confidence he follows her footmarks no matter whither they lead. In the examination of witnesses the lawyer derives no small aid from the religious sanction of the oath which the court administers to the witness: not harshly and carelessly in the way of astonishment and terror; but meekly, religiously, and devoutly, reminding him, how by the solemn oath he has taken he has called the Searcher of all hearts to witness to the truth of that which he alleges. Not that he dares confide to this, which should of right be an all-sufficient test of truth: his knowledge of mankind teaches him far otherwise. Hence, if he sees a witness attempt to prevaricate or conceal the truth, notwithstanding the solemn oath which he has taken to disclose it simply and wholly, he spares no weapon which the storehouse of his art affords whereby to overcome the devices of falsehood. Not that he uses these weapons indiscriminately, attempting by artifice to extort that alone which may favour his client, and to draw attention from all else. If he brow-beat a witness, it is because he believes him of set purpose to conceal the truth: if he startle him by sudden transitions, it is because he believes him to be moving in the narrow circle of perjury: if he impeach his character, it is because he believes him unworthy of credit. Sometimes in utter doubt in his own mind where the truth lies, he throws his darts with random aim which misses the mark he intended and wounds where he meant not. If at any time he discovers that he has so done, he is sorry for the injury, and hastens to throw balm into the wound he has inflicted.

CHAPTER XVI.

THE LAWYER DRAWING DEEDS.

THE lawyer, in the drawing of deeds, is careful to obtain all knowledge pertinent to the matter in hand, and is studious well to apply it. He considers that a deed resembles a house, which, if well constructed, lasts long and gives protection and comfort to him who inhabits it; but being ill built, lets in wind and rain; and to complete all is blown down some stormy night about the ears of its possessor. Hence, when engaged in this duty, the lawyer reflects anxiously how best he may secure ease and quiet to those and to their families who repose in him so great a trust. His principal care is, so far as he may control it, that the intention of the parties be not only prudent but righteous. And observing that in matters of property the ill passions of our nature are wont, even in the best, to be stirred up and active—that distrust in Providence and in one another—love of power and of undue gain, have often way, though he may not always be able to procure the adoption of that course which all circumstances considered is most holy and highminded, yet he constantly strives after this end by suggestions made with the diffidence which is required from one who advises in the affairs of others. And *first*, he wishes that there be not too great anxiety concerning the future—too much thought of the morrow—he wishes that something be given to trust in the providence of God as ordering the affairs of men: for he sees that they who by multiplying provisos and conditions think to secure themselves against the ills of fortune, as they impiously term them, do most often in the end, not only miss their aim, but draw upon themselves burthens more heavy than those they have sought to avoid. *Secondly*, he wills that without good cause the natural rights of men be not abridged beyond what the law of the land prescribes: as, in the frame of the marriage contract, by restraining the power of parents over their children, or of husbands over their wives. *He commends the maxim of the common law, which is also that of piety and*

religion, that a man and his wife are *one*; and he cares not that 'provision be made by those entering into the holy state of marriage, for a separation which the church will not contemplate; but requires that they who enter thereupon pledge to one another their faith until death do them part. *Thirdly*, he wishes that when contracts are made between persons who are equal, the contract be as simple and unfettered as may be; that each may know to what he is obliged, and that the minds of men be not burdened with thoughts of complicated obligations, or their estates at some future time encumbered with unlooked-for demands. *Fourthly*, in all matters of trust, he advises that none be named as trustees who are not willing to take upon them the duties of the trust; and that to such offices men of integrity and probity be chosen, who will not use the power committed to them for their own gain and to the injury of those whose rights they are set to protect.

The lawyer, having made it his first care that the wishes of the parties be, as far as he may control them, prudent and upright, his next care is to provide that they be given effect to in as full and ample a manner as the law will permit; and that they be not disappointed by after events, or controlled and curtailed by the absence of provisions pertinent to the nature of the interests which it is the intention of the parties to create. And seeing the infinite complexity of human affairs, and that if he rely upon his own skill alone it were an hundred to one but that some circumstance escape his notice which ought to be provided for, he is careful to follow approved precedents sanctioned by time and the approbation of learned men; not that he relies entirely upon these, for every case will have its own peculiarities; and as he would be thought but a bungling cobbler who should think to fit all men of the same age from the same last, so he would be but a sorry conveyancer who should try to make one form of deed suit all conveyances of one class.

The last though no light care of the lawyer is that his deeds be concise. Prolixity in deeds he sees to spring either from indolence or dishonesty. It was no ill saying of one who, in excuse for the length of a letter, added, "that he had not *time* to be short;" and so the lawyer finds it in the drawing of deeds. It is easier, he knows, to throw into a deed all ordinary common forms and words, taking chance that some among them will suit his purpose, than carefully to weigh the wants of the case before him, and insert only what are called for. The other cause of prolix deeds, to wit, a dishonest wish to increase his own and the attorney's gains, he shrinks from with disgust, and knows not by what words sufficiently strong to denote his abhorrence of it.

CHAPTER XVII.

THE LAWYER DRAWING WILLS.

THE lawyer, in the drawing of wills, follows for the most part the same rules which he observes in the drawing of deeds. Yet some things there are peculiar to this department of his duty which belong not to that other: for whereas deeds are for the most part made openly upon much consideration, and upon debate of the different persons affected by them; wills, on the other hand, are secret, and made upon the advice of the testator alone, who, provided he observes the limits which the law enjoins, may do arbitrarily what pleases him, be it just or unjust, pious or impious, in the disposition of his own. And because the more perverse any man is in that which he wills, the more hard it is to turn him from his purpose: the lawyer, when he would dissuade from strange dispositions of property, has need of infinite discretion, that he fail not in his design, and haply earn for himself the reputation of a busybody. Seeing, however, that his first duty, when he is about to draw a will, is to inform himself concerning the particulars of the property which the testator is about to dispose of, for this purpose he requires him to look narrowly into his affairs, that he may not, as testators often do, by too favourable an estimate of

his substance, disappoint the intended objects of his bounty: seeing, moreover, that duty and right reason move him thereto, it can scarce be but that a friendly lawyer shall find occasion without offence to advise that what in a testator's intention savours of impiety or wrong be altered or omitted.

Another caution which the lawyer observes in the matter of wills is, that he be not led by the misinstructions of others or mistakes of his own to make for a testator a will far other than that which he intends, as knowing how difficult it is for one unversed in the forms and technicalities of law to express with clearness his wishes respecting the devolution of property. Hence, if at any time it chances that he receive instruction from a testator in person, he requires him to write down what dispositions he chooses to make of his substance, or else that a witness be present at this conference, who may compare the instructions given with the deed as drawn into form.

CHAPTER XVIII.

THE LAWYER A PEACEMAKER.

THE lawyer, remembering him of the blessing promised to the peacemakers, neglects not the occasions which his calling affords of reconciling differences, and by much study has attained an excellent skill herein. In this matter he grounds himself mainly on that which everywhere he has observed—that each, measuring the justice of his cause by his own desire, thinks himself therefore wronged because he has not what he would. Hence, when one comes to consult him concerning some wrong done to him, the lawyer leaps not at once to the conclusion which the client wishes, but listens patiently till he has told his whole tale; noting, in the meanwhile, those parts where he observes it to be defective. When he has done, he questions him as to these, to the end that, by his own answers, he may himself discover the weaknesses of his case. Having in this manner abated somewhat of his confidence, he suggests the matters of most weight which the opposite side may have to oppose: then he dwells upon the delays which he must encounter, the expense that must be incurred, the chances of failure from defects in forms of law and other causes. Having thus further shaken his confidence, he recommends that offers of compromise be made, not niggardly, but liberal; not boasting of a confidence which he does not possess (since such boasts both partake of falsehood and inflame the pride and passions of the opposite side), but meekly urging the many hazards which lie in the paths of both, the uncertainty of the issue, and the certainty of expense. Be it, however, that the cause be never so good, that a grievous injury has been wrought, and that the law is ready at hand to vindicate his right, he suggests that the law need not, therefore, as of course, be resorted to. In many things we all offend God; we are not able to answer one of a thousand; shall we not, then, where we may, seek occasion to forgive our fellow men, even as we ourselves daily pray to be forgiven of God?

CHAPTER XIX.

THE LAWYER AN ARBITRATOR.

THE lawyer, ever anxious to promote peace, rejoices when, to terminate differences, parties will agree to forego the contentious forms of law; and, abating somewhat from their strict rights, will submit to his judgment the matter in dispute between them. For by arbitrations, when properly employed, a means is often found to a more perfect administration of justice than the law of the land affords. For whereas, in giving sentence, the judge is obliged to decide according to the

letter of the law, be it, when applied to the case in hand, never so inequitable; the arbitrator may decide wholly according to equity; and this he always does, except where they who commit their cause to his decision will of their own accord have it otherwise. Nevertheless, in the matter of arbitrations, care is necessary that they be not perverted by the ill blood of the parties or the bad designs of attorneys, to the engendering of protracted litigation: and forasmuch as the lawyer is in no case obliged to take upon him the duty of an arbitrator until he has been first advised of the nature of the matter to be referred to him, and the terms on which the parties will conduct their proceedings; if at any time he sees probable reasons for supposing an ill issue of his labours, he prudently refuses to enter upon the office until the parties have agreed to such terms as he thinks right: which if they consent to do, reposing trust in the uprightness of his intent, he is more than ever watchful that he abuse not their confidence by a hasty judgment, but patiently listens to all that either party has to allege.

For the rest, the lawyer, when appointed arbitrator, desires to bring those qualities to his aid which a judge should possess; considering, that though appointed by the parties to decide betwixt them, the judgment is of the Lord, and to him he must account: and as he is not now clothed with that dignity which the appointment of the prince confers upon the judge, he strives, by the uprightness of his intention, the moderation of his manner, and the kindness and patience of his carriage towards all who come before him, to effect that his award be respected even by him against whom it is given.

CHAPTER XX.

THE LAWYER ON CIRCUIT.

THE lawyer is anxious that the odour of a good name may follow him whithersoever he goes: and as in the courts his truth and probity earn for him the confidence of the judges; so in the towns on his circuit he gains the respect and good will of those who are in the habit of serving upon juries. These having observed his practice of saying nothing but what he deems of weight, and of stating nothing with more weight than he deems it to possess, listen with pleasure to what he has to offer; not arming themselves, as with some they are forced to do, against being surprised into false judgments by specious artifices, but thinking of him as co-operating with themselves in the work of justice which they are sworn to promote. And as, at the time of the judge coming to the county town, the minds of all are erected towards the administration of justice; and the events of each day, whether of criminal or civil affairs, are in every one's mouth; he is careful to improve the opportunities which the hospitality of his friends affords, of commending to all with whom he converses the cause of justice, mercy, and truth: and when, as too often must happen, he chances to fall in with those who prefer ingenuity before honesty, and cajolery before truth; and who think him faint-hearted and a fool who will quietly sit down under an injury received, and forgive him who has injured him, rather than seek to be revenged therefor, he fails not to declare before God the sin of such practices, and moreover exposes the evil consequences that follow from them among men: as how injustice begets injustice, and fraud begets fraud, in an infinite generation; while a patient endurance under wrong is alone able to lay a foundation whereon may be built the superstructure of love to mankind.

When on circuit, the lawyer keeps jealous watch over himself, lest the freedom of social intercourse, or the unguarded converse of convivial hours, betray him into a participation with or approval of what is immoral or profane.

When in town, though he may not decline any duty which Providence throws in his way, he has much liberty to determine whom he will cultivate as friends and associates; but on circuit the range of his choice is much narrowed, and he is often brought into converse with men whom his own judgment would not have selected,

yet whose society courtesy will not permit him to shun. Hence, while he cheerfully joins in converse with those whom he happens to meet, turning conversation where he may to the profit both of himself and others; he yet observes a prudent caution, lest by his language or looks he should at any time seem to countenance what he esteems wrong. Another temptation to which on circuit the lawyer is exposed, and which he carefully guards against, is that of neglecting the duties of the Lord's day. The frequent example of others, and the urgency of important business committed to his care, make it at all times hard to maintain faithfulness in this matter; but the lawyer, feeling that in proportion to the difficulty so is the necessity, that by his example others may be encouraged to a just observance of this holy day, takes courage in the promises of Him who is a most strong tower of defence unto all that put their trust in him, and in due time reaps, if he faint not, a reward of his obedience. And thus, like the gentle rain having descended upon the land, his country duties ended, the lawyer returns again to his home, cheerful in the hope that he has not run nor laboured in vain.

CHAPTER XXI.

THE LAWYER AT ELECTIONS.

THE lawyer, when invited to act as counsel for candidates at elections of members to serve in parliament, sees before him so foul a den in which the evil passions of our nature, like beasts of prey, are wont to ravage and devour, that he scarce dares to enter therein. Yet, in the fulfilment of duty, he may not otherwise refuse than by making known to him who seeks his aid the principles on which alone he will consent to act. And, *first*, he acquaints him that he will neither directly nor indirectly be party to the bribery of votes. The law of the land, judging rightly of the nature of a vote, and intending that he who is to exercise that high privilege should do so not for private ends, but for the public good, has by heavy penalties forbidden that which, even though no law of man had condemned, must have been held in detestation by all good men. To the righteousness of this law the lawyer gives his hearty assent, and hence deems himself unfit to be of counsel for him who, regarding neither the law of God nor of man, in this behalf thinks of the purchase of voters no otherwise than as of the purchase of a flock of sheep or other commodity which may without scandal be bought and sold. For though it may be he shall not himself be asked to aid directly in giving bribes, yet forasmuch as the confidence which should of right subsist between a candidate and his counsel makes known to him the whole conduct of affairs, and he is besides to advise concerning this very matter in making known what the law of the land enjoins respecting bribery, he will not peril himself by an approach to so dangerous a precipice.

Secondly. He will not aid in giving effect to dishonest artifices whereby to hinder voters from the exercise of their franchise, nor suggest objections merely technical to invalidate what he believes to be otherwise *bonâ fide* votes. Such artifices and objections he sees to flow from the intemperate zeal of party spirit or the unholy desires of self-interest and pride, which charity forbids him to countenance. If he who asks his services will nobly seek to attain the high office of representative by the unbought affections of his fellow-citizens, disdaining all corrupt and petty arts; the lawyer delights to be of counsel for such an one, and with all his might strives to defeat the unjust artifices of those who would hinder the free choice of the people.

CHAPTER XXII.

THE LAWYER'S SECRECY.

THE lawyer, oftentimes becoming acquainted with the private affairs of families, as in drawing of wills and settlements, and advising in cases of difficulty and trouble, is watchful not to divulge what he may thus learn, and considers that as counsel he lies in a manner under a promise of secrecy which it behoves him to keep sacredly. Nor is this a slight task or a trivial duty. For there is in most a desire to know the secrets of other men's houses; and if any obstacle oppose, rather than altogether miss their mark, they will pass current for truths the vaguest rumours of lying fame. Hence arises a constant temptation to the lawyer. For, let him but hint that he has some knowledge of any matter that is questioned, and he shall at once command attentive listeners, and commend himself as a person of importance. Now the lawyer having, when inexperienced, been oft taken unawares by this itch of hearing, becomes after a while wary and on his guard to avoid those occasions which might tempt him to gratify the love of detraction. The best cure for this malady, which is one of little minds, he finds to be by leading the conversation to the consideration of higher matters, which quickly puts to silence those petty traders on others' faults, and makes room for the speech of better men.

CHAPTER XXIII.

THE LAWYER DISCOMFITED.

THE lawyer claims not infallibility; he oft falls into error, but, like a wise man, seeks to profit by his errors. And this he does both in the way of humility and of prudence; learning to entertain a lowly opinion of his knowledge and powers, and in every case of difficulty asking that the aid of men wiser and more experienced be called in, though it may be that by so doing he lessens the respect of his client for his services. The subtilty, the strength, the versatility of the enemies he has to encounter terrify and dismay him. For the lawyer, when he falls into error, considers not himself at liberty to correct his mistakes by artifice or fraud; and, uncorrected, they often entail upon his client great expense and loss. When this happens, he attempts not by plausible pretences to gloss over his blunders, or to charge them upon the client as though he had misled him by erroneous instructions; but he straightway confesses his error, and advises how best he may avoid the consequences, and, if the mistake be the fruit of gross negligence or unpardonable ignorance, makes what restitution he may in returning the fees he has received. If these errors happen often, he seriously bethinks him it were better his place were filled by another, and seeks some occupation better fitted to his powers: but if he finds he only commits occasional faults, though they grieve him much, he takes courage, seeing that others around him do likewise.

Difficulty of like kind, but in another shape, presents itself to the lawyer, when the cause that at first appeared to him just, by reason that much belonging to it had been kept back from him, as it proceeds, becomes manifestly unjust. If this happen by the wilful fraud of him whose cause he has undertaken, he forthwith deserts it, and leaves the deceiver as best he may to get out of his own trap. If, on the other hand, the client was himself deceived, the lawyer, as soon as he discovers the defects in his cause, apprizes him of them; and recommends to desist from further prosecution of it, or helps to conduct it to a termination consistent with justice.

CHAPTER XXIV.

THE LAWYER IN THE MATTER OF FEES.

THE lawyer is exceeding jealous of himself in what concerns the recompense of his labours, seeing what infinite evils they engender who, in the administration of justice, regard only their own gains. Of such the wise Hooker, not without sufficient reason, affirms, that "if they who travail about the public administration of justice, follow it only as a trade with an unquenchable and unconscionable thirst for gain, being not in heart persuaded that justice is God's own work, and themselves his agents in this business; the sentence of right God's own verdict, and themselves his priests to deliver it; formalities of justice do but serve to smother right, and that which was necessarily ordained for the common good, is, through shameful abuse, made the cause of common misery." This estimate of what should be the lawyer's motive in the exercise of his calling, caused that among the Roman advocates, and among those in time past of our own nation, the lawyer's fee was regarded,* "not in the nature of wages or pay due by contract for labour or service—since no price or rate can be set upon counsel which is invaluable—but of a gift or gratuity, which albeit the able client might not neglect to give without note of ingratitude, the worthy counsellor might not demand without doing wrong to his reputation:" which consideration, though it have not like currency now that it once had—in that the administration of justice is more complex and formal, and the duties of lawyers more fixed and certain—were well kept in mind at our day, if peradventure it might curb that too eager love of gain which makes the profession of the law a by-word in the mouths of many.

In the matter of fees, the lawyer observes that rule of his profession which forbids the taking of half fees: yet only in such manner as that he will not by so doing seek to creep into business by underbidding his brethren of the bar. Hence nothing hinders but that in a poor man's cause he return the whole or any part of the wonted fees, or cares not to look for their payment till the result of the suit be known. In such cases, however, the lawyer is careful that what he so declines turn not to the attorney's profit but to the client's relief. To this end he is mindful not to put his name to any fee which either he has not received or which for charity sake he returns, that the absence of such mark may be a check upon the careless and a memento to the careful attorney. And here the lawyer wishes that rule were more narrowly observed which forbids the officers whose duty it is to tax attorneys' bills, to allow any fees to counsel which have not such mark of receipt; inasmuch as the neglect of it causes injury to the advocate as well as to the client; to the client, in that he is sometimes charged with fees which the lawyer may have returned as not deeming them well earned, or from the poverty of the party may have declined to ask; to the lawyer, in that it enables the unworthy attorney to recover counsel's fees which he has not paid and perchance shall never pay.

Other dangers there are in the matter of fees which oblige the lawyer to walk warily, observing not only his own steps but those of his fellow-travellers also, lest haply a false step made by one of them cause him to fall.

First. He is careful to return his fee in any matter in which, from accident or other cause, he has given no labour or thought: the contrary practice in which regard, has deservedly brought much scandal upon his calling.

Secondly. He is faithful to the side which first retains him, though it may be they neglect the wonted courtesy of continuing to ask his services: considering it safer in such cases to let ingratitude, and it may be dishonesty, pass unnoticed, than himself to run the risk of being false to one to whom he has engaged his services.

Thirdly. He is watchful not to countenance the making of unnecessary motions, or the taking of superfluous proceedings, only because his own and the attorney's costs will be charged by the court to the account of the opposite party. And this the

* Sir John Davies. Preface to his Report.

rather, in that it is to be feared too many motions in courts have their origin herein, and by it robbery is daily practised unpunished in the very precincts of the temple of justice.

CHAPTER XXV.

THE LAWYER'S REGARD FOR PROFESSIONAL RULES.

THE lawyer shuns their opinion who regard the professors of the law as an order whose interests are at variance with those of society at large, and therefore to be protected by walls and bulwarks raised in self-defence. Lawyers were appointed to live for society, not society framed for them to live by. Hence in those rules which they make for their conduct towards one another and towards their fellow-citizens, the lawyer regards those as of no binding force which clash with the welfare of society at large: and though to the other rules of his order he pays that deference which courtesy toward his fellow labourers in the work of justice demands, he ever remembers the good of society and the principles of equity whereby to relax their rigour. Thus though it be a rule of his profession that no lawyer confer on business with a client except at the instance of an attorney (and such rule, in the present state of the law, serves to useful purposes), yet if one be so poor that he cannot pay an attorney's costs, nor find one who will of charity undertake his cause, the lawyer willingly listens to the case of such an one, and at once gives him the advice he seeks; or, if he need assistance such as may be the best given by an attorney, commends him to some charitable practitioner who will lend his aid to the distressed. In all such matters the lawyer looks to the intent of the rule; and so the abatements he makes from the rigour of it be made in honour, with a clean conscience, without left-handed designs of self-interest or avarice, he cares not what censure he may incur from those who, considering the privileges of their order as of more value than the good of society for which alone that order exists, however wise they be in their own eyes, to others resemble the fool who arrogantly thought he played on the organ when he only blew the bellows.

CHAPTER XXVI.

THE LAWYER'S REGARD FOR PROFESSIONAL CONFIDENCE.

THE lawyer, like the divine, often comes, in the exercise of his calling, by reason of the confidence reposed in him, to the knowledge of public and private wrongs, which, had he arrived at it another way, he had been bound to reveal to the ministers of justice or to the parties injured. Now, however, that such matters have become known to him under the implied promise of secrecy, though he exhorts the person asking his counsel to do what is just, he dares not himself reveal what he has thus discovered, even though by so doing he would free the righteous cause from oppression. Thus if one should, in asking counsel, confess that he has by fraud got possession of his neighbour's goods, though the lawyer shudders at the thought that one should knowingly persist in the commission of crime, refusing to make restitution; yet he dares not make known to the injured party his just rights, esteeming that he who has thus made him privy to his evil acts has done so under the confidence that he would not make them known; which confidence, though he does what he can to cause that it should not be reposed in him, yet having been reposed, he thinks he may not without wrong betray.

Still it may be that at times a higher duty shall oblige the lawyer to declare openly what he has thus learned in secret; though here, as in all questions concerning conflicting duties, as for instance—when a subject may lawfully resist the commands of his prince, or a child those of his parent—he finds it impossible as it would

be inexpedient to define beforehand what circumstances will justify a deviation from the general rule of duty.

When the Church of England by her canons would determine the duty of a clergyman respecting matters revealed to him in confession, she forbids her ministers, "under pain of irregularity, to make known any crime or offence committed to their trust and secrecy, for the unburdening of the offender's conscience, except such as by the laws of the realm their own lives would be called in question by concealing." Now though the law of the land permits to its professors and servants a privilege in regard of matters confided to them in the discharge of their professional duty which it denies to all others, giving them liberty, even when interrogated by the judge, to decline an answer to any question which would oblige them to reveal such matters, the lawyer at times finds cases arise in which right reason and conscience demand that he waive the exercise of this privilege—as if he sees one about to suffer for a crime of which another has confessed himself the perpetrator—or if treason, murder, or any other heinous crime about to be committed, could, by the disclosure of facts entrusted to him, be averted. In such cases the lawyer thinks himself at liberty to reveal so much as may be necessary, considering that the promise he has made being but implied, conditions and exceptions must be implied also.

For the rest, the lawyer regards it not as any breach of the confidence reposed in him, when, being entrusted with the conduct of a cause, he discovers to the court all that is material to the just decision of it. Thus, if being employed to demand at the hands of the law a sum of money clearly due, he might by some concealment cause that double that sum be adjudged, he stays not in such cases to ask liberty of his client, but at once makes known to the court what he deems necessary to the ends of justice; considering that to do otherwise were to act injuriously to his client in imputing to him dishonest aims.

CHAPTER XXVII.

THE LAWYER IN VACATION.

THE lawyer in vacation is like a field lying fallow, reposing from past and preparing for future labours: there is neither ploughing, nor sowing, nor reaping—neither books, nor courts, nor fees—yet here and there a flower or plant springs up. Wherever he chances to be, the lawyer refuses not advice to the poor, neither omits any opportunity which offers of reconciling differences or preventing litigation. More than this in the business of his calling he cares not to do, not only because for the most part the health of his body and mind require these seasons of rest, but more especially because he fears lest by an unbending application to the study of the law, he make narrow his mind. For, strive as he may after the larger and higher principles of natural law, much of his time, he finds, must of necessity be employed in the study of those minute distinctions which the ingenuity of lawyers, aided by the infinite variety of human events, and the imperfection of positive laws, has by little and little compelled the diffidence of judges to sanction. Now, lest this microscopic study should injure his moral and intellectual vision, the lawyer delights, during these seasons of relaxation, to climb the hills which surround the narrow valley where the scene of his daily labour lies, and to view from their tops the glories of creation set before him by the hand of Almighty love. And now he frequents the joyous halls of imagination, where the handmaid poesy waits upon his feasts, and crowns with a more sparkling wreath the cup of sober-minded pleasure; or seeks the cool groves of philosophy, where discursive thought and inventive reason supply invigorating viands to enlarge and strengthen the mind. With these, if opportunity offer, he seeks in travel to expand his knowledge, as well of nature and art as of men and manners. If he bend his steps to foreign lands, he inquires, in the states through which he passes, concerning the condition of the people, noting what of excellent or defective he observes in the institutions of each,

and the sources whence derived; as whether of old standing and growing out of ancient laws, or whether the fruit of modern legislation. If, as he loves rather, he betake himself to the hospitable homes of friends in his native land, he omits no opportunity of acquainting himself with whatever of useful and charitable exists in the public or private institutions of the neighbourhood; and where he may be of service (as strangers often may), he spares no labour necessary to that end. Especially he delights to further those designs which have in view the promotion of religion, knowing that where piety advances all good things will quickly follow in her train.

CHAPTER XXVIII.

THE LAWYER'S HUMANITY.

THE lawyer, when he became a lawyer, ceased not to be a man: when he received from the guardians of his order the badges of his calling, he laid not aside any of those sympathies which should warm every brother of the human race. If the pagan could say, "*Homo sum: humani nihil a me alienum puto,*" much more can he. God by his providence has appointed divers orders of men in the state, even as he has in the human body set various members, no one of which can say to another, "I have no need of thee." And as in this latter though to each belongs its proper office, yet through all circulates one common blood, one common life, and all are moved by one common spirit: so in the body politic, though to each member is allotted its respective vocation and ministry, yet from all God will one day demand an account of every talent, small or great, which he has committed to their charge: nor shall he who has neglected the duties of a father, brother, master, or friend, be in that day excused because he has laboured in his calling as a clergyman, a physician, or a husbandman. Hence the lawyer, while he is diligent in the peculiar duties of his calling, strives heartily and as unto God to fulfil every other duty to his neighbour; following in His steps who visited our earth, not alone that he might be a sacrifice for sins, but also an example unto us of godly life; and that we might approve ourselves his faithful followers and friends, not by the barren leaves of Christian profession, but by the good fruit of that vine into which he has ingrafted us.

CHAPTER XXIX.

THE LAWYER'S CHARITY.

THE lawyer, though no divine, is so far versed in the knowledge of divine things as to have learned, that outward alms alone earn not a title to the virtue of charity. Not that outward alms are therefore to be omitted. Charity is the end of the commandment, and the end of the commandment is love: love to God first, and love to our neighbours afterwards, as of necessity springing from love to God: not such love as was that of the lawyer in the gospel, who, willing to escape, sought by the difficulty of the letter to make void the spirit. The lawyer's charity is his religion, and his religion is his life; and his life is twofold—inward in his heart, and outward in his actions. For that which is inward he accounts not to man, but to God: not but that he is herein so far forth accountable to man, as that inward faith must of necessity bear outward fruit; yet forasmuch as faith is an inward germ, it binds not to a legal observance of particular outward duties in set forms. These howbeit in the general shall scarcely be found wanting.

First. His heart being on fire for the spiritual welfare of his fellow men, it cannot be but that where opportunity offers, he will speak a word in season concerning divine things to those with whom business brings him into converse: and often in

so doing shall it be his chance to meet a fellow-traveller to the celestial city. Be it he but casts his bread upon the waters, yet after many days shall it return to him again. This fire in his heart makes him watchful likewise for the external welfare of Christ's church, and of those religious institutions which are formed to support its mutilated fabric. To these he willingly imparts somewhat of the store with which God has blessed him, and, so far as the duties of his calling will permit, somewhat also of his time and labour.

Secondly. In his care for the spiritual, he forgets not the temporal wants of his fellow men; for though the inferior, this is yet the second part of charity. If he can spare time, he himself visits the sick and seeks out distress: otherwise, that which, according to the apostle's injunction, he has "earned with his hands to give to him that needeth," he entrusts to faithful deacons to dispense withal; or with the widow's mite throws it into the treasury of some refuge dear to the fatherless and the widow. But principally the lawyer delights in relieving those wants of the poor which concern law and justice. This he considers his proper alms, as being the advocate of Heaven, whose peculiar care the poor are.

CHAPTER XXX.

THE LAWYER'S COURTESY.

THE lawyer's courtesy flows from his charity: and as this reaches all men, so does the other; for how should he, whose thoughts are love towards all, willingly in his outward demeanour give offence unto any?

Yet because what is never so well intended shall sometimes fail in its aim, and courtesy has limits, in that it may not pass a smile of compliance on that which inwardly we disapprove; the lawyer observes measures in his courtesy. For the exercise of this virtue he finds infinite occasions, some of which in particular, as of more frequent occurrence and weightier import, he prepares himself for beforehand; and, *First, in his demeanour before judges.* To these are due not courtesy alone, but reverence also, as to God's viceregents. Therefore he omits no occasion of showing them due respect—as in restraining all unseasonable mirth in their presence, in rising from his seat upon their entering or leaving the court, and in other such like attentions. He thinks not that time or trouble lost which upholds respect to them to whom respect is due: Yet should the judge at any time, either from impatience refuse to hear fully his client's case, or from prejudice manifest an undue bias against it, the lawyer dares to remonstrate; yet in such a respectful manner as, if it at the moment recall not the judge to a sense of his duty, shall so weigh upon his mind that afterwards he will repair the injury.

Secondly, in his conduct to his brother barristers. To these courtesy is especially due as members of the same calling, and fellow labourers in the work of justice. Hence the lawyer is ever ready to assist them with his knowledge and counsel, not fretfully resenting all interruptions of his own business, nor carelessly giving advice no matter whether sound or not, nor being jealous because a younger than himself shall profit by his knowledge; but with a single eye considering how he may best aid others in that work of justice which he has himself at heart. Yet here he needs to be on his guard, that courtesy cause him not to sanction that in the conduct of others which he himself thinks wrong, whether it be an unworthy act or profane jest. Haply he shall hereby earn for himself ridicule and reproach; yet these he gladly bears, and more also, so he might recall such as thus offend to sober thought upon the sinfulness of such practices.

Thirdly, in his intercourse with attorneys. These, in despite of the ill name which the evil practices of too many among them have brought upon their brotherhood, he regards with esteem, and considers their duties scarce a whit inferior in dignity to his own. But as elsewhere, the corruption of the best engendereth the worst, so is it here: and while he who is true to his own conscience, and faithful to his client's interest, is as gold thrice tried in the fire; he who is false to

the one, and faithless to the other, stinks in the nostrils of all good men. In his intercourse with an attorney, the lawyer's manner is according to his mind. If he have not full confidence in his integrity, he is wary that he be not betrayed, by word or look, into approval; but if, on the other hand, he meet one in whom he may confide, he freely communes with him as with a friend and fellow-worker.

For the rest, the lawyer, while he guards himself against the faults of others, is jealous that he be not unwittingly led into those faults to which his calling renders him peculiarly liable; such as are—an over-confident manner, rudely bearing down all that opposes; an irritable temper, ready to rise at every supposed offence and assume the privilege of abuse; a spirit of dispute, quick to discover matter about which to differ, and ever ready to defend that side which it has adopted by captious arguments, rhetorical artifice, or unwarranted sarcasm. Rather he conforms to those precepts which the apostle Peter (himself of an abrupt and hasty temper) enjoins, "Be ye all one mind, having compassion one of another; love as brethren, be pitiful, be courteous."—1 Pet.

CHAPTER XXXI.

THE LAWYER'S HOSPITALITY.

THE lawyer may not, like the country gentleman or man of wealth, give up much of his time to the entertainment of guests: yet, according to his power, he forgets not to be hospitable, bethinking him how many delights flow from the exercise of this most excellent virtue: as how, first, it serves for the comfort of our earthly pilgrimage, making known to friends the passing events in the history of each, and by this communion enhancing the joys and alleviating the sorrows of life. Then, again, he considers how grateful it is to the wearied spirits of those who have no home to be admitted among the cheerful scenes of domestic life; and how much more grateful still it is to him who, enjoying thus the luxury of doing good, learns that it is more blessed to give than to receive. Moreover by hospitality opportunities are opened up for combined efforts in the cause of charity which had not otherwise been made.

The lawyer dislikes altogether the practice of those who, when they will be hospitable, put on a mask, heaping their table with unaccustomed dainties, and surrounding it with strange faces. He thinks that a friend will not the less like his feast because it invites not to intemperance, nor will be the sooner weary of his company because they present not the excitement of novelty. Yet, when occasion offers, he delights to give the stranger a place at his board; especially he loves to entertain those whom business brings to the town, and whom the unknown multitude reminds of their solitude: and while he collects from them knowledge of how the country flourishes, how the poor fare, if the laws be respected, if religion be honoured; he in turn entertains them with all of charitable, or useful, or instructive, which the busy energy of city life, and the versatile pursuits of his own calling, have made him familiar with. If at any time he observe one anxious to seek a doubtful right at the hands of the law, he brings him to the courts, and there shows him the ordeal through which he must pass before the maimed limb of his estate be restored; so that if his appetite after law be not over keen, he may reflect on the many unforeseen difficulties which lie in his way, and rather sit down content with the loss of an uncertain advantage, than incur a certain loss of so much time, and trouble, and expense.

CHAPTER XXXII.

THE LAWYER A CITIZEN.

THE lawyer, though watchful to obey the laws of the land which it is his peculiar duty to know, deems not of himself as having then fulfilled his duties, when he has

outwardly conformed to all that they command, and abstained from all that they forbid, so that he may lie down at night secure from the rods and axes of the ministers of justice. Love, not fear, is the spring of his obedience; and hence he refuses no office, however burdensome, whereby he may serve the commonwealth, nor shrinks from the discharge of any duty which his station imposes, no matter how much the performance of it may expose him to the odium of those whom it is his interest to please. Some he observes who, careless about the welfare of the commonwealth, and anxious only for their own advancement, under colour that, in a free state, men, to serve their country, should act with a party, attach themselves to a confederacy of politicians, whom they slavishly follow, in hopes at some future time to receive from them or with them an ample reward for their prostituted services. Now the lawyer reprobates not alone the practices, but the theory of such men. He holds it as a maxim of political philosophy, that principles should associate parties, and not parties control principles—being well assured that the conduct of others, how high soever their station or intellect, can never sanction a departure from what in each case is right, and deeming parties to be no further good or useful than as they are formed by the union of like minds earnestly striving after high and holy ends. Hence he in no case gives a blind assent to the acts of any set; but freely weighs and canvasses all measures of which it is his duty to judge, and if in any thing he disapproves, frankly speaks his mind; considering that the liberty of speech, which the constitution gives, not only imparts a privilege but imposes a duty. And while the lawyer values highly this freedom of speech, he is careful not to abuse it for impious ends; as by reviling rulers, or by inflaming the minds of his fellow subjects upon the occasion of every grievance which ill government may cause. If abuses exist, he chooses rather that remedy which the constitution approves, and by petition sets forth the evil, and humbly prays that it be remedied: which if those in power refuse, he cheerfully bears up under the burden, regarding what may not be removed by lawful means as a judgment sent in the wisdom of God for the punishment of national sin.

CHAPTER XXXIII.

THE LAWYER A LEGISLATOR.

THE lawyer, as he shrinks from no burthen which it behoves a good citizen to bear, should he be invited by any portion of his countrymen to represent them in parliament, if higher duties permit, declines not the proffered honour; so however that he may arrive thereat without the use of those evil arts too commonly practised, and that he be not required by his constituents to sacrifice that liberty of thought and action which their interests and his own honour alike call upon him to maintain. All contracts by which the freedom either of the constituent or the representative is restrained, or their conscience fettered, he considers not only inexpedient but immoral. For as, on the one hand, he who, being entrusted by God and his country with the high privilege of declaring upon whom shall be conferred a portion of the legislative power, if for corrupt ends he name an unworthy person, stands guilty before God and his country; so he, on the other hand, who receives a heaven-descended power, and yet binds himself to exercise it according to the will of his fellow men rather than of God, insults His majesty, by whom princes rule and judges decree justice. At the same time the lawyer denies not the right of the electors to know from the candidate what are his principles, and what his present views of political measures, introduced or proposed; these he makes known without distortion or concealment; but he will not bind himself to continue ever of the same mind, and unchangeably to advocate measures which more extended knowledge or altered circumstances may prove to be injurious; or, in default of so doing, to yield up his power at the moment when duty most loudly calls upon him to exercise that power for the safety of the commonwealth.

When returned to parliament, the lawyer, as best qualified thereto by his daily

studies, and being besides as it were an ambassador from the court of justice, gives himself chiefly to the amendment of his country's domestic laws. And here, having noted what is observed by Lord Bacon, that "all those who have written of laws have written either as philosophers or as lawyers, and none as statesmen; and that, as for the philosophers, they make imaginary laws for imaginary commonwealths, and their discourses are as the stars, which give little light because they are so high; and that as for the lawyers, they write according to the states where they live, what is received law, and not what ought to be law:" he is careful, on the one hand, that he be not so fettered by a reverence for existing laws as to decline making any material change therein; and on the other, that he be not led by too abstract a consideration of natural law to propose alterations merely speculative and visionary. In the matter of legislation, religion is the pole-star by which he steers; and his first care is that the laws of his country be conformable to the law of God. Hence where the intemperate and unholy zeal of statesmen, or the carelessness, infirmity, or impiety of judges, have in any case framed statutes or sanctioned maxims at variance with the law of God, he is earnest to abrogate all such. Next he seeks that the laws be made, as to their meaning, clear and certain; as to their administration, impartial and equal; as to their execution, quick and easy. For the rest, the lawyer upholds by all means the authority of the existing powers; ever, where he may with a safe conscience, supporting, rather than opposing, the ministers of the crown, and steadily resisting all feverish attempts at change, as knowing that these for the most part proceed from an irreligious spirit, which vainly looks for perfection from arrangements of what is *outward* and *formal*, neglecting that which is *inward*; a right ordering of which can alone give health to the wisest institutions.

CHAPTER XXXIV.

THE LAWYER'S CONSIDERATION CONCERNING ECCLESIASTICAL AFFAIRS.

THE lawyer, not only as being himself a member of some spiritual community, and to hold converse with members of his own and of other spiritual communities; but also as being at times to advise concerning the laws relating to the goods and discipline of such communities, is constrained, as well for conscience as for peace sake, to determine what he shall think concerning the outward form of Christ's kingdom upon earth—as whether there be but one visible church upon earth, united under one visible head—or several churches all united by one common discipline, derived from apostolic times, and continued by legitimate succession—or whether again there be several churches, some it may be having forms of government differing from others, and acknowledging no one visible head, and no one external bond of union. If one form alone be of divine appointment, and all others schismatic, it may not be that the lawyer lend his aid to establish what he believes to be contrary to God's holy will and ordinance. Now since to suppose that none can be members of the kingdom of Christ, no matter how strong their faith, no matter how evident the fruits of that faith—love, joy, peace, long suffering, gentleness, goodness, meekness, temperance—that none can dwell in the unity of the Spirit, unless visibly joined together by uniformity of worship, were to imitate the error of our Lord's disciples when they would have forbid those, who, though not followers with themselves, were yet in the name of their master, and by the power of his Spirit, enabled to work miracles of mercy; and of those Jews who at the first thought that none who belonged not to the stock of Abraham could be partakers of the grace of Christ; since moreover there is in the nature of things nothing obliging to such an opinion, nor anything in the history of the church compelling thereto; the lawyer is in this matter of the advice of Lord Bacon "who in revolving the scripture could never find that there should be but one form of discipline in all churches, and that imposed by the necessity of a commandment and prescript out of the word of God; but that God had left the like liberty in the church government that he had done to the civil government, to be varied according to time and place and accidents,

which, nevertheless, his high and divine Providence doth order and dispose." Yet he does not therefore deny that uniformity, if it could be had, were an excellent mean towards unity; nor that some forms of ecclesiastical government have in themselves (as is the case in civil governments) a superiority over others, God having at times for national sins (as in the case of his peculiar people the Jews) permitted inferior forms of government to take the place of better. But as all forms of civil government, be they never so imperfect, require of those subject to them allegiance to the authorities therein ordained, and confer though in differing degrees protection upon those living under them; so forms of church government, inferior in kind, albeit they confer not like privileges on those subject to them which others more perfect do, may not be deemed accursed of God. And as in the civil constitution of mankind the subjects of one state, because of the overflow of evil therein, or for other sufficient causes, may place themselves beneath the dominion of another; so in the kingdom of Christ upon earth, nothing hinders but that one born and nursed beneath one form of church government, on urgent occasions thereto moving, may subject himself to the rules and ordinances of other forms—not but that there may be, as in civil communities assemblies of mere rebels and outlaws; so in churches—confederacies of mere schismatics and separatists. But to whom particularly we will give these names, especially when lapse of time in the Providence of God shall have imparted stability to governments at the first it may be founded in schism; it behoves us carefully to consider.

The lawyer having thus considered of ecclesiastical affairs, though it may be he values beyond all others that form of church government under which he has himself been nourished, yet deems not so of other forms but that he may wish them Godspeed, and if need be give his counsel and aid for the maintenance of them, especially of such as the civil power has tolerated—so, however that in no case he will be found the advocate of those, which, though holding the name of Christian churches, deny that foundation upon which every true church must of necessity be built.

CHAPTER XXXV.

THE LAWYER UPON SUNDAYS.

THE lawyer during the week bethinks him constantly of the returning day of rest, and so arranges his business that he may early upon the Saturday lay aside all professional care, and make the evening of that day a preparation for the Sunday. This he does, as having found how hard it is on that day to dismiss from his mind all thoughts of worldly affairs: how ever and again, in the midst of his public and private devotions, some matter of urgent business will obtrude itself upon him and distract his attention. Hence the lawyer, upon the Sunday, not only abstains from the labours of his calling, but carefully lays aside his briefs and papers, lest the sight of them should recall his thoughts to his weekday's business. Not that he thinks of the Sunday as a day of ceremonial observances to be slavishly pursued: on the contrary, he considers it to have been ordained by God himself in the Patriarchal and Jewish churches for the ease and solace of men in communion with their Maker: and when it behoved the Christian church to appoint a festival whereupon to celebrate the triumph of its head over the powers of sin and death, it set apart for that purpose each seventh day, thereby at once to bring to mind the labour of God's love in the creation and in the redemption of the world. The lawyer receiving thus this holy day, rejoices in the opportunity it gives him of turning his thoughts from the fleeting things of this world, to the eternal joys of that heaven of which it is a type. To this end he is a constant attendant at public worship; and that he may be found an attentive observer, as of all other laws, so of the laws of his church, if some weighty hindrance prevent not, he prefers before all other places his parish church; and to whatever place he goes to that he is constant, and this for these reasons. First—he considers that it serves to the maintenance of order, and has in it as it were the sentiment and notion of law. Next—he reflects, that of hearing

many preachers there is no end; and that variety in this matter rather engenders a judgment of the preacher, than an humble seeking of truth from his lips. Moreover he frequents the temple of God mainly to pray to him, and to praise him for all his manifold mercies. If, as must at times happen, the preacher be careless or indifferent, he thinks not of public worship as thereby rendered naught, but humbly repairs his loss by more deep thought of his own infirmities, or by studying a sermon of some holy father of the church. When public worship is ended, he goes forth to meditate like Isaac of old upon divine things, or communes with a friend as he walks after the manner of the disciples journeying to Emmaus: or he seeks out the poor, or visits the sick, or assists the minister in catechising the poor children of his parish, or pursues such other work of mercy as God puts into his heart. At night he either entertains such of his relatives or immediate friends as have not a home around whose festive board to gather, or is entertained by them. There he enjoys cheerful converse seasoned with the salt of godliness: and having joined in worship round the altar of the family with whom he has kept this festival of the church, he retires to rest with an unburthened mind, refreshed for the duties of the following week; his whole soul exulting in the foretaste thus given of the joys of that kingdom for whose coming he daily prays.

CHAPTER XXXVI.

THE LAWYER BECOME JUDGE.

THE lawyer, whose probity and ability have commended him to his prince's favour, refuses not at his hands the sacred office of judge, but with holy fear and many prayers enters thereon. And now he, who before was but the servant of men, according to the will of God, becomes, by the appointment of his prince, the minister of God, to dispense those laws which by God's authority committed to him for that purpose the prince with his parliament has ordained. Hence he ever keeps in remembrance the height and holiness of his office, for the due administration of which he must one day give an account before the Judge of judges; and labours earnestly to discharge its duties in all things according to the holy will of God.

His first care is, that the robe of justice which he wears be spotless. Gifts blind the eyes of the wise, and pervert the words even of the righteous. Therefore he refuses all manner of gifts, not caring to trust his own integrity. With God there is no respect of persons. Why then should there be with him his minister? Before his judgment seat the ties of blood and the bonds of friendship call in vain for favour or affection; they are as though they were not. In this matter he commends the practice of Sir Thomas More, who to his relations who prayed his favour was wont to reply, "I assure thee on my fayth, that if the parties will at my hands call for justice and equitie, then although it were my father whom I reverence dearly, that stood on one side, and the devil whom I hate extremely were on the other side, his cause being just, the devil of me should have his right."

The next care of the judge is that he may discharge his office with wisdom: to which end it behoves that he have, *First*—A knowledge of the law he is to administer; this he is studious to attain by unwearied study, as knowing the scandal which an ignorant judge brings upon the administration of law: and secondly, sound sense in the application of them to the circumstances of affairs which come before him in judgment. And here, two principal difficulties present themselves—one, when the law, which he is to dispense, is in itself unjust; the other, when the law, though good in its intent, is by the craft of wicked men perverted to work evil. Now the judge, though it grieve him to be made the means by which to work injustice, yet dares not refuse to declare what the law is. For he is sworn to administer the laws as made, not to make new laws. His duty is *ius dicere*, not *ius dare*; and so that no ill intent of his cause the law to work injustice, he considers not himself therefore culpable because the sentence he pronounces fails to dispense what is altogether just. Yet he labours that the law may be as little injurious as

possible: for first if the law itself be bad, he earnestly seeks from those to whom the power belongs, that it be repealed or altered; and again, if the law be good in its intent, but by wicked men is drawn to work injustice, "unless plainly obliged he suffers not the law to be so perverted, but where without sophistry he may, gives effect to the spirit rather than to the letter: and where he is so constrained that he may not decide otherwise than according to the letter, he metes out only what he must, and sharply reproveth him and his counsellors who have turned the law to such ill purposes.

Next to wisdom the judge brings courage to his work. The cause of the widow, the fatherless, and the oppressed, though all forsake it, he dares to uphold against the mightiest, yea, even against the very prince at whose hands he has received his office. The fear of God being ever before his eyes leaves no place for the fear of man. But chiefly in times of political trouble the courage of the judge is seen. The sullen frown of the enraged prince, and the tumultuous murmur of an angry populace, are alike unnoticed by him: and when all the pillars of the state are shaken, and the minds of men quail amid the confusion that prevails, his unshaken courage in judgment, like oil poured upon troubled waters, is able to produce a calm. Next to courage the judge brings patience. He does not hastily suffer himself to be prepossessed with either side of the case until the whole be heard; nor does he consider any case heard till he has patiently exhausted all that either party have to allege, whether of fact or of argument, as knowing how often matters of moment in the heat of debate are overlooked even by the most experienced.

And now having added to probity wisdom, and to wisdom courage, and to courage patience, he sums up all with a holy zeal and love for truth and justice, which quicken and enliven him in the work in which he is engaged, and cause that forgetful of himself he yields up his whole powers to his service who has called him to so exalted a station.

CHAPTER XXXVII.

THE LAWYER'S DEATH.

"It was a bright evening in summer—the rays of the declining sun fell full upon the couch where the old man lay—round him were gathered his wife and children awaiting in sorrow, rendered peaceful by the sweet smile which played upon his lips, the moment that should summon to a better world the departing spirit of a kind and affectionate father, husband, and friend. His domestics stood in the farther part of the room scarce able to suppress their sobs.

He raised himself with an effort and spoke. "Beloved wife and children, God, who has comforted and succoured me all my days, bless, preserve, and keep you. To his heavenly guidance I commit you: despise it not: his law written on your hearts, set before you in the ensample of his dear Son, and taught you by his Holy Spirit, regard with holy fear and follow with fervent love. Let no power force you, no wealth tempt you, no earthly splendour allure you to swerve from allegiance to this holy law. I have lived long, and in a long life been often called upon to encounter the enemies of this holy law, and often alas! have I seen it trodden down and trampled under their feet: but sure I am that no peace fills their dwellings, no joy swells their breasts; but the worm that dies not gnaws their hearts, and a fearful looking for of fiery indignation haunts and disturbs them in the midst of their loftiest triumphs. Envy not then the oppressor and choose none of his ways. Listen to the law of God—the voice of heavenly wisdom—it will be a light to your feet, and a lamp to your paths; a shield against every foe, and a shelter from every blast: its ways are ways of pleasantness, and all its paths are peace. Such has it ever been to me amid all the strifes and struggles of this transitory life—and now I go, where wars and tumults shall be no more heard, where strife and struggle shall have no place, but justice, peace, and righteousness shall reign eternal. Father of heaven, grant that in that kingdom of bliss we may all meet and

join in the song of praise 'unto Him that has loved us and washed us from our sins in his own blood, and hath made us kings and priests unto God and his Father: to him be glory and dominion for ever and ever.—Amen.' ”

CHAPTER XXXVIII.

THE LAWYER'S PRAYER.

O LORD, our heavenly Father, who in thy providence hast appointed governors, thy ministers, to dispense thy laws among all nations: grant that we and all thy servants ministering in things pertaining to justice, may faithfully fulfil the duties of our calling, with a single eye to thy glory, and a humble dependence upon thy heavenly blessing. Mercifully, we beseech thee, turn us away from all undue love of wealth and earthly power; keep us from all pride, malice, and evil speaking; preserve us from the fear of evil men and the contagion of ill-example; strengthen in us the love of truth, justice, and mercy; and so quicken our hearts with love towards thee that we loving thee above all things may so love our fellow creatures even as thou hast loved us. Grant this, O Lord, for Jesus Christ's sake, our only Saviour and Redeemer.—Amen.

APPENDIX.

APPENDIX TO THE APOLOGY FOR THE WORK.

¹ *In the earlier times.* Except in the short notices of the subject which occur in the writings of the casuists, I have not found any treatise upon the duties of advocates considered peculiarly in reference to morality. The subject is incidentally mentioned by several writers, especially divines; and the views almost uniformly put forward by them justify me in supposing the principles of the legal profession in the elder ages of our nation to have been in accordance with the views here maintained, however in many cases the practices of its members may have deviated from those principles.

The titles of some of the tracts touching upon the subject of the duties of lawyers, and their deviations from them, as mentioned in Watt's *Bibliotheca Britannica*, are amusing. Among them are the following:—

“The voyce of the laste trumpet blowen bi the seventh angel, as is mentioned in the Eleventh of the Apocalyps, callynge al the estates of menne to the right path of their vocation; wherein are contained xii lessons to twelve severall estates of menne, whych if they learne and follow al shall be well, and nothing amise. The contentes of thys booke: the Beggar's Lesson, the Servante's, the Yeoman's, the Lewde Prieste's, the Scoler's, the Learned Man's, the Phisician's, the Lawier's, the Merchante's, the Gentilman's, the Magistrate's, the Woman's. In metre. Lond. 1549, 1550. Octavo.” *By Robert Crowley, Crole, or Croleus, an English Printer, Divine, and Poet, born either in Gloucestershire or, according to Bayle, in Northamptonshire, and died 18th June, 1588.*

The Familiar Epistles of *Sir Anthony of Guerara*, Preacher, Chronieler, and Counsellour to the Emperour Charles the Fifth. Translated out of the Spanish tongue by Edward Hellows, Groome of the Leash. Wherein are contained very notable letters, excellent discourses, curious sayings, and most natural reasons. Wherein are contained Expositions of certain figures, authorities of Holy Scripture, very good to be preached and better to be followed; Declarations of Ancient Stamps of writing upon Stones, Epitaphs of Sepulchres, Lawes and Customes of Gentiles, doctrines, examples, and counsels for Princes, for Noblemen, for Lawyers, and

Churchmen, very profitable to be followed and pleasant to be read. Lond. 1574, 4to.

Downfall of the Unjust Lawyers, and Rising of the Just. By Edmund Leach. 1652, 4to.

Sagrir, or Doomsday drawing near, with Thunder and Lightning to Lawyers. Lond. 1654, 4to. By John Rogers.

A Rod for the Lawyers. By Wm. Cole. 4to. Lond. 1659.

Essay for the Restoring of our decayed Trade, wherein is described the Smugglers', Lawyers', and Officers' Frauds. By J. Treveris. 4to. 1675.

² *The chivalric spirit of the profession, &c.* This was the doctrine of the civil law, and is of ours; as may be seen by consulting Sir John Davis's Preface to his Reports, and Blackstone's Commentaries, vol. iii. p. 28; though, in the present day, it is to be feared it is too much lost sight of.

³ *Now, however, that principles, &c.* The theories of professional duty which are entertained in the present day are the natural offshoots of those low and inadequate theories of morals which make utility, expediency, self-love, the general good of mankind, and other external and experimental standards the complete measures of right and wrong; nor is it to be wondered at that the young man who at the university has imbibed the principles of Paley's Moral Philosophy, should, when he comes to the practical business of life, carry out those principles in the adoption of some one or other of those erroneous views which I have noted.

⁴ *Under no obligation to speak the truth.* This is Dr. Paley's estimate of the lawyer's duty. In the chapter on "Lies," in his Moral Philosophy, he writes thus:—

"There are falsehoods which are not lies, that is, which are not criminal; as, 1. where no one is deceived, which is the case in parables, fables, novels, jests, tales to create mirth, ludicrous embellishments of a story, where the declared design of a speaker is not to inform but to divert; compliments in the subscription of a letter, a servant's denying his master, a prisoner pleading not guilty, and an advocate asserting the justice or his belief of the justice of his client's cause. In such instances no confidence is destroyed, because none was reposed; no promise to speak the truth is violated, because none was given or understood to be given."

⁵ *As paid for affecting warmth, &c.* The shrewd biographer of Dr. Johnson has preserved to us the sentiments of that author on the morality of modern legal practice in the following colloquy. "BOSWELL: I asked him whether, as a moralist, he did not think that the practice of the law in some degree hurt the nice feeling of honesty. JOHNSON: Why no, sir, if you act properly. You are not to deceive your client with false representations of your opinion: you are not to tell lies to a judge. BOSWELL: What do you think of supporting a cause which you know to be bad? JOHNSON: Sir, you do not know it to be bad till the judge determines it. I have said that you are to state facts fairly, so that your thinking or what you call knowing a cause to be bad must be from reasoning, must be from your supposing your arguments to be weak and inconclusive. But, sir, that is not enough. An argument which does not convince yourself may convince the judge to whom you urge it; and if it does convince him, why then, sir, you are wrong and he is right. It is his business to judge, and you are not to be confident in your own opinion that a cause is bad, but to say all you can for your client and then hear the judge's opinion. BOSWELL: But, sir, does not affecting warmth when you have no warmth, and appearing to be clearly of one opinion when you are in reality of another opinion, does not such dissimulation impair one's honesty? Is there not some danger that a lawyer may put on the same mask in common life in the intercourse with his friends? JOHNSON: Why no, sir, everybody knows you are paid for affecting warmth for your client, and it is therefore properly no dissimulation; the moment you come from the bar you resume your usual behaviour. Sir, a man will no more carry the artifice of the bar into the common intercourse of society, than a man who is paid for tumbling upon his hands when he should walk on his feet."—*Boswell's Life of Johnson*, Croker's edit. vol. ii. p. 48.

⁶ *As men who with wigs on their heads, &c.* For this eloquent description of one of the modes of thought upon the subject of legal practice we have to thank the

writer of an article in the 65th vol. of the Edinburgh Review (generally supposed to be the late Chief Indian Law Commissioner.) In examining Mr. Montagu's defence of Lord Bacon's conduct in the prosecution of the Earl of Essex, the reviewer expresses himself thus:—"Mr. Montagu conceives that none but the ignorant and unreflecting can think Bacon censurable for anything that he did as counsel for the crown, and maintains that no advocate can justifiably use any discretion as to the party for whom he appears. We will not at present inquire whether the doctrine which is held on this subject by English lawyers be or be not agreeable to reason or morality;—whether it be right that a man should, with a wig on his head, and a band round his neck, do for a guinea what without these appendages he would think it wicked and infamous to do for an empire;—whether it be right, that not merely believing, but knowing a statement to be true, he should do all that can be done by sophistry, by rhetoric, by solemn asseveration, by indignant exclamation, by gesture, by play of features, by terrifying one honest witness, by perplexing another, to cause a jury to think that statement false. It is not necessary on the present occasion to decide these questions. The professional rules, be they good or bad, are rules to which many wise and virtuous men have conformed, and are daily conforming. *If, therefore, Bacon did no more than these rules required of him, we shall readily admit that he was blameless.*"

⁷ *As the agents of God in the work of justice, &c.* I quote here the words of the learned Hooker in a passage from the fifth book of his Ecclesiastical Polity, worthy to be written in letters of gold, and which I have placed as a frontispiece to this little volume.

⁸ *As the counsellors, secretaries, &c.* These are the words of Sir John Davies, attorney-general for Ireland in the reign of Charles II. They are taken from the eloquent preface to his Reports, a copious extract from which will be found in a subsequent part of this volume.

⁹ *Orators bound to use, &c.* These eloquent words are from an Assize Sermon of Bishop Sanderson, preached at Lincoln, 4th August, 1625.

¹⁰ *Every member of society, &c.* This statement is from Bishop Warburton's Divine Legation, vol. i. p. 397, 3d edition, where, speaking of the character of Cicero, he says, "As an orator he was an advocate for his client, or more properly personated him. Here then without question he was to feign and dissemble his own opinions and to speak those of his client. And though some of those who call themselves casuists have held it unlawful for an advocate to defend what he thinks an ill cause, yet I apprehend it to be the natural right of every member of society, whether accusing or accused, to speak freely and fully for himself. And if, either by a legal or natural incapacity, this cannot be done in person, to have a proxy provided or allowed by the state to do for him what he cannot or may not do for himself. I apprehend that all states have done it, and that every advocate is such a proxy. Tully, therefore, feigning and dissembling his own opinions under this character, acted, I say, neither a weak nor an unfair part."

¹¹ *The advocate is part of the machine of justice, &c.* This is the theory in substance proposed by Mr. Basil Montague. In his little tract describing what the character of "*The Barrister*" should be, we meet the following:—"He (the barrister) exerts his power to strengthen his own case and weaken his opponent's, because he knows that taking all things into consideration, justice is best promoted by collision of intellect, and that the whole truth will be eviscerated by the opposite counsel, or that the intelligence which presides will not permit truth to be misrepresented by any partial examination." And again—"The statements by opposite advocates may not be most beneficial to the practitioner; and as the advocate may profess feelings which he does not feel, and may support a cause which he knows to be wrong; as it is a species of acting without an avowal that it is acting; it may appear at variance with some of our best feelings. It is, however, nothing but appearance. The advocate is in reality an officer assisting in the administration of justice, and acting under the impression that truth is elicited and difficulties disentangled by the opposite statements of able men. He is only troubling the waters that they may exert their virtues.

¹² *This has been done too often of late years, &c.* The first writer who appears

to have raised his voice against the specious and captivating exposition of this theory contained in "The Principles of Moral and Political Philosophy," by William Paley, D.D., was the Rev. Thomas Gisborne, the amiable author of the "Duties of Man," and of other useful works on morals. In a work entitled "The Principles of Moral Philosophy investigated and applied to the Constitution of Civil Society," that writer protests strongly against the introduction of Dr. Paley's work among the class-books of the University of Cambridge. That protest was unheeded; and the consequence may be stated in the words of Professor Whewell, "Preface to Four Sermons on the Foundations of Morals." "The general currency which Paley's Moral Philosophy has acquired (a currency due in no small degree to the adoption of the work by the University of Cambridge) has had a very large share in producing the confusion and vacillation of thought respecting the grounds of morals which is at present so generally prevalent in England even among persons of cultivated minds." Since the appearance of Mr. Gisborne's work, the errors of Dr. Paley's system have been well exposed by many writers.

²³ *Not the obligation of the law of the land, &c.* On the contrary. The following case, in which, an action having been brought by a client against his attorney for refusing to urge a plea furnished him by the client, on the ground that the plea was false, the judges held that the attorney in so acting had done his duty, affords strong ground for contending that the law of the land does not require from those who represent others in the courts that they should be made the conscious instruments of wrong. "*Attourné qui est informé de pléder matter que il ne peut pléder par conscience, il peut pléder—quod non est veraciter informatus, &c. et hoc sufficit in breve de disceit versus son client.*" Note, this case is wrongly quoted both in Brooke's Abridgment, title "Attorney," plac. 76, and in Jenkin's Reports, p. 52, from the year book 20 *Edw. 4, fo. 9*. I have not been able to discover the correct reference.

Quite consistent with the above judgment is the oath which is taken by attorneys of the Court of Common Pleas in Ireland, of which the following is a copy:—

Oath taken by every Attorney of the Court of Common Pleas.

"You shall do no falsehood or deceit, nor consent to any to be done within this court; and if you know of any to be done you shall give notice thereof to the Lord Chief Justice, or other his brethren justices of this court, that it may be reformed. You shall delay no man for lucre or malice. You shall increase no fees, but you shall be contented with the accustomed fees. You shall plead no foreign plea, nor sue any foreign suits unlawfully to the hurt of any man, but such as shall stand with the order of the law and your own conscience. You shall seal all process that you shall sue out of this court with the seal thereof, and see the Queen's majesty and Chief Justice discharged for the same. You shall not wittingly or willingly sue, or procure to be sued any false suit, or give aid or consent to the same, on pain of being expelled the court for ever; and further you shall truly use and demean yourself in the office of an attorney within this court according to your learning and discretion. So help me God."

²⁴ *Is then (it is asked) is no concealment, &c.* Jer. Taylor, in the second part of his sermon on the text, "And harmless as doves," Matt. x. 16, where discussing the question whether it be lawful to tell a lie to save a good man's life or to do him a great benefit? notes, "that it was a question which St. Austin was much troubled withal, affirming it to be of the greatest difficulty, for he saw generally all the doctors before his time allowed it, and of all the fathers no man is noted to have reprov'd it but St. Austin alone, and he also, as his manner is, with some variety. Those which followed him are to be accounted upon his score. And it relies upon such precedents which are not lightly to be disallowed. For so Abraham and Isaac told a lie in the case of their own danger to Abimelech; so did the Israelitish midwives to Pharaoh, and Rahab concerning the spies, and David to the King of Gath, and the prophet that anointed Saul, and Elisha to Hazeel, and Solomon in the sentence of the stolen child; concerning which Tremæus hath given us a *rule*. That

those whose actions the Scripture hath remarked and yet not chastised or censured, we are not without great reason and certain rule to condemn.”

Though much that Jer. Taylor says in the above sermon, and also in the Ductor Dubit. book iii. ch. 2, rule 5, where he again discusses the matter, is good, yet he seems to me not to have perceived the right clue to the labyrinth, which I apprehend is that I have noted in the text.

¹⁵ *The escape from the dilemma lies here, &c.* This appears the judgment of St. Austin. I quote from Jeremy Taylor, Ductor Dubit. book iv. ch. 2, rule 398: “Ut noverimus omnia opera nostra tunc esse munda et placere in conspectu Dei si fiant simplici corde id est intentione superna fine illo caritatis, quia et plenitudo legis caritas est. Oculum ergo hic accipere debemus ipsam intentionem quâ facimus quicquid facimus: quæ si munda fuerit et recta et illud aspiciens quod aspiciendum est omnia opera nostra quæ secundum eam operamur necesse est bona sint.” By which he cannot be supposed to mean that every act which seems right in a man’s own eyes is therefore good, but those acts only which are consecrated by the love of God constraining thereto.

It is remarkable that while those commandments in the two tables which forbid murder and theft do so generally—malice and ill intent being necessarily implied in the words there used; the commandment which forbids lying couples with it the notion of injury to our neighbour. Whence probably it is that Melancthon defines a lie to be, “to deceive our neighbour to his hurt.” “Mendacium est petulanter aut cupiditate nocendi aliud loqui seu gestu significare et aliud sentire.”

¹⁶ *God in the beginning formed man after his own image, &c.* The following beautiful description of man’s moral character in his state of innocency is from South’s sermon on the text.

“The image of God was (in the state of man’s innocency) no less resplendent in that which we call man’s practical understanding; namely, that storehouse of the soul in which are treasured up the rules of action and the seeds of morality. Now of this sort are these maxims, ‘That God is to be worshipped,’ ‘That parents are to be honoured,’ ‘That a man’s word is to be kept.’ It was the privilege of Adam innocent to have these notions also firm and untainted, to carry his monitor in his own bosom, his law in his heart. His own mind taught him a due dependence upon God, and chalked out to him the just proportions and measures of behaviour to his fellow creatures. Reason was his tutor, and first principles his *magna moralia*. The decalogue of Moses was but a transcript, not an original. All the laws of nations and wise decrees of state, the statutes of Solon and the twelve tables, were but a paraphrase upon this standing rectitude of nature, this fruitful principle of justice, that was ready to run out and enlarge itself into suitable determinations upon all emergent objects and occasions. Justice was then neither blind to discern nor lame to execute. It was not subject to be imposed upon by a deluded fancy, nor yet to be bribed by a glozing appetite, for an *utile* or *jucundum* to turn the balance to a false or dishonest sentence. In all its directions of the inferior faculties it conveyed its suggestions with clearness and enjoined them with power; it had the passions in perfect subjection; and though its command over them was but *suasive* and *political*, yet it had the force of *co-action* and *despotal*. It was not then as it is now, where the conscience has only power to disapprove and to protest against the exorbitancies of the passions, and rather to wish than make them otherwise. The voice of conscience now is low and weak, chastising the passions as old Eli did his lustful domineering sons: ‘Not so, my sons, not so;’ but the voice of conscience then was not, ‘This should or this ought not to be done,’ but ‘This must, this shall be done.’ It spoke like a legislator; the thing spoke was a law, and the manner of speaking it a new obligation.”

¹⁷ *Yet even here God did not so leave himself without witnesses, &c.* The following remarkable passage from Cicero is a striking instance of that moral enlightenment vouchsafed to pagans to which I have here alluded. “Est quidem vera lex, recta ratio, naturæ congruens diffusa in omnes, constans, sempiterna; quæ vocet ad officium jubendo, vetando a fraude deterreat; qua tamen neque probos frustra jubet aut vetat, nec improbos jubendo aut vetando movet. Huic legi, nec abrogari fas est, neque derogari ex hac aliquid licet, neque tota abrogari potest. Nec vero per sena-

tum aut per populum solvi hæc lege possumus, neque est quærendus explanator aut interpres ejus alius. Nec erit alia lex Romæ, alia Athenis—alia nunc, alia posthac; sed et omnes gentes et omni tempore una lex et sempiterna et immortalis continebit; unaque erit communis quasi magister et Imperator omnium Deus. Ille legis hujus inventor, disceptator, lator: cui qui non parebit ipse se fugiet, ac naturam hominis aspernabitur; atque hoc ipso, luet maximas pœnas, etiam si cætera supplicia quæ effugerit.”

²⁸ *The other of the law itself, &c.* This truth is well expressed by Barrow in his sermon upon Ecclesiastes iii. 17. “As for human laws, made to encourage and requite virtue, or to check and chastise vice, it is manifest that they do extend to cases in comparison very few; and that even as to particulars which they touch, they are so easily eluded or evaded, that without entrenching upon them, at least without incurring their edge or coming within the verge of their correction, men may be very bad in themselves, extremely injurious to their neighbours, and hugely troublesome to the world; so that such laws hardly can make tolerable citizens, much less thoroughly good men, even in exterior demeanour and dealing. However, no laws of men can touch internal acts of virtue or vice. They may sometimes bind our hands, or bridle our mouths, or shackle our feet; but they cannot stop our thoughts, they cannot still our passions, they cannot bend or break our inclinations: these things are beyond the reach of their cognizance, of their command, of their compulsion, or their correction; they cannot, therefore, render men truly good or hinder them from being bad.

²⁹ *And therefore it cannot be otherwise than immoral, &c.* Jer. Taylor, Ductor Dubit. book iv. ch. 1, thus asserts this truth and the authority by which it is supported:—

“He that gives counsel or aid to an action, good or evil, consents to it, and it is imputed to him as a product of his will and choice.

“This is expressly affirmed by all laws civil and canon, and the municipal laws of all those nations of which I have seen any records concerning this matter; and the interpreters universally consent, with this proviso—that the counsel be so much cause of the action, that without it it would not have been done.”

³⁰ *Notwithstanding all the objections, &c.* Several of these difficulties are strongly stated in the following passages, the one from the little work of Mr. Basil Montague, called *The Barrister*, which I have before mentioned, p. 154, the other from an article in the 129th number of the *Edinburgh Review*, p. 16.

Mr. Basil Montague, in describing the ideal of a Barrister such as he would have him, has the following as a part of his character:—

“*In general he (the barrister) does not exercise any discretion as to the suitor for whom he is to plead.* If a barrister were permitted to exercise any discretion as to the client for whom he will plead, the course of justice would be interrupted by prejudice to the suitor, and the exclusion of integrity from the profession. The suitor would be prejudiced in proportion to the respectability of the advocate who had shrunk from his defence, and the weight of character of the counsel would be evidence in the cause. Integrity would be excluded from the profession, as the counsel would necessarily be associated with the cause of his client.

“‘From the moment (says Erskine, in his defence of Thomas Paine) that any advocate can be permitted to say that he will or will not stand between the crown and the subject arraigned in the court where he daily sits to practise, from that moment the liberties of England are at an end. If the advocate refuses to defend, from what he may think of the charge or of the defence, he assumes the character of the judge; nay, he assumes it before the hour of judgment; and, in proportion to his rank and reputation, puts the heavy influence of perhaps a mistaken opinion into the scale against the accused, in whose favour the benevolent principle of English law makes all presumptions, and which commands the very judge to be his counsel.’

“Our advocate, therefore, does not exercise any discretion; to him it is a matter of indifference whether he appears for the most unfortunate or the most prosperous member of the community; for the poorest bankrupt or the noblest peer of the realm; for a traitor or for the king.”

The author of the article in the *Edinburgh Review* thus writes: “If it depends on the opinion of an advocate whether he shall make any statement or not (that is,

any statement given by his client, and the bringing which forward is admitted to be for his benefit), how long will it be before it depends upon his opinion of the whole case, whether he shall undertake the cause or not? If the lending of his assistance to the client is to depend upon the opinion he forms of the case, how long will it be before it depends upon his inclination? Can there be the least doubt that this preliminary inquiry must open the door to the grossest of all abuses, and the one most fatal both to the character of the profession and the administration of justice—the choice of clients and causes by whatever advocates are most in request? How easy will it be in each case to say, ‘I don’t believe your story,’ or ‘I don’t agree with your law,’ and thus to refuse being the defender of the poor and the oppressed on pretence of refusing to assist an unjust cause! In truth, the silly charge against the profession that its aid is lent to all causes indiscriminately, and that it may furnish instruments to oppression, and may help injustice to its objects, leads at once, by a very direct and short route, to a course of proceeding which makes it truly and almost in every case the means of overwhelming innocence and working injustice. For this whole charge resolves itself, whenever it is examined, into a complaint that advocates undertake either side; and as one must be wrong, it is contended that there is in each case an advocate defending injustice. True, but till the event of the trial you have no right to say which side is wrong. Therefore the charge is, that the advocate has undertaken the cause without previous examination. Consequently the remedy proposed is making this previous examination, which of course implies the right to refuse the cause; and this at once gives the rich, and the powerful, and the popular, a monopoly of legal resources, and (if it shuts not the courts to all who are desolate and oppressed) at least precludes them from the assistance of those whose ability and experience qualifies them for the safe conduct of suits. Indeed, were this preposterous but very prevalent notion once established, once firmly rooted so as to produce its legitimate fruit—the obligation in each case to institute a preliminary inquiry before undertaking it—there are times in every country when the result would be, the utter exclusion of certain parties from all professional assistance whatever. Suppose a season of great political violence, and an arbitrary power established, in the hands either of a tyrannical court, as in this country a century and a half ago, or of a ferocious multitude, as in France during the first revolution; what chance could the victim either of the despot or of the mob have of obtaining any defender at all, even among the humbler members of the profession, if the undertaking his cause was optional and not imperative? If the advocate, when applied to, was bound by such an absurd rule to institute an examination and satisfy himself, would he not be sure to employ the rule for his own protection, and refuse the defence of all whom the tyrant, be he of one head or of many, had marked out for destruction? Nay, would not this very rule be the source, and the only source, of the advocate’s danger? For as long as he has no choice, but is bound by strict rule to defend every client and undertake every cause, he is necessarily free from all responsibility. Tyranny itself cannot frame a charge against him while the performance of the duty is compulsory; but make it optional, and there is some ground for questioning, and there will soon enough be found reasons for punishing, the exercise of the discretion. Under our Charleses and Jameses there was no material risk encountered by those who defended causes against which the tyrannical court was most strongly biased. Honesty was punished in the judges when it now and then broke out; the advocates never suffered. Even during the Reign of Terror at Paris, when the execrable revolutionary tribunal had wholly yielded to the menaces of the blood-thirsty rabble, there never wanted advocates to maintain a defence, rendered unavailing by the ferocity or by the pusillanimity yet more despicable of the judges. Had advocates been clothed with the attributes of justice which those who inveigh against them are ever requiring them to display, had they been in the practice of what is daintily termed ‘refusing to undertake an unjust cause,’—that is, of previously examining each case, and refusing it if they chose,—we may be well assured that instead of few decisions being pronounced against the English court, there would have been none at all, and, what is of far more importance, all the noble displays of learning and reasoning would have been lost which served to promote the flame of liberty in those dismal times, and the destruction of

the tyrants which it ultimately accomplished might have been indefinitely delayed. Even in France, where much less was effected by the exertion of the bar, there can be no doubt that whatever it contributed towards the restoration of liberty, first by preparing the revolution of 1784, and then by the overthrow of the mob-tyranny of 1793-4, would have been wholly lost had the lawyers exercised any discretion in undertaking the defence of the accused; and in later times the lawyers of both countries have beyond all dispute been enabled, with comparatively little risk to themselves, to resist the oppressions of the government, chiefly by the maintenance of the rule which, depriving them of all power to refuse their assistance, secures the administration of justice in evil times, and is by *ignorant declaimers* complained of as the fountain of injustice."

I hope to show, in the appendix to this work, that in the number of these *ignorant declaimers* are to be found many of the most able lawyers of our own and other countries, and by far the larger proportion of those casuists, moralists and divines, who have handled the subject of the duties of lawyers.

"*I appeal from the assertion to the experience of those nations in which the civil law, &c.* By the Roman law the advocates in each case were obliged, at the commencement of it, to swear upon the Holy Evangelists that they would defend with all their force what they should judge to be true and just; and that they would abandon the defence of any cause which they should find in the beginning to be unjust, or which in the progress they should discover to be unjust. "Patroni autem causarum, qui utrique parti suum præstantes auxilium ingrediuntur, cum lis fuerit contestata, post narrationem propositam, et contradictionem objectam, in qualicunque judicio majore vel minore, vel apud arbitros sive ex compromisso sive aliter datos vel electos, sacrosanctis Evangeliiis tactis, juramentum præsent quod omni quidem virtute sua, omnique ope, quod verum et justum existimaverint clientibus suis inferre procurabunt, nihil studii relinquentes quod sibi possibile est; non autem creditâ sibi causâ cognitâ quod improba sit vel penitus desperata, et ex mendacibus allegationibus composita ipsi scientes prudentesque malâ conscientiâ liti patrocinaabuntur, sed et si certamine procedente aliquid tale sibi cognitum fuerit à causa recedent ab hujusmodi communione sese penitus separantes.—*Cod. l. 14. § 1 de Judic.*

The ancient law of Scotland required, that "Advocates in the time of their admission, and yearly, should be sworn to execute their office of advocacy diligently and truly; and that as soon as they understand their client's cause to be unjust or wrongful, that they should incontinent leave the same, and desist from all further pursuit or defence."—*Statute of the Lords*, 13th June, 1537.

The law of Spain requires an oath from advocates, "That they will conduct themselves faithfully, and will not defend unjust causes."—*Institutes of the civil law of Spain*, by D. Ignatius Jordan de Asso y del Reo, and D. Miguel de Manuel y Rodriguez (translated by Lewis T. C. Johnston), p. 303.

The following is the form of the advocate's oath prescribed by a law adopted by the representative council of Geneva, 20th June, 1834.

"I swear before God to be faithful to the republic and canton of Geneva; never to swerve from the respect due to the tribunals and to the authorities; not to advise or maintain any cause which does not appear to me just or equitable, unless in the defence of an accused; not to employ, knowingly, in order to maintain the causes which shall be confided to me, any means contrary to the truth; and not to attempt to deceive the judges by any artifice or by any false exposition of facts or of law; to abstain from all offensive personality, and not to advance any fact against the honour and the reputation of the parties, unless it be indispensable to the cause with which I shall be charged; not to encourage the commencement or the carrying on of any process from any motive of passion or of interest; and not to refuse, from any personal considerations, the cause of the feeble, the stranger, or the oppressed."

The only case I have been able to find which gives any intimation of what the law of England is upon this subject, is the one I have above alluded to.

APPENDIX TO PREFACE.

¹ *AND the obliquy and contempt, &c.* It would be easy to fill a volume with quotations from poets, historians, moralists, philosophers and divines, marking the scorn which the evil practices of the professors of law brought upon their calling; let the following suffice.

Swift describes lawyers as "A society of men bred up from their youth in the art of proving, by words multiplied for the purpose, that white is black, and black is white, according as they are paid."

"They were lawyers . . . men full of subtilty."—*Burke's French Revolution*.

"Lawyer! I believe there's many a cranny and leak unstopped in your conscience. If so be that one had a pump to your bosom, I believe we should discover a foul hold. They say a witch will sail in a sieve, but I believe the devil would not venture aboard your conscience."—*Congreve*.

An old proverb, to characterize that which is heartless, describes it "As cold as charity in the heart of a lawyer."

"If you go to law for a nut, the lawyers will crack it, give each of you half the shell, and chop the kernel themselves."—*Carey's Present State of England*, 4to. 1627.

"Whether it was the ever open hand of a practising lawyer always ready to grasp a fee, or the extravagant deference paid to that fee, as if a motive, sordid in its nature, could so hallow a cause of cursed iniquity as to render it fit for any man to prostitute his tongue in its behalf, and to employ what talents he has (either in argumentation, eloquence, skill in the quirks of the law, or in outfacing truth itself), to pervert justice, to impose on the minds of jurors, and influence them to an unjust verdict; or whether a strong bias, habitual disposition, and fruitful genius in too many, for turning every trust and situation in life to their own private advantage, were the reason why one of the wisest of our kings, with his council composed of great men, and parliaments themselves, thought it necessary to incapacitate practising lawyers from sitting in the House of Commons; it is certain they were the first set of men expressly excluded."—*Carte's Hist.* vol. iii. p. 480.

"I speak to the face of many here present, the lawyers, of all the people in the land, are the greatest grievance to my subjects; for when the case is good to neither party, yet it proves good and beneficial to them."—*King James I. last speech in Parliament*.

Milton, in his *Treatise upon Education*, speaks of men "allured to the trade of law, grounding their purposes not on the prudent and heavenly contemplation of justice and equity, which was never taught them; but on the promising and pleasing thoughts of litigious terms, fat contentions, and flowing fees."

"To deal freely with you counsellors, it is a matter that they who are strangers to your profession can scarce put any fair construction upon, that the worst cause, for a little money, should find an advocate among you! This driveth the standers by upon this harsh dilemma—to think that either your understandings or your consciences are very bad. If, indeed, you so little know a good cause from a bad, then it must needs tempt men to think you very unskilful in your profession. But when almost every cause, even the worst that comes to the bar, shall have some of you for it, and some against it; and in the palpeablest causes you are some on one side, and some on the other; the strange differences of your judgments doth seem to betray their weakness. But if you know the causes to be bad which you defend, and to be good which you oppose, it more evidently betrays a deplorable conscience. I speak not of your innocent or excusable mistakes in cases of great difficulty, nor yet of excusing a cause bad in the main from unjust aggravations: but when money will hire you to plead for injustice against your own knowledge, and to use your will to defraud the righteous, and spoil his cause, or vex him with delays for the advantage of your unrighteous client; I would not have your conscience for all your gains, nor your account to make for all the world."—*Baxter*.

"I oft have heard him say how he admired
 Men of your large profession, who could speak
 To every cause, and things indeed contraries
 Till they were hoarse again, yet all be law:
 That with most quick agility could turn
 And return, make knots and undo them,
 Give forked counsel, take provoking gold
 On either hand and put it up. These men
 He knew would thrive with their humility:
 And for his part he thought he should be blessed
 To have his son of such a suffering spirit;
 So wise, so grave, of so perplexed a tongue
 And loud withal, that could not wag, nor scarce
 Lie still without a fee."—*Ben Jonson*.

Even the meek Wordsworth cannot let the profession escape. His "Poet's Epitaph" contains the following lines—

"A lawyer art thou?—draw not nigh:
 Go, carry to some fitter place
 The keenness of that practised eye,
 The hardness of that sallow face!"

APPENDIX TO CHAPTER I.

¹ In *which definition, &c.* Having freely quoted from those who have looked on the dark side of the lawyer's character, I shall be excused for the length of the following extract in favour of lawyers, and of the law when rightly applied, from the Preface to the Reports of the eloquent Sir John Davies, before alluded to.

"These vulgar errors respecting the laws of England and its professions being thus reversed, so we may truly say that there is no such uncertainty in the rules of the law, no such delay in the proceedings, no such prevarication or corruption in the professors thereof, as is by some unjustly pretended; why may we not proceed further, and affirm confidently, that the profession of the law is to be preferred before all other humane professions and sciences, as being most noble for the matter and subject thereof, most necessary for the common and continual use thereof, and most meritorious for the good effects it doth produce in the commonwealth.

"For what is the matter and subject of our profession but justice, the lady and queen of all moral virtues? And what are the professors of the law but her counsellors, her secretaries, her interpreters, her servants? Again, what is the king himself but the clear fountain of justice? And what are the professors of law but conduit pipes, deriving and conveying the streams of his justice to all the subjects of his several kingdoms? So if justice be rightly resembled to the sun in the firmament, in that she spreadeth her light and virtue to all creatures, how can she but communicate part of her goodness and glory unto that science that is her handmaid, and waits upon her? And if kings be God's scholars (as Homer writeth) and that the rules of justice be their principal lesson; and if God do honour kings with his own name, *Dixi quod dii estis* (as a more divine poet than Homer singeth), especially for that they sit upon God's own seat, where they minister justice unto the people; do not kings again highly honour those persons whose subordinate ministry and service they use in performing the principal part of their kingly office? Undoubtedly: touching the advancement of such persons, Solomon the king speaketh, 'that they shall stand before kings,' and 'God will set them (saith David) with princes, even with the princes of his people.'

"Neither is this profession ennobled in regard of the dignity of her employment only, but she is to be honoured so much the more for the necessity and continual use of her service in the commonweal. For if we must honour the physician *propter necessitatem*, as the wise man prescribeth; much more must we honour (for the same cause) the professors and ministers of the law. For neither do *all men* at any time, nor any one man at *all times*, stand in need of the physician; for they that are in health (which are the greatest number of men) *non egent medico*, saith

the great Physician of our souls, and our only Advocate which is in heaven. But *all men at all times and in all places* do stand in need of justice, and of law, which is the rule of justice, and of the interpreters and ministers of the law, which give life and motion unto justice.

“For do not *all persons* stand in need of justice, when, without her rule, the prince himself knows not how to rule, nor his people how to obey? When without her support the nobleman cannot uphold his honour, nor the common subject hold his liberty? When without her safeguard, the rich man cannot be free from spoil, nor the poor man from oppression? Briefly, when without her no man living, be he virtuous or vicious, can enjoy his life, nor anything that makes his life delightful. For the covetous man cannot increase his profit, nor the sensual man enjoy his pleasure, but under the shadows of her wings.

“Again, is not justice needful at *all times*, when we can neither travel safely by day, nor sleep securely by night, without her protection? When if such a law were indeed made, as was propounded by a wicked emperor, *that all laws should cease for four-and-twenty hours*, that short cessation would be sufficient to give opportunity to wicked men to make a greater combustion in the whole world, than that which happened when the chariot of the sun did want a guide but half a day, as it is lively expressed in the fable of Phaëton?

“Lastly, is not justice necessary in *all places*, when we cannot without peril make a voyage by sea, unless she waft us; nor a journey by land, unless she convey us? When we should be oppressed by force in the country, if she did not defend us; and undone by fraud in the city, if she did not relieve us? When she encloseth every man’s garden and field, and makes every man’s cottage his castle of defence. So as we have not such a universal and continual use either of the light of the sun, or of fire or water, as we have of the light and heat and comfort of justice: for a man may remain alive for some hours without the use of those common benefits. But a commonwealth, wherein each private man’s weal consisteth, cannot stand and continue one minute of an hour, if justice, which is her soul, be departed from her.

“If, therefore, justice, and the law which is but a rule and lesson of justice, be so necessary for all persons, times, and places, as no family, no city, no commonwealth, no kingdom, can stand without the support thereof; how needful is the service of learned men in the law, without which justice itself cannot possibly stand! For *justitia periret* (saith the president Cassanæus) *si deesset qui justitiam allegaret*. For if no man did study the reason of the law, if no man kept in memory the rules of the law, if no man knew the form of pleading, or the course of proceeding in the law, what would become of public justice in a short time? Or how should the benefit of the law be derived and communicated unto the people? For as in a natural body, the reasonable soul cannot use or transmit any of her powers but by special organs of the same body, disposed of and fitted by nature for every function, as the eye to see, the ear to hear, the tongue to speak, and the like of the rest: so in the body politic of a commonwealth, the law, which is the soul thereof, produceth no effect on operation at all, but by such of her ministers, as by art and experience, are enabled and qualified for her service. For “*lex est justitia inanimata*,” saith the schoolman; “*lex est mutus magistratus*,” saith Cicero. The law of itself is dumb, and speaks not but by the tongue of a learned and eloquent lawyer: she is deaf, and heareth no complaints but by the ear of a grave and patient judge: she is blind, and seeth no enormities, but by the eye of a watchful and diligent officer.

“Again the law is nothing else but a rule which is made to measure the actions of men. But a rule is dead and measures nothing, unless the hand of the architect do apply it. It is indeed an excellent instrument to make harmony and concord in the commonwealth; but the best lute that ever was made could never make music of itself alone, without the learned hand of the lute-player.

“Therefore, though Jupiter (as Protagoras in Plato telleth us) did first invent and give the law, yet was Mercury sent with that heavenly gift to deliver it over unto mankind. So as it is manifest, that without the ministry of these Mercuries, of these interpreters of the law, namely, the learned professors thereof, there can be

no use or application of the law, and consequently the law or justice itself cannot consist without them.

“But as the estimation and price of this profession is exceedingly raised by the necessary and universal use thereof, so do her great *merits* to the commonwealth deserve a far greater exaltation of honour. For, first, the commonwealth is indebted to the law for all her temporal blessings and felicities whatsoever: for all our peace, plenty, civility, and moral honesty dependeth upon the law. That we enjoy our lives, our wives, our children, our goods, our lands, our good names, or whatsoever is sweet and dear unto us, we are beholden unto the law for it. *Quid sunt regna nisi latrocinia, sine justitia?* saith St. Augustine. Without justice the land would be full of thieves, the sea full of pirates, the commons would rise against the nobility, the nobility against the crown: we should not know what were our own, what another man's: what we should have from our ancestors, what we should leave to our children. *Major hæreditas venit unicuique nostrum à Jure et legibus quam à parentibus,* saith Cicero. In a word, there would be nothing certain, nothing sure, no contracts, no commerce, no conversation among men; but all kingdoms and states would be brought to confusion, and all human society would be dissolved.

“But, on the other side, the law is a fortress for the weak to retire into, a sanctuary for the oppressed to fly into; it restraineth the boldness of the insolent, it tieth with manacles the hand of the potent, and, like Orpheus's harp, or Noah's ark, it charmeth the fierceness of the lion and tiger, so as the poor lamb may lie in safety by them.

“If, then, the law itself doth merit so highly of all mankind in general, for that it is the fountain of all these benefits; what do the professors of the law deserve which draw these benefits out of that fountain, and derive the same unto every particular person? *Namsi non habes quo haurias, et puteus altus est,* as the woman of Samaria saith of Jacob's well in the gospel, ‘How canst thou refresh thyself with the water of that well?’ *Si veritas sit in profundo demersa,* as Democritus was wont to say,—If human actions be so carried in clouds, as it is hard to find what is true and what is false, and when the truth of the fact is found, it is as hard many times to distinguish what is just and what unjust; if in all causes that come in question, either *quæstio facti* or *quæstio juris* must first be decided before a man can receive the benefit of the law; (for, as the wise man saith, *Deus fecit hominem rectum, sed ipse miscuit se infinitis quæstionibus*;) what a meritorious work it is to resolve these troublesome questions which arise in the civil life of man, either by laying open the truth of fact, or by clearing the doubt of the point in law, that speedy and equal justice may be done unto all, and every one may have and enjoy his own in peace. How often would the truth be concealed and suppressed, how oft would fraud lie hid and undiscovered, how many times would wrong escape and pass unpunished, but for the wisdom and diligence of the professors of the law? Doth not this profession every day comfort such as are grieved, counsel such as are perplexed, relieve such as are circumvented, prevent the ruin of the improvident, save the innocent, support the impotent, take the prey out of the mouth of the oppressor, protect the orphan, the widow, and the stranger? Is she not *oculus cæco, et pes claudo,* as Job speaketh? Doth she not withal many times stretch forth *brachium seculare* in the defence of the church and true religion? All which are works of mercy and of singular merit. Again, doth she not register and keep in memory the best *antiquities* of our nation? Doth she not preserve our ancient *customs* and *forms of government*, wherein the wisdom of our ancestors doth shine far above the policy of other kingdoms? Are not the records of her acts and proceedings so precious, as they are kept in the king's treasury, like jewels of the crown, and reputed a principal part of the royal treasure? Lastly, is not a worthy professor of the law a star in the firmament of the commonwealth? Is he not *lux in tenebris* wheresoever he dwelleth? Is not his house as it were an oracle, not only to a town or city, but to a whole country round about him? So as he may truly say of the people that seek his counsel, as Apollo Pythius spoke in Ennius of such as resorted to his temple,—

‘*Suarum rerum incerti, quos ego ope meâ
Ex incertis certos, compotesque consilii,
Dimitto, ne reateme tracent turbidos.*’

Therefore one of the Roman emperors doth not without cause give this honourable testimony of the professors of the law—*Advocati, qui dirimunt ambigua facta causarum, suæque defensionis viribus tam publicis in rebus quam in privatis lapsa erigunt, fatigata reficiunt, non minus humano generi provident quam si præliis atque vulneribus patriam parentesque salvarent: neque enim solos nostro imperio militare credimus qui gladiis clypeis et thoracibus utuntur, sed etiam Advocatos. Militant namque casarum Patroni, qui laborantium spem vitam et posteros defendunt.* For if it be a worthy deed (as doubtless it is) for a man to defend his friends or country with his right hand and his sword only; what an excellent service is it to defend them with his speech, his reason, and wisdom, wherein the excellency of man doth principally consist.

“Therefore both the schoolman and the politick do prefer justice before fortitude; and the statute of 31 Hen. VIII. cap. 10, which ranketh the great officers of the kingdom in their due places, doth place the constable and marshal beneath the chancellor in all assemblies of counsel; for *ille semel* (saith *Cicero*, speaking of the martial man) *hic semper proderit reipublicæ*, meaning the learned man of the long robe.

“And in very truth, as the commonwealth is beholden to the profession of the law, so are the professors of the law not a little beholden to the commonwealth. For if they procure and preserve her peace and plenty, doth not she requite them again with riches and with honour? Doth she not advance them to her chief benches and offices, and trust them with the livelihood and lives of all her good people? Neither do our learned men of the law grow to good estates in the commonwealth by any illiberal means (as envy sometime suggesteth), but in a most ingenious and worthy manner. For the fees or rewards which they receive are not of the nature of wages or pay, or that which we call *salary* or *hire*, which are indeed duties certain, and grow due by contract for labour or service; but that which is given to a learned counsellor is called *honorarium*, and not *merces*, being, indeed, a gift which giveth honour as well to the taker as to the giver: neither is it certain or contracted for; no price or rate can be set upon counsel, which is invaluable and inestimable, so as it is more or less according to circumstances, namely, the ability of the client, the worthiness of the counsellor, the weightiness of the cause, and the custom of the country. Briefly, it is a gift of such a nature, and given and taken upon such terms, as albeit the able client may not neglect to give it without note of ingratitude (for it is but a gratuity or token of thankfulness); yet the worthy counsellor may not demand it without wrong to his reputation, according to that moral rule, *Multa honestè accipi possunt, quæ tamen honestè peti non possunt.*

“Lastly, it is an infallible argument, that the estates of such as rise by the law are builded upon the foundation of virtue, in that God’s blessing is so manifestly upon them, not only in raising but preserving their houses and posterities: whereof there are examples not a few, and those not obscure, in every *shire* of *England*, and of the *English pale* in this kingdom of *Ireland*.”

The following eloquent description of justice is from the “*Holy Court*” of Father *Caussin*, translated by Sir F. Hawkins.

“If the world be a harp (as saith the eloquent *Synesius*), justice windeth up the strings, stirreth the fingers, toucheth the instrument, giveth life to the airs, and maketh all the excellent harmonies. If the world be a music-book, framed of days and nights as of white and black notes, justice directeth and composeth: if it be a ring, justice is the diamond: if it be an eye, justice is the soul: if it be a temple, justice is the altar. All yieldeth to this virtue, and as it is enchased in all laudable actions, so all laudable actions are incorporated in justice. It is an engine much more powerful in effect than was that of *Archimedes* in idea; for it doth that in kingdoms which this man could never so much as imagine in his mind, though ambitious enough in inventions. It maketh, I say, heaven to descend upon earth, and earth to mount up to heaven: heaven to descend, in introducing a life wholly celestial in the uncivil conversation of men: earth to mount up, in drawing it from the dregs and corruption of a covetous and bloody life, to enlighten it with rays of a prudent knowledge, to embellish it with virtues, diversify it with beauties, and settle it in the centre of repose.”

APPENDIX TO CHAPTER II.

(THEIR DIVERSITIES.)

¹ *Of those called Lawyers, &c.* Those who wish to inquire into the history of advocacy will find the subject treated of in the "Histoire abrégée de l'Ordre des Avocats, par M. Boucher d'Argis," republished, together with several other interesting treatises upon the subject of the duties of Advocates, by M. Dupin, in a work entitled "Profession d'Avocat." Paris, 1838.

The necessity of the order of lawyers in advanced stages of society is so obvious as to need no comment. I would here, however, particularly call attention to the path of duty which the consideration of the origin and necessity of this profession seems clearly to point out to the advocate. For if, as is obvious, the *resulting* force (to speak mechanically) of the three persons united—the client, attorney, and advocate—ought to be the same as that of the client alone, were he endowed with the powers and knowledge necessary to plead his own cause, it follows, as a necessary consequence, that the advocate should not lend himself to produce, in concert with his client and the attorney, an effect which could not with justice be produced by the client alone when filling all the three characters in his own person. I am aware that a different conclusion is attempted to be drawn by some who assert, that inasmuch as in a simple state of society every client, no matter what his character, has the power of stating his own case in his own way, therefore in a more complicated state of society every client should possess a similar right; and that hence the duty of the advocate is not to seek what *he* thinks just in the way that *he* thinks right, but to seek that and in that manner which his client wills. I have, in the preface of this work, attempted to show the theory of advocacy which asserts this conclusion to be unsound and irreligious. At the same time I am aware, that as the data on which the arguments for and against it must be eventually grounded are determinations of the moral sense, no positive proof can be given save that which the conscience may supply.

APPENDIX TO CHAPTER III.

(THE LAWYER'S CHOICE OF A CALLING.)

¹ *For some calling he must needs have, &c.* On the necessity, choice, and exercise of a calling, without which, as he says, "we despise God's ordinance and smother his gifts, we expose ourselves to sinful temptations; we deprive ourselves, our families, and the poor of due maintenance; we withdraw our bounden service from the commonwealth." See Bishop Sanderson's Sermon on the text, "Brethren, let every man wherein he is called therein abide with God." 1 Cor. vii. 27.

"I confess it is a very sad consideration to see how much men abuse their callings, the end whereof is to serve God by serving men. He that employs his talents only to get honours, profits, and pleasures, profanes his calling, living to another end than God hath appointed him. It is true every man must labour in his calling to maintain his family, but that is not the main scope and end of our lives. The true end of life is to do service to God in serving men in our several stations. And for a recompense of this service God blesses men's honest travails, and allows them to take moderately for their labours according to the judgment of godly men. But I see it is a very hard thing to find a man that labours in his calling in love to God and his brethren's good."—*Cooke's Vindication of the Professors and Profession of the Law.*

The author of the "Broad Stone of Honour," in his review of the callings which present themselves to the notice of young men on entering upon life, thus speaks respecting the choice of the legal profession:—"The profession of the law will, of course, present itself, and the question will arise whether it be consistent with your order. Now this appears to me to be altogether a question of individual character,

and not one that will admit of any general conclusion. If you are of studious habits; of a decided disposition of mind, not to be influenced by the subject of your study; and of a devotion to truth not to be perverted or overcome by sophistry; if you are firmly established in the principles of religion, and if you are one of those elevated spirits that are raised above the world, above its temptations, and its opinions—in that case you may embrace this profession, and look up to a Cicero, a Sulpicius,* a D'Aguesseau, a More, a Bacon, a Clarendon, a Hale, a Mansfield, and an Eldon, as your dignified masters. But if this be not your character; if nature has not so fashioned, and practice confirmed these habits; if a higher power has not so refined and elevated your mind; I exhort you not to undertake it.

“I confess this is the only conclusion I can come to on the subject. What authority more weighty, what judgment more sound and impartial, than that of Lord Clarendon? And yet what observation does he make upon the effects of a legal education? He says, ‘It introduces men into the language and practice of business; and if it be not resisted by the great ingenuity of the person, inclines young men to more pride than any other kind of breeding, and disposes them to be pragmatical and insolent, though they have the skill to conceal it from their masters, except they find them (as they are too often) inclined to cherish it.’ And with what a lively image does Lord Bacon represent the danger of an indiscriminate defence of right and wrong, though the mind may be convinced at the time, when he says that ‘certain it is that words, as a Tartar’s bow, do shoot back upon the understanding of the wisest, and mightily entangle and pervert the judgment;’ which is not wonderful if we consider what Cicero has said: “Nihil est tam incredibile quod non dicendo fiat probabile: nihil tam horridum, tam incultum, quod non splendescat oratione et tanquam excolatur,”† which may be regarded as the judgment of Heaven by those who hold the opinion of Socrates, οὐ γὰρ πού θεμὶς τῶ ἄρῳ λέγοντι μὴ συγχωρεῖν.‡

“It is not that I object *in toto* to the theory of the legal profession; for though Cicero perceived the grand objection to which it is exposed, and seemed to distrust his own sentence against the objection and in favour of the practice (very remarkable indeed are his words, and very slender the authority which removed his scruples);§ but that I observe and deprecate its practical tendency, its effect upon the mind, upon the judgment, and upon the heart. It is not that I would subscribe to the definition of an advocate as lately (1823) delivered and laid down before the most solemn audience that the world could produce.|| Of that portrait there certainly can be but one opinion among honest men. It has, however, I trust, no original to make it of importance, and therefore cannot be too quickly effaced from our memories; for while there are diseases of the body which it is dangerous to behold, there are also mental images from which we should turn aside to escape pollution, to both of which that verse is applicable—

‘Dum spectant oculi læsos læduntur et ipsi.’

The arguments of Cicero are the same as those of the later writers who profess to defend the ordinary practice of the profession, although the Roman lawyer seems

* The legal character of Sev. Sulpicius was admirable: “Neque ille magis juris consultus quam justitiæ fuit: neque constituere litium actiones malebat quam controversias tollere.”

† Paradox vi.

‡ Plat. Hipp. Major.

§ Quod scribere (præsertim cum de Philosophiâ scriberem) non audebam, nisi idem placeret gravissimo stoicorum Pamelio.—Cic. De Off. II. xiv.

|| The character here alluded to would seem to be that drawn by Lord Brougham, in his defence of Queen Caroline, before the House of Lords, in which we find the following:—“An advocate, by the sacred duty which he owes his client, knows, in the discharge of that office, but one person in the world, *that client and none other*. To save that client by all expedient means—to protect that client at all hazards and costs to all others, and among others to himself—is the highest and most unquestioned of his duties; and he must not regard the alarm, the suffering, the torment, the destruction, which he may bring upon any other. Nay, separating even the duties of a patriot from those of an advocate, and casting them, if need be, to the wind, he must go on, reckless of the consequences, if his fate it should unhappily be to involve his country in confusion for his client’s protection!”

less confident of his argument than content with his authority: '*vult hoc multitudo, patitur consuetudo, fert etiam humanitas.*' It must be confessed also, that were the question one that could be determined by the conclusion from a naked abstracted theory, the writers who support it would easily overcome their opponents. But this is not the case, as I have before observed. We must pay attention to a multitude of effects, connections, and circumstances, which follow from it, and which must be taken into account when we are to decide for ourselves, or for any individuals who are estimating its advantages. The reasoning upon the one side is plausible, and perhaps unanswerable; yet from the abstracted line of the argument, without being guilty of resisting truth, the mind may remain in suspense, till the experience, the observation, and the individual feeling of the inquirer may at length confirm him in the opposite opinion, that 'the indiscriminate defence of right and wrong contracts the understanding while it corrupts the heart. Subtlety is soon mistaken for wisdom, and impunity for virtue. If there be any instance upon record, as some there are undoubtedly, of genius and morality united in a lawyer, they are distinguished by their singularity, and operate as exceptions.' In this very severe sentence the author of Junius has excluded all considerations of a religious nature, though it certainly appears to me it is from such the objection can be most forcibly urged, and it was not incumbent upon either the philosopher or the politician to exclude them from his regard. I confess, however, freely, that views and reasoning of this kind have appeared to me to determine the question. That desire of establishing a legal reputation, so essential to the candidate for future employment, while the words of Cicero are before me, '*Difficile est cum præstare omnibus concupieris, servare æquitatem quæ est justitiæ maxime propria,*' that habit of regarding the side of justice (vain men, how little qualified are we to judge!) instead of mercy; that habit of looking up to authority and law as the restraining principle of human conduct, instead of relying for virtue upon the piety and principles of individuals (Montesquieu, *Esprit des Loix*, 3 v.); that disposition to regard the utility and practical result of measures as the criterion of their value, and that custom of office which identifies impunity with innocence; which is ready to sacrifice the end to the means, the object of the legislator to the letter of the law; these effects all and separately are death to the high and generous feelings which refine and purify the soul; they tend to destroy those grand general impressions of right and wrong which must be kept alive, and ready at the call of a moment to direct you; that habit of mercy, which must be the first feature of your character; that full confidence in the virtue of other men which must spring from the conviction of your own; that unqualified preference of principle and worth above the mere service of interest and necessity; that disdain for the bands and trammels of the letter of our rule; that utter indifference to the utility and consequences of virtue, which are all and separately essential to that elevated character which you desire and are bound to imitate. Upon the whole, then, after a consideration of the question with all its relations, and after an honest examination of your own powers, habits, and disposition, you will make that decision which disowns every base and unworthy motive; the decision of conscience and of honour, which will ensure to you your own respect, whatever may be the subsequent opinion which experience shall induce you to adopt."

APPENDIX TO CHAPTER V.

(THE LAWYER'S KNOWLEDGE.)

¹ Now of laws, &c. The distinction which (following Hooker) I have here drawn between the different kinds of laws to which mankind are subject, is one of great importance. But because in the present day it has been much overlooked, and its place supplied by the theories of two classes of persons, each widely differing from the other, I will first briefly allude to these latter, and will then illustrate and support, by quotations from authors of high authority, the views I have put forward in the text.

The first class of persons to whom I allude are those, who like Hobbes, Mandeville,

ville, Hume, Paley, and Bentham, denying the existence of conscience as the faculty by which we judge of right and wrong, and with it the permanent and immutable character of the laws which it discovers to us; substitute in its place, as the test of moral worth, the varying and uncertain standards of the supreme power, self-interest, utility, the general good of mankind, and other external or experimental standards. These by denying the moral nature of man, and forbidding him to look *within* for that whereby to judge of human conduct, send him to the cumbrous accumulations of a painful experience to determine, not what is *right* but what is *useful*, not what is *honest* but what is *profitable*. Even the pagan orator, unenlightened by the sun of Christianity, could discern the fallacious character of speculations such as these. Speaking of those who made power and utility the measures of right and wrong, he indignantly exclaims: "*Quod si pœna, si metus supplicii non ipsa turpétudo, deterret ab injuriosâ facinorosâque vitâ nemo est injustus, at incauti potius habendi sunt improbi. Tum autem qui non ipso honesto movemur ut viri boni simus, sed utilitate aliquâ atque fructu, callidi sumus non boni.*" Cicero de Legibus. lib. i. What is right we feel assured is even in this world useful, expedient, conducive to our own and to the public interest; but if we are to hesitate to call right *right*, until we have proved it by experience to be all these, we shall act like a man who should refuse to call white *white*, until he had analyzed the rays of light of which it was composed. And if (as is the case in morals) we have no instrument by which to effect this analysis, we must remain for ever in the same state of scepticism as to right and wrong, in which the philosopher would be as to colours, who was ignorant of, or had not at hand, an instrument by which to effect a separation of rays, or who, having separated them, should consistently call for a further analysis to convince him that each of the colours was in reality what it seemed.

The second class of persons to whom I have above alluded are those who, while they admit the existence of conscience, yet distrust altogether the intimations which it gives respecting what is right and wrong, and refer every question respecting human conduct to the decision of the Bible, looking in every case to it for a solution, direct or indirect. This form of thought, though less injurious than the other first mentioned, becomes, in the extreme to which it was carried in the days of the puritans, and is by many in our day, the source of most serious and dangerous consequences. Some of these have been most wisely noted by Bishop Sanderson in his fourth Sermon, *Ad Clerum*, where, after asserting that for the maintenance of the doctrine "that the Holy Scriptures are the sole rule of all human actions whatsoever"—"there was never yet produced any piece of an argument, either from *reason*, or from authority of Holy Writ, or from the testimony either of the ancient fathers, or of other classical divines of later times, which may not be clearly and abundantly answered to the satisfaction of any rational man, not extremely fore-possessed with prejudice;" he warns his hearers "to beware of it, and that so much the more heedfully, because of the evil consequents and effects that issue from it; to wit, a world of superstitions, uncharitable censures, bitter contentions, contempt of superiors, perplexities of conscience. First, it filleth men's heads with many *superstitious* conceits, making them to cast impurity upon sundry things, which yet are lawful to as many as use them lawfully. For the taking away of the indifferency of anything that is indifferent, is in truth *superstition*: whether either of the two ways it be done either by requiring it as necessary, or by forbidding it as unlawful. He that condemneth a thing as *utterly unlawful*, which is yet *indifferent*, and so lawful, is guilty of superstition, as well as he that enjoineth a thing as *absolutely necessary*, which yet indeed is but *indifferent* and so arbitrary. They of the church of Rome, and some in our church, as they go upon quite contrary grounds, yet both false, so they run into quite contrary errors, and both superstitious. They decline too much on the left hand, denying to the Holy Scripture that perfection which of right it ought to have, of containing all things appertaining to that supernatural doctrine of faith and holiness which God hath revealed to his church, for the attainment of everlasting salvation: whereupon they would impose upon Christian people, and that with an opinion of *necessity*, many things which the Scriptures require not; and that is a *superstition*. These wry too much on the right hand, ascribing to the Holy Scripture such a kind of perfection as it cannot have; of being

the sole director of all human actions whatsoever: whereupon they forbid unto the Christian people, and that under the name of sin, sundry things which the Holy Scripture condemneth not; and that is a *superstition* too."

"From which *superstition* proceedeth in the second place uncharitable censuring: as evermore they that are the most superstitious are the most supercilious. No such severe censurers of our blessed Saviour's person and actions, as the superstitious Scribes and Pharisees were. In this chapter the special fault, which the apostle blameth in the weak ones (who were somewhat superstitiously affected), was their rash and uncharitable judging of their brethren. And common, and daily experience among ourselves, showeth how freely some men spend their censures upon so many of their brethren, as without scruple, do any of those things which they, upon false grounds, have superstitiously condemned as utterly unlawful.

"And then, thirdly, as unjust censures are commonly entertained with scorn and contumely; they that so liberally condemn their brethren of profaneness, are by them again as freely flouted for their preciseness: and so while both parties please themselves in their own ways, they cease not mutually to provoke, and scandalize, and exasperate the one the other, pursuing their private spleens so far till they break out into open contentions and oppositions. Thus it stood in the Roman church when this epistle was written. They judged one another and despised one another, to the great disturbance of the church's peace: which gave occasion to our apostle's whole discourse in this chapter. And how far the like censurings and despisings have embittered the spirits, and whetted both the tongues and pens of learned men one against another in our own church, the stirs that have been long since raised, and are still upheld by the factious opposers against our ecclesiastical constitutions, government, and ceremonies, will not suffer us to be ignorant. Most of which stirs, I verily persuade myself, had been long ere this either wholly buried in silence, or at leastwise prettily well quieted, if the weakness and danger of the error whereof we now speak, had been more timely discovered, and more fully and frequently made known to the world than it hath been.

"Fourthly, let that doctrine be once admitted, and all human authority will soon be despised. The commands of parents, masters, and princes, which many times require both secrecy and expedition, shall be taken into slow deliberation; and the equity of them sifted by those that are bound to obey, though they know no cause why, so long as they know no cause to the contrary. *Delicata est obedientia quæ transit in causæ genus deliberativum.* It is a nice obedience in S. Bernard's judgment, yea rather troublesome and odious, that is over curious in discussing the commands of superiors, bogging at everything that is enjoined, requiring a *why for every wherefore*, and unwilling to stir until the lawfulness and expediency of the thing commanded shall be demonstrated by some manifest *reason* or undoubted authority from the Scriptures.

"Lastly, the admitting of this doctrine would cast such a snare upon men of weak judgments but tender consciences, as they should never be able to unwind themselves thereout again. Men's daily occasions for themselves or friends, and the necessities of common life, require the doing of a thousand things within the compass of a few days; for which it would puzzle the best textman that liveth readily to bethink himself of a sentence in the Bible, clear enough to satisfy a scrupulous conscience, of the *lawfulness* and *expediency* of what he is about to do; for which, by hearkening to the rules of *reason* and *discretion*, he might receive easy and speedy resolution. In which cases if he should be bound to suspend his resolution, and delay to do that which his own reason would tell him were presently needful to be done, until he could haply call to mind some precept or example of scripture for his warrant, what stops would it make in the course of his whole life, what languishings in the duties of his calling? How would it fill him with doubts and irresolutions, lead him into a maze of uncertainties, entangle him in a world of woful perplexities, and, without the great mercy of God, and better instruction, plunge him irrecoverably into the gulf of despair? Since the chief end of the publication of the Gospel is to comfort the hearts, and to revive and refresh the spirits of God's people with the glad tidings of liberty from the spirit of bondage and fear, and of gracious acceptance with their God; to anoint them with the oil of gladness, giving

them beauty for ashes, and instead of sackcloth girding them with joy: we may well suspect that doctrine not to be evangelical which thus setteth the consciences of men upon the rack, tortureth them with continual fears and perplexities, and prepareth them thereby unto hellish despair."

The same subject is more fully treated of by Bishop Sanderson in the fourth chapter of his treatise *De Conscientia*, in which he proposes and answers the question *Wherein is to be found a complete rule of conscience?* After commencing with the position "That God alone exercises a complete and direct command over the consciences of men," he infers, "That the proper and complete rule of conscience is the will of God, in whatever manner made known to mankind," and then states that will to be discovered in three ways; "1st, by the light of Nature; 2ndly, by the light of Scripture; and 3dly, by the light which is conveyed by meditation and instruction exercised upon the knowledge conveyed to us by the light of Nature and the light of Scripture;" a distinction nearly corresponding to that which I have made in stating that the knowledge of natural laws is "to be sought in the recesses of the heart, and in the written records, and from the living ministers of God's holy word."

To the same effect as the passages in the writings of Bishop Sanderson, to which I have above alluded, are the remarks of the learned Hooker, in the third book of his *Ecclesiastical Polity*; in which, considering the assertions of those who urged "That in Scripture there must be of necessity contained a form of Church Polity, the laws whereof may in no wise be altered," he asserts, "That no sound divine in the world ever denied that the will of God, which we are to judge our actions by, was in part made manifest by light of nature, and not by Scripture alone."

I have been the more anxious to point out the errors of the two classes of theorists above mentioned, because they each in their way tend to insufficient notions of the force and obligations of laws, lowering the character of *natural* and exaggerating that of *positive* law. While they obtrude the aid of the philosopher to say what is *useful*, and of the lawyer to say what is *lawful*, they disregard the conscience which would tell what is *right*, and wholly dispense with the aid of the *Divine*, whose business it is to assist the conscience by lights drawn from the Scriptures of truth, and the opinions of pious and holy men.

I now proceed to illustrate by a few quotations the view I have adopted: And first from Hooker. In his first book of *Ecclesiastical Polity*, "Law Rational," he says, "which men commonly use to call the Law of Nature, meaning thereby the law which human nature knoweth itself in reason universally bound unto, which also for that cause may be termed most fitly the Law of Reason; this law, I say, comprehendeth all those things which men by the light of their natural understanding evidently know, or at leastwise may know, to be be seeming or unseeming, virtuous or vicious, good or evil, for them to do." And again, "All laws human, which are made for the ordering of politic societies, be either such as establish some duty whereunto all men by the law of reason did before stand bound; or else such as make that a duty now which before was none. The one sort we may for distinction's sake call *mixedly*, and the other *merely* human." In the same book, speaking of the cause why so many natural laws are set down in Scripture, he says, "The Scripture is fraught even with the laws of nature; insomuch that Gratian defining natural right, whereby is meant the right which exacteth those general duties that concern men naturally, even as they are men, termeth 'Natural Right, that which the Books of the Law and the Gospel do contain.' Neither is it vain that the Scripture aboundeth with so great store of laws in this kind: for they are either such as we of ourselves could not easily have found out, and then the benefit is not small to have them readily set down to our hands; or if they be so clear and manifest that no man endued with reason can lightly be ignorant of them, yet the Spirit as it were borrowing them from the school of nature, as serving to prove things less manifest, and to induce a persuasion of somewhat which were in itself more hard and dark, unless it should in such sort be cleared, the very applying of them unto cases particular is not without most singular use and profit many ways for men's instruction. Besides, be they plain of themselves or obscure, the evidence of God's

own testimony added to the natural assent of reason concerning the certainty of them, doth not a little comfort and confirm the same."

In his sermon upon the text, "His mind swelleth and is not right in him; but the just by faith shall live," Hab. ii. 4, he makes the following forcible remarks upon that obscurity concerning justice, which is caused by the want of properly distinguishing between laws natural and immutable, and laws subject to change, otherwise called positive law. "It is," he says, "no small perplexity which this one thing hath bred in the minds of many, who, beholding the laws which God himself hath given, abrogated and disannulled by human authority, imagine that justice is hereby conculcated; that men take upon them to be wiser than God himself; that unto their devices his ordinances are constrained to give place: which popular discourses, when they are polished with such art and cunning as some men's wits are well acquainted with, it is no hard matter with such tunes to enchant most religiously affected souls. The root of which error is a misconceit that all laws are positive which men establish, and all laws which God delivereth, immutable. No—it is not the author which maketh, but the matter whereon they are made, that causeth laws to be thus distinguished. Those Roman laws, '*Hominem indemnatum ne occidito,*' '*Patronus si clienti fraudem fecerit, sacer esto,*' were laws unchangeable, though by men established. All those Jewish ordinances for civil punishment of malefactors, '*The prophet that enticeth into idolatry shall be slain,*' '*A false witness shall suffer the same hurt which his testimony might have brought upon another,*' '*Life for life, eye for eye, tooth for tooth;*' all canons apostolical touching the form of church government, though received from God himself, yet positive laws, and therefore alterable. Herein, therefore, they differ: a positive law is that which bindeth them that receive it in such things as might before have been either done or not done without offence, but not after, during the time it standeth in force. Such were those church constitutions concerning strangled and blood. But there is no person whom, nor time wherein, a law natural doth not bind. If God had never spoken word unto men concerning the duty which children owe unto their parents, yet from the firstborn of Adam unto the last of us, '*Honour thy father and thy mother,*' could not but have tied all. For this cause, to dispense with the one can never possibly be justice; nor other than injustice sometimes not to dispense with the other."

Domat, in his treatise upon Laws, prefixed to his work upon the Civil Law in its natural order, thus expresses himself:—"All the different ideas which it is possible to conceive of the several sorts of laws that are expressed by the names of divine and human laws, natural and positive, spiritual and temporal, law of nations, civil laws, and by all the other names that can be given them, may be reduced to two kinds, which comprehend all laws of what nature soever: one is, of the laws which are immutable; and the other, of the laws that are arbitrary. For there is not any one law but what has one or other of these characters. Which it is of moment to consider, not only for apprehending aright this first general distinction of laws into these two kinds, which ought to precede the other ways of distinguishing them; but because it is these two characters which are the most essential part of the nature of all laws, and therefore the knowledge of them is necessary and of great use in the study of the civil law.

"The immutable laws are so called because they are natural, and so just at all times and in all places that no authority can either change or abolish them; and the arbitrary laws are those which a lawful authority may enact, change, or abolish, as there is occasion."

The importance which Bishop Sanderson attached to a knowledge of the distinctions between different kinds of laws, is seen in his answer to one who asked him what course a young divine should take in his studies to enable him to be a good casuist. After recommending a sufficient understanding of the learned languages and of moral philosophy, "The second thing (he said) which would be a great help and advantage to a casuist, was a convenient knowledge of the nature and obligation of laws in general; to know what a law is; what a *natural* and a *positive* law; what is required to the *latio dispensatio derogatio* vel *abrogatio* legis; what promulgation is antecedently required to the obligation of any positive law; what ignorance

takes off the obligation of a law, or does excuse, diminish, or aggravate the transgression: for every case of conscience being only this, *Is this lawful for me or is it not?* and the law the only rule and measure by which I must judge of the lawfulness or unlawfulness of any action, it evidently follows that he who (in these) knows not the nature and obligation of laws, never can be a good casuist, or rationally assure himself or others of the lawfulness or unlawfulness of actions in particular.—*Life of Bishop Sanderson, by Izaak Walton, ad finem.*

^a *He finds to be derived, &c.* Jeremy Taylor, whose work entitled *Ductor Dubitantium* is well worthy the study of every lawyer, thus prefaces his observations upon the nature and character of laws:—"That the laws of God and man are the great measures of right and wrong, of good and evil, of that which is to be followed and what is to be avoided, in manners of men and the intercourses of societies—is infinitely certain and universally confessed. Since, therefore, human laws are one moiety of the rule and measure of conscience, and that we are bound to obey our lawful superiors in what they command, it is naturally consequent to this that we acknowledge the conscience bound, and that in human laws as well as divine (though according to their several proportions) the conscience ought to be instructed. And indeed there is more need of preachers in the matter of divine laws, and more need of wise and prudent guides in the matter of human laws. For the laws of God are wiser and plainer, few and lasting, general and natural, perceived by necessity, and understood by the easiest notices of things; and, therefore, men have more need to be called upon to obey than taught how; and, therefore, here the preacher's office is most necessary and most required. But human laws are sometimes intricate by weakness, sometimes by design, sometimes by an unavoidable necessity; they are contingent, and removed far from the experiences of most men; they are many and particular, difficult and transient, various in their provisions, and alterable by many parts and many ways: and yet because the conscience is all the way obliged, she hath the greater need of being conducted than in the other, where every wise man can better be a guide in the little intrigues, and every child can walk in the plain way."

APPENDIX TO CHAPTER VII.

(THE LAWYER'S DUTIES.)

¹ *AND first he makes it known, &c.* As the duty here asserted, of regarding the moral as well as legal merits of a client's case is one in the present day very generally denied among British lawyers, I shall offer no excuse for the numerous quotations which follow (and which, if need were, might easily be multiplied) from the writings of eminent Divines, Casuists, Moralists, Lawyers (both of our own and other nations), and Legislators, expressive of opinions in accordance with those which in this little work it has been my anxious wish to recommend to the attention of my brethren of the bar. If they should fail to convince, I trust they may at least cause some to suspend their judgment ere they join in characterising as "*ignorant declaimers*" those who agree in the thoughts and sentiments they contain.

I. DIVINES.

1. BISHOP SANDERSON, in an Assize Sermon, preached at Lincoln, 4th August, 1625, thus addresses the bar:—"If thou comest hither as to thine harvest, to reap some fruit of thy long and expensful study in the laws, and to assist thy client and his cause with thy counsel, learning, and eloquence, think not because thou speakest for thy fee, that therefore thy tongue is not thine own, but thou must speak what thy client will have thee speak, be it true or false; neither think because thou hast the liberty of the court, and perhaps the favour of the judge, that therefore thy tongue is thine own, and thou mayest speak thy pleasure to the prejudice of the adversary's person or cause. Seek not preposterously to win the name of a *good lawyer* by wresting and perverting good laws, or the opinion of the *best counsellor* by giving the *worst* and *shrewdest* counsel. Count it not, as Protagoras did, the

glory of thy profession, but subtily of wit and volubility of tongue, to make the worse cause the better; but, like a good man as well as a good orator, use the power of thy tongue and wit to shame impudence and protect innocency, to crush oppressors and succour the afflicted, to advance justice and equity, and to help them to right that suffer wrong. Let it be as a ruled case to thee in all thy pleadings, not to speak in any cause to wrest judgment."

That no doubt may remain as to the full meaning of this passage, I will quote two more passages from sermons by the same good bishop. In an Assize Sermon, preached at Lincoln, 7th March, 1624, is the following:—"I know not any extremity of wrong beyond the extremity of right: when laws intended for *fences* are made *snares*, and are calumniously wrested to oppress that innocency which they should protect. And this is most properly calumny in the prime notion of the word:—for a man upon a mere trick or quillet from the letters or syllables of the law, or other writing or evidence pressed with advantage to bring his action or lay his accusation against another man, who yet *bonâ fide* and in equity and conscience hath done nothing worthy to bring him into such trouble." And again, in the same sermon, describing the ways in which a "false report" (Exod. xxiii. 1) is raised, he says, "The third way is, when, taking advantage of the law, we prosecute the extremity thereof against our brother, who perhaps hath done something contrary to the letter of the law, but not violated the intent of the lawgiver, or offended either against common equity, which ought to be the measure of just laws, or against the common good, which is in some sort the measure of equity. In that multitude of laws, which, for the repressing of disorders, and for the maintenance of peace and tranquillity among men, must needs be in every well governed commonwealth, it cannot be avoided but that honest men, especially if they have much dealings in the world, may have sometimes just and necessary cause to do that which, in regard to the thing done, may bring them within the compass of some statute or branch of a statute; yet such as, circumstances duly considered, no wise and indifferent man but would well approve of. Now if in such cases always rigour should be used, laws intended for the benefit should by such hard construction become the bane of human society."

2. HOOKER.—It will hardly be contended that Hooker had not in his view lawyers as well as judges in the following passage:—"So natural is the union of religion with justice, that we may boldly deem there is neither, where both are not. For how should they be unfeignedly just, whom religion doth not cause to be such; or they religious, which are not found such by the proof of their just actions? If they, which employ their labour and travel about the public administration of justice, follow it only as a trade, with unquenchable and unconscionable thirst for gain, being not in heart persuaded that justice is God's own work, and themselves his agents in this business, the sentence of right God's own verdict, and themselves his priests to deliver it, *formalities of justice do but serve to smother right, and that which was necessarily ordained for the common good, is through shameful abuse made the cause of common misery.*" (Hooker's Eccles. Polity, book v. ch. 1.) What Hooker here means by formalities of justice, he has more fully explained in the 9th chapter of the same book. "General laws (he says) are like general rules of physic, according whereunto as no wise man will desire himself to be cured if there be joined with his disease some special accident, in regard whereof that whereby others in the same infirmity but without the like accident recover health, would be to him either hurtful, or at the least unprofitable: so we must not, under a colourable commendation of holy ordinances in the church, and of reasonable causes whereupon they have been grounded for the common good, imagine that all men's cases ought to have one measure.

"Not without singular wisdom, therefore, it hath been provided, that as the ordinary course of common affairs is disposed of by general laws, so likewise men's rarer incident necessities and utilities should be with equity considered. From hence it is, that so many privileges, immunities, exceptions, and dispensations, have been always with great equity and reason granted; not to turn the edge of justice, or to make void at certain times and in certain men, through mere voluntary grace or benevolence, that which continually and universally should be of force

(as some understand it), but in very truth to practise general laws according to their right meaning.

“ We see it in contracts, and other dealings which daily pass between man and man, that, to the utter undoing of some, many things by strictness of law may be done, which equity and honest meaning forbiddeth. Not that the law is unjust, but imperfect; nor equity against, but above, the law, binding men’s consciences in things which the law cannot reach unto. Will any man say, that the virtue of private equity is opposite and repugnant to that law, the silence whereof it supplieth in all such private dealing? No more is public equity against the law of public affairs, albeit the one permit unto some in special considerations, that which the other agreeably with general rules of justice doth in general sort forbid. For sith all good laws are the voices of right reason, which is the instrument wherewith God will have the world guided; and impossible it is that right should withstand right, it must follow that principles and rules of justice, be they never so generally uttered, do no less effectually intend than if they did plainly express an exception of all particulars, wherein their literal practice might in any way prejudice equity.”

3. BAXTER, in his *Christian Directory*, part iv. ch. iv. giving directions to lawyers about their duty to God, says: “*Be not counsellors or advocates against God, that is, against justice, truth or innocency.* A bad cause would have no patrons if there were no bad or ignorant lawyers. It is a dear bought fee which is got by sinning; especially by such a wilful aggravated sin as the deliberate pleading for iniquity or opposing of the truth. Judas’s gain and Athithophel’s counsel will be too hot at last for conscience, and sooner drive them to hang themselves in the review than afford them any comfort: as Saint James saith to them that he calleth to weep and howl for their approaching misery, ‘Your riches are corrupted, and your garments moth-eaten; your gold and silver is cankered, and the rust of them shall be a witness against you, and shall eat your flesh as it were fire; ye have heaped treasure together for the last days.’ Whatever you say or do against truth, and innocency, and justice, you do it against God himself. And is it not a sad case that among professing Christians there is no cause so bad but can find an advocate for a fee? I speak not against just counsel to a man that hath a bad cause (to tell him it is bad, and persuade him to disown it); nor do I speak against you for pleading against excessive penalties or damages; for so far your cause is good, though the main cause of your client was bad; but he that speaketh or counselleth another for the defence of sin, or the wronging of the innocent, or the defrauding another of his right, and will open his mouth to the injury of the just for a little money, or for a friend, must try whether that money or friend will save him from the vengeance of the Universal Judge (unless faith and true repentance, which will cause confession and restitution, do prevent it).”

4. BISHOP COLLYER, in his *Moral Essays*, part iv. p. 198, expresses his opinion upon this matter in the following dialogue:—

“*Philotimus.* Pray what is your opinion of those lawyers who appear in a foul cause?

“*Philalethes.* I think if they know it they misbehave themselves, and have much to answer for. What can be more unaccountable than to solicit against justice, and lend the credit of our character to an ill business?—To throw in dilatory pleas and false suggestions—to perplex the argument or entangle the witness?—To make a mercenary noise against right or reason?—To misapply precedents and statutes, and draw the laws into a conspiracy, to endeavour to surprize the judge and mislead the jury?—To employ learning, and lungs, and elocution to such purposes as these, is to disgrace the bar, and mismanage to a high degree.

“*Philot.* Must the counsel start at every dark appearance, and the client be dismissed at the first information? that is hard: a cause which has an ill face at first, clears up sometimes in the court, and brightens strangely upon the pleading. This observation prevailed with Sir Matthew Hale to discharge his scruples and practise with more freedom.

“*Philal.* I grant this reverend judge relaxed a little, and gave his conscience more room for the reason you mention. When his business lay at the bar, he made no difficulty to venture through suspicion and dislike; he thought it no fault

to bring the matter to an issue, and try the strength of either party. But when he once found it work foul and shrink under the test, he would engage no further, nor ever encourage the keeping on the dispute.

“*Philot.* What then—must a man turn away his clients and baulk his profession?”

“*Philal.* It is no part of a lawyer’s profession to promote injustice, or help one man to that which belongs to another. The laws are made to secure property, to put an end to contests, and help those to right that suffer wrong. They were never designed to entangle matters, to perpetuate quarrels, to enrich any set of men at the damage of the community. To engage in an ill cause when I am conscious it is so, is, in plain English, to encourage a litigious humour, to countenance a knave; it is to do my best to disseize an honest man of his birthright, and wrest his money or his land from him. If the privilege of practice, if the pretence of taking a fee, will justify us in this liberty, why may not the consideration of money bear us out in other remarkable instances? Why may not we be hired for any other mischief? Why may not a physician take a fee of one man to poison another?”

5. FULLER’S estimate of a lawyer’s duty will sufficiently appear from the following description of *the Good Advocate*, which I have extracted entire from his Holy State, book iii. chap. 1. “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 soldier, 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 sovereign truth, plainly appearing to his conscience.

“Maxim 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, seldom search to the quick; and those miraculous apprehensions who understand more than all, before the client hath told half, run without their errand, and will return without their answer.

“2. *If the matter be doubtful he will only 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 battle in a speedy trial.* Yet sometimes suits are continued by their difficulty, the potency and stomach of the parties, without any default in the lawyer. Thus have there depended suits in Gloucestershire, betwixt the heirs of the Lord Berkely and Sir Thos. Talbot Viscount Lisle, ever since the reign of Edward the Fourth, until now lately they were finally compounded.

“4. *He is faithful to that side that first retains him.* Not like Demosthenes; who secretly wrote one oration for Phormio, and another in the same matter for Apolliodorus 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 Anaximenes, *That he had a flood of words and a drop of reason.* His boldness riseth or falleth as he apprehends the goodness or badness of his cause.

“6. *He joys not to be retained in such a suit, where all the right in question is but a drop blown up with malice to be a bubble.* Wherefore in such trivial matters he persuades 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 by 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 lazy; and if a leading case be out of the road of his practice, he will take pains to trace it through his books, and prick the footsteps thereof wheresoever he finds it.

“8. *He is more careful to deserve than greedy to take fees.* He accounts the

very pleading of a poor 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 seldom die either without heirs or making a will) find God's blessing on his provisions and posterity.

"We will respite him awhile till he comes to be a judge, and then we will give an example of both together."

II.—CASUISTS.

1. THOMAS AQUINAS, in his book entitled *Summa Theologiæ*, 2. 2. quæst. cap. 71, art. 3, to the question, whether it is sinful in an advocate to defend an unjust cause, answers, "It is unlawful to co-operate with any one in doing what is wrong, whether it be by advising, or assisting, or in any manner consenting: for he who counsels and assists in any thing is in a manner the doer of it. And the apostle Paul (Rom. i. 23) says, that they are worthy of death 'not only who commit sin, but who have pleasure in those that do so.' . . . Now the advocate clearly counsels and assists him whose cause he undertakes; and, if he knowingly undertakes an unjust cause, is without doubt guilty of heinous sin, and is bound to make restitution to the party who by his assistance has been unjustly injured. If, however, he should undertake an unjust cause thinking it to be a just one, he has that measure of excuse which ignorance in such case offers. 'Utrum advocatus peccet si injustam causam defendat? . . . Respondeo dicendum, quod illicitum est alicui cooperari ad malum faciendum sive consulendo sive adjuvando, sive qualitercumque consentiendo: quia consilians et coadjuvans quodammodo est faciens; et Apostolus dicit, Rom. i. 32, quod digni sunt morte non solum qui faciunt peccatum sed etiam qui consentiunt facientibus. Unde et supra dictum est (quæst. 62, art. 7) quod omnes tales ad restitutionem tenentur. Manifestum est autem quod advocatus auxilium et consilium præstat ei cujus causæ patrocinator. Unde si scienter injustam causam defendit, absque dubio graviter peccat et ad restitutionem tenetur ejus damni quod contra justitiam per ejus auxilium altera pars incurrit. Si autem ignorantur injustam causam defendit putans esse justam, excusatur secundum modum quo ignorantia excusari potest."

2. Dr. ARNETS, in his work *De Conscientiâ*, lib. v. ch. 54, when treating of the duties of advocates, asserts that no advocate ought to undertake or prosecute a cause which he knows to be unjust. "Nullus Advocatus debet suscipere aut defendere causam quam novit esse injustam. Nam, 1. Hoc esset mentiri et contra conscientiam peccare. 2. Hoc esset fraudem facere proximo (contra Levit. xix. 13) et perversitatem exercere in judicio (ibid. v. 15). Hoc esset non tantum communicare peccatis judicis et aliorum inique facientium, sed etiam eisdem occasionem efficacem aut causam præbere. Unde etiam sit quod ars advocatoria (prout hodie a plerisque exercetur) nihil aliud sit quam sophistica perniciosa ex dolis fraudibus technis cavillationibus laqueis captiunculis insidiis tricis ambagibus et circumventionibus conflata."

3. LUDOVICUS MOLENA, in his treatise *De Justitiâ*, tract ii. disp. 81, lays it down that an advocate, when asked to plead for an heir-at-law against devisees, under a will not formally executed, is bound in conscience to ask his client whether he believes it was the intention of the testator that the will should not take effect; and that if he should say it was not, or if from circumstances the advocate be morally convinced that it was not, to decline to advocate the client's claim as being against conscience. "Denique dicendum est advocatos, qui sibi persuaserint eam fuisse legumtalorum mentem (non quidem irritas reddere minus solemnes testatorum ultimas voluntates impedire ve ne ex eis ea naturalis obligatio emanant quæ ex naturâ rei nata est oriri, neque item ex præsumptione falsitatis eas nullas pronunciare jusque concedere hæredibus ab intestato, sed duntaxat non admittere eas tanquam legitimas ad probandum eam fuisse voluntatum testatoris) teneri in conscientiæ foro interrogare clientulos, qui eorum petunt patrociniûm ut ipsis tanquam hæredibus in exteriori foro adjudicentur bona defuncti in minus solemnibus testamentis aut codicillis aliis relictis, num sibi persuadeant illam fuisse voluntatem testatoris: quod si annu-

ant, aut ipsimet advocati, illis negantibus, id sibi persuadeant, non posse illis præstare patrocinium utpote ad rem injustam, tenerique illos admonere non posse petere ea bona in foro conscientie si semoto omni dubio arbitrentur eam fuisse voluntatem testatoris; et in dubio teneri facere compositionem ut dictum est."

N. B. The sentiments of many other casuists to the same effect will be found collected by Vasquez, in D. Thomæ, col. 595.

III.—MORALISTS.

1. OWEN FELTHAM, in his *Resolves*, cent. ii. ch. 82, thus expresses his opinion:—"Questionless there are of this profession (the law) that are the light and wonder of the age. They have knowledge and integrity; and, by being versed in books and men, in the noble acts of justice and of prudence, they are fitter for judgment and the regiment of the world than any men else that live. And their honesty truly weighed is the gallantest engine that they can use and thrive withal. A faithful advocate can never sit without clients; nor do I believe that man could lose by it in the close that would not take a cause he knew not honest. A goldsmith may gain an estate as well as he that trades in every coarser metal. An advocate is a limb of friendship, and further than the altar he is not bound to go. And it is observed of as famous a lawyer as I think was then in the world, the Roman Cicero, that he was slain by one he had defended when accused for the murder of his father. Certainly he that defends an injury is next to him that commits it. And this is recorded not only as an example of ingratitude, but as a punishment for patronizing an ill cause. In all pleadings, foul language, malice, impertinence, and recriminations are ever to be avoided. The cause, more than the man, is to be convinced. Overpowering oratory is not ever to be practised. Torrents of words do often bear down even trophies of truth, which does so fret and anger the party overborne, that the resort is no more to paper and pleadings, but to powder and steel.

2. GROTIUS, speaking *De Officio Advocati*, says,

"Qui sancta sumis arma civilis togæ
Cui se reorum capita, fortunæ, decus
Intenda credunt, nomini præsta fidem
Juris sacerdos: ipse die causam tibi
Litemque durus arbiter præjudica
Voto clientum jura metiri time,
Nec quod colorem patitur, id justum puta.
Peccet necesse est sæpe, qui nunquam negat."

3. COLERIDGE, by the editor of his *Table Talk*, is made to lay down the limits of the advocate's duty as follows:—"There is undoubtedly a limit to the exertions of an advocate for his clients. He has a right, it is his bounden duty, to do every thing which his client might honestly do, and to do it with all the effect which any exercise of skill, talent, or knowledge of his own, may be able to produce. But the advocate has no right, nor is it his duty, to do that for his client which his client *in foro conscientie* has no right to do for himself; as, for a gross example, to put in evidence a forged deed or will, knowing it to be so forged."

4. JONATHAN DYMOND, a late American writer, whose *Essays on the Principles of Morality* have been republished in this country, thus speaks (Essay ii. ch. 5):—"We affirm that a lawyer cannot morally enforce the application of legal rules, without regard to the claims of equity in the particular case. If it has been seen, in the preceding chapters, that morality is paramount to law; if it has been seen that there are many instances in which private persons are morally obliged to forego their legal pretensions; then it is equally clear that a lawyer is obliged to hold morality as paramount to law in his own practice. If one man may not urge an unjust legal pretension, another may not assist him in urging it."

IV.—LAWYERS.

1. CHRISTOPHER ST. GERMAINS, the supposed author of the celebrated work entitled *Doctor and Student*, has given us very clear means of ascertaining his general

opinion on the question of what causes an advocate may rightly undertake, by the solution he gives in that work of several particular questions there proposed and answered. Take, for example, the following dialogue respecting cases in which the advocate may plead the statute of limitations.

“*Student.* Whether may a man with conscience be of counsel with the plaintiff in action at the common law, knowing that the defendant hath sufficient matter in conscience whereby he may be discharged by a *subpœna* in the Chancery, which he cannot plead at the common law, or not?”

“*Doctor.* I pray thee put a case thereof in certain, for else the question is very general.

“*Student.* I will put the same case that thou puttest in our first dialogue in Latin, the twelfth chapter, that is to say: If a man bound in an obligation pay the money and taketh no acquittance, so that, by the common law, he shall be compelled to pay the money again, for such consideration as appeareth in the fifteenth chapter of the said dialogue, where it is showed evidently how the law in that case is made, upon a good and reasonable ground, much necessary for all the people, howbeit that a man may sometime, through his own default, take hurt thereby: herein, I pray thee, show me thine opinion.

“*Doctor.* This case seemeth to be like to the case that thou hast next before this, and that he that knoweth the payment to be made doth not as he would be done to, if he gave counsel that an action should be taken to have it paid again.

“*Student.* If he be sworn to give counsel according to the law, as serjeants at the law be, it seemeth he is bound to give counsel according to the law, for else he should not perform his oath.

“*Doctor.* In these words, *according to law*, is understood the law of God and the law of reason; as well as the laws and customs of the realm: for, as thou hast said thyself, in our dialogue in Latin, that the law of God and the law of reason be two special grounds of the laws of England, wherefore (as methinks) he may give no counsel (saving his oath) neither against the law of God nor the law of reason; and certain it is that this article, that is to say, that a man should do as he would be done to, is grounded upon both the said laws. And, first, that it is grounded upon the law of reason, it is evident of itself. And in the sixth chapter of St. Luke it is said, ‘*Et prout vultis ut faciant vobis homines et vos facitis illis similiter*’; that is to say, that ‘All that other men should do to you do you to them,’ and so it is grounded upon the law of God. Wherefore if he should give counsel against the defendant, in that case he should do against both the said laws.

“*Student.* If the defendant had no other remedy but the common law, I would agree well it were as thou sayest; but in this case he may have good remedy by a *subpœna*: and this is the way that shall induce him directly to his *subpœna*, that is to say, when it appeareth that the plaintiff shall recover by law.

“*Doctor.* Though the defendant may be discharged by *subpœna*, yet the bringing in of his proofs there will be to the charge of the defendant, and also the proofs may die ere they come in. Also there is a ground in the law of reason, *Quod nihil possumus contra veritatem*, that is, we may do nothing against the truth. And since he knoweth it is truth that the money is paid, he may do nothing against the truth; and if he should be of counsel with the plaintiff, he must suppose and aver that it is the very due debt of the plaintiff, and that the defendant withholdeth it from him unlawfully, which he knoweth himself to be untrue; wherefore he may not with conscience in this case be of counsel with the plaintiff, knowing that the plaintiff is paid already. Wherefore if thou be contented with this answer, I pray thee proceed to some other question.

“*Student.* I will with good will.”

2. JOHN COOKE, who was solicitor-general of the Commonwealth at the trial of Charles I., in his *vindication of the professors and profession of the law*, published 1646, thus expresses his own opinion and practice, in which he expresses his belief that many of the great practisers of his day agreed. “The client (he says) I look upon as a sick man, distempered, passionate, wilful, and extremely in love with his own cause whatever it be; and many times the best advice to a resolute client is but as a good lesson set to a lute out of tune—for affections pre-engaged draw away

the judgment. Now the counsellor in the least measure ought not to feed the corrupt and peccant humour; for that is not to act the honest lawyer, but the flattering courtier, who steers his advice by the star of his prince's inclination, as our adversary Satan works upon our fancies, and the wind makes the waters rage. Nor is it enough to tell the client faintly that he doubts his cause but will do the best he can: but to deal freely with him—"Sir, thus I would do if it were my own case; if you will not follow my advice, go to another; you are in a fever, and must not eat and drink after your own appetite." I assure you there is great difference between one counsellor and another; therefore the precious ought to be distinguished from others. The shepherd and the butcher look upon the sheep with a different eye, the one to do him good, the other to eat him. The client retains two counsel; the one cares not for the cause further than that he may gain by it; however it succeeds, he deserves little in conscience: the other desires his client may have his right, and what is given him freely he accepts contentedly. But to speak truth, many times the clients deserve the blame and not we, for they conceal the worst of their cause, and so for want of a true confession, as the priest says, the absolution is worth nothing; for proof being the chariot which carries the judge to give sentence, how can the counsel tell what the success of a difference will be; which answers a common cavil that lawyers will be of any side, and there is but one side true. The truth is many times in such a deep well, that every lawyer hath not a bucket to draw. Titles of law are very difficult perplexed knotty cases, which will hardly be made plain; the judge hath one ear for the plaintiff, another for the defendant; but the counsel hath both ears for his client, yet so as if he can discover the injustice of his client's cause (and many times light may be seen at a little hole), I am persuaded many of our great practisers will not maintain him in it. For truly to speak well in a bad cause is but to go to hell with a little better grace without repentance: it is but a kind of juggling by an over curious flourish to make a shadow seem a substance. If any of my profession think they may for their fee maintain a side which they think is dishonest.....I would fain but ask them some such questions, Whether the least evil may be done to procure the greatest good? And whether every particular calling must not yield to the general of Christianity? And whether a Christian may do anything against the truth, or must do everything for the truth? And whether to be willingly instrumental to condemn the innocent, and to justify the wicked, be not both an abomination to the Lord? And whether he can answer it at the bar of Heaven that many a poor man should be undone and want food and raiment, because he found out some formality of law or defect in the proceedings, yet persuaded in his conscience that the poor man had right to the thing in question. If any man practise upon such principles, I had rather be tongue-tied nor not know how to write my name—rather be the hall sweeper, and should die with more comfort. But enough: I doubt not, but good men will hear reason from their inferiors, now the client must be admonished who will bring himself into a labyrinth do we what we can."

N. B. I quote with diffidence the last named author, as I can neither admire the character in which he appeared on the trial of Charles, nor the mode in which he sustained that character; but on the contrary think them both worthy of the severest condemnation. There is, however, so much sound sense in his remarks that I have given them as I found them.

3. SIR MATTHEW HALE. A question has been raised, as we have seen in the quotation above made from Bishop Collyer, p. 75, as to the principles and practice of this great man when at the bar, in respect to the undertaking of causes. The view of Bishop Collyer will be confirmed by the following extracts from the life of Sir M. Hale, by Bishop Burnet, and from his own contemplations. "If he found the cause doubtful or weak in point of law, he always advised his clients to agree their business; yet afterwards he abated much of the scrupulosity he had about causes that appeared at first view unjust. Upon this occasion there were two causes brought to him, which by the ignorance of the party or their attorney were so ill represented to him that they seemed to be very bad, but he, inquiring more narrowly into them, found they were really very good and just; so after this he slackened much of his

former strictness of refusing to meddle in cases upon the ill circumstances that appeared in them at first.

"In his pleading he abhorred those too common faults of misreciting evidences, quoting precedents or book falsely, or asserting things confidently; by which ignorant juries or weak judges are too often wrought on. He pleaded with the same sincerity that he used in other parts of his life, and used to say 'it was as great a dishonour as a man was capable of that for a little money he was to be hired to say or do otherwise than as he thought.' All this he ascribed to the unmeasurable desire of heaping up wealth, which corrupted the souls of some that seemed otherwise born and made for great things." When we take this coupled with Sir M. Hale's own declaration in his "*Contemplations*," little doubt will remain as to the opinion of this great man. In his "*Great Audit*" we find him giving the following account of his use of the *gift of elocution*.

"1. I have ever used that gift with *humility*; not thereby seeking applause to myself, or owning it; because pride and ostentation in this gift would be secret idolatry to myself, and sacrilege to Thee, robbing Thee of Thy glory, and therefore signally vindicated in the example of Herod. (Acts xii.)

"2. With *truth*. I never used the advantage of my elocution, either to maintain a falsehood or to abuse credulity into a foolish opinion or persuasion.

"3. With *integrity*. I never used the advantage of elocution or rhetoric to deceive people or to cozen them into a thing. My heart always went along with my tongue, and if I used intention of speech upon any occasion, it was upon an intention of conviction in myself of the truth, necessity, usefulness, and fitness of what I was persuaded; if my judgment was doubtful or uncertain, so was my speech. I never used elocution or specious arguments to invite any to that, which in my own judgment I doubted, or doubted whether it were fit or reasonable, all circumstances considered. I never used my elocution to give credit to an ill cause, to justify that which deserved blame, to justify the wicked or to condemn the righteous, to make anything appear more specious or enormous than it deserved. I never thought my profession should either necessitate a man to use his eloquence by extenuations or aggravations to make anything worse or better than it deserves, or could justify a man in it; to prostitute my elocution or rhetoric in such a way, I ever held to be most basely mercenary, and that it was below the worth of a man, much more of a Christian to do so. When the case was good and fully so appeared to me, I thought then was that season that the use of that ability was my duty, and that it was given me for such a time as that, and I spared not the best of my ability in such a season; and indeed elocution or rhetoric is a dead and insipid piece unless it come from and with a heart full of the sense and conviction of what the tongue expresseth, and then, and not till then, elocution hath its life and energy. I esteemed these cases best deserving my elocution, and in these I was warm and earnest: the setting forth of Thy glory; the asserting of Thy truth; the detection and conviction of errors; the clearing of the innocent; the aggravating sins, oppressions, and deceits; and though I was careful that I did not exceed the bounds of truth or of moderation, yet I ever thought that these were the seasons for which that talent was given me, and accordingly I employed it."

4. SIR JOHN DAVIES, in the passage from his preface already quoted, says: "Good lawyers have not with us that liberty which good physicians have; for a good physician may lawfully undertake the cure of a foul and desperate disease, but a good lawyer cannot honestly undertake the defence of a foul and desperate cause. But if he fortune to be engaged in a cause which, seeming honest in the beginning, doth in the proceeding appear to be unjust, he followeth the good counsel of the schoolman (Thos. Aquinas, 2. 2. Quæst. 71, art. 3.): *Advocatus si in principio credidit causam justam esse quæ postea in processu apparet esse injusta, non debet eam prodere, ut scilicet alteram partem juvet revelando causæ suæ secreta; potest tamen et debet, causam deserere, vel eum cujus causam agit inducere ad cedendum, sive ad componendum, sine adversarii damno.*"

5. DOMAT in his *Civil Law*, book ii. tit. 6, s. 2, thus speaks respecting the duties of advocates: "It may be remarked here on all that has been said concerning the duties of advocates, that there are three sorts of causes in which they are employed;

one sort is, of those that are *notoriously unjust*; others are *manifestly just*; and there is a third sort that are *doubtful*.

“As for the causes which are *notoriously unjust*, whether they be contrary to the law of nature, or against the positive law, it is never lawful to defend them, in the same manner as it is never lawful to steal, nor to defend an unjust act. And if the parties themselves cannot carry on these sorts of causes without abandoning the rules of their conscience and committing a most enormous crime which is odious in the eye of man, and still more abominable before God, because they use his authority to make it serve as an instrument of their injustice; the advocates who maintain and defend those causes are so much the more guilty and criminal, in that they make themselves accomplices in the malice of their clients, and prevaricate in the exercise of their function, and in the most essential duty belonging to it, which is that of dissuading their clients from prosecuting causes that are unjust. But those who undertake the defence of such causes against poor and indigent persons make themselves accessories to a crime the enormity of which can hardly be well expressed. The Holy Scripture compares the offering of him who offers to God the goods of the poor as an alms or sacrifice, to the oblation which one would make to a father by sacrificing his son before his eyes (Eccles. xxxiv. 20). By what words therefore could it describe the action of those who present themselves before the tribunal not of the mercy, but of the justice of God; not to offer to him the goods of other people and to divest themselves of them, but to wrest them out of the possession of the right owners, and to appropriate them to themselves; and who have the boldness to invoke the judges to be executors of this injustice?

“As for causes that are *just* and equitable, the only rule is to defend them by no other ways than what are just, without lying and without trick; for if actions that are just of themselves become unjust when they are not performed with the circumstances of justice, according to the saying of the wise man, (Wisd. of Sol. vi. 10,) much more ought the actions of justice itself to be accompanied with truth and with justice; and if all men owe to one another in all their actions truth and godly sincerity, according to the expression of St. Paul, they owe it infinitely more to God himself, and in his tribunal which is the seat of justice. (2 Cor. i. 12.)

“As for causes that are *doubtful*, the chief rule whereby advocates are to govern themselves therein, is not to take those causes for doubtful which may be rendered such by covering injustice with the appearance of justice; but to take sincerely all those for doubtful whose decisions are uncertain, whether it be on account of the circumstances of the facts or by reason of the obscurity of the law, or because of other considerations which makes justice doubtful in such sorts of causes, and advocates ought to determine themselves therein according to their own knowledge and conscience; and they ought neither to engage in them, nor to defend them in any other manner, nor by any other means, than such as are lawful in the defence of causes that are just.

“All these rules of the duties of advocates may be reduced to two maxims: one, never to defend a cause that is so unjust; and the other, not to defend just causes but by the ways of justice and truth; and these two maxims are so essential to the duties of advocates, and so indispensably necessary, that although they seem to be rather maxims of religion, they are, however, in proper terms expressed in the laws of the Code and Digest.”

6. CAMUS, a French advocate of considerable eminence, in his little treatise entitled *Etudes nécessaires à l'Exercice de la Profession d'Avocat*, thus speaks of the duty of an advocate:—“Toutes les personnes qui s'adressent à lui sont écoutées indistinctement; mais il ne défend pas les causes de tous sans distinction. Son cabinet est un tribunal prive; il y juge les causes avant de se charger de les défendre. Ce serait faire un usage criminel de ses talens, que de les employer à pallier l'injustice; en manquant à son devoir on s'exposerait à perdre sa réputation.”

The same sentiment as is here expressed runs through the several French works collected by M. Dupin in his book entitled *Profession d'Avocat*.

7. DAVID HOFFMAN, an American advocate and author now living, in a work entitled, *A Course of legal Study addressed to Students and the Profession generally*,

among the rules which he has proposed for the professional department of lawyers, has the following:

“X. Should any client be disposed to insist on captious requisitions, or frivolous and vexatious defences, they shall be neither enforced nor countenanced by me. And if still adhered to by him from the hope of pressing the other party into an unjust compromise, or with any other motive, he shall have the option to select other counsel.

“XI. If after duly examining a case, I am persuaded that my client's claim or defence (as the case may be) cannot, or rather ought not, to be sustained, I will promptly advise him to abandon it. To press it farther in such a case, with the hope of gleaning some advantage by an extorted compromise, would be lending myself to a dishonourable use of legal means, in order to gain a *portion* of that, the whole of which I have reason to believe would be denied to him both by law and justice.

“XII. I will never plead the statute of limitation when based on the *mere efflux of time*; for if my client is conscious he owes the debt, and has no other defence than the *legal bar*, he shall never make me a partner in his knavery.

“XIII. I will never plead or otherwise avail myself of the bar of *infancy* against an honest demand. If my client possesses the ability to pay, and has no other legal or moral defence than that it was contracted by him when under the age of twenty-one years, he must seek for other counsel to sustain him in such a defence. And although in this, as well as in that of limitation, the *law* has given the defence, and contemplates in the one case to induce claimants to a timely prosecution of their rights, and in the other designs to protect a class of persons who by reason of tender age are peculiarly liable to be imposed on, yet in both cases *I shall claim to be sole judge* (the pleas not being compulsory) of the occasions proper for their use.

“XIV. My client's conscience and my own are distinct entities: and though my vocation may sometimes justify my maintaining as facts or principles in doubtful cases, what may be neither one nor the other, I shall ever claim the privilege of solely judging to what extent to go. In *civil* cases, if I am satisfied from the evidence that the *fact* is against my client, he must excuse me if I do not see as he does, and do not press it; and should the *principle* also be wholly at variance with sound law, it would be dishonourable folly in me to endeavour to incorporate it into the jurisprudence of the country, where, if successful, it would be a gangrene that might bring death to my cause of the succeeding day.

“XV. When employed to defend those charged with crimes of the deepest dye, and the evidence against them whether legal or moral be such as to leave no just doubt of their guilt, I shall not hold myself privileged, much less obliged, to use my endeavours to arrest or to impede the course of justice by special resorts to ingenuity—to the artifices of eloquence—to appeals to the morbid and fleeting sympathies of weak juries, or of temporizing courts—to my own personal weight of character—nor finally, to any of the overweening influences I may possess, from popular manners, eminent talents, exalted learning, &c. /Persons of atrocious character who have violated the laws of God and man, are entitled to no such special exertions from any member of our pure and honourable profession; and indeed to no intervention beyond securing to them a fair and dispassionate investigation of the *facts* of their cause, and the due application of the law; all that goes beyond this, either in manner or substance, is unprofessional, and proceeds either from a mistaken view of the relation of client and counsel, or from some unworthy and selfish motive, which sets a higher value on professional display and success, than on truth and justice and the substantial interests of the community. /Such an inordinate ambition I shall ever regard as a most dangerous perversion of talents, and a shameful abuse of an exalted station. The parricide, the gratuitous murderer, or other perpetrators of like revolting crimes, has surely no such claim on the commanding talents of a profession whose object and pride should be the suppression of all vice by the vindication and enforcement of the laws. Those, therefore, who wrest their proud knowledge from its legitimate purposes, to pollute the streams of justice, and to screen such foul offenders from merited penalties, should be regarded by all (and certainly shall by me) as ministers at a holy altar, full of high pretension, and appa-

rent sanctity, but inwardly base, unworthy, and hypocritical; dangerous in the precise ratio of their commanding talents and exalted learning."

8. LORD LANGDALE. It is cheering in these days, in which our judges too often regard with apathy the arts of legal cunning, to hear language such as the following, which I quote from the observations of the present Master of the Rolls, in the case of *Hutchinson v. Stephens*, reported 1 Keen's Reports, 669. "With respect to the task which I may be considered to have imposed upon counsel, I wish to observe that it arises from the confidence which long experience induces me to repose in them, and from a sense which I entertain of the truly honourable and important services which they constantly perform as ministers of justice, acting in aid of the judge before whom they practise. No counsel supposes himself to be the mere advocate or agent of his client, to gain a victory if he can on a particular occasion. The zeal and the arguments of every counsel, knowing what is due to himself and his honourable profession, are qualified not only by considerations affecting the general interests of justice. It is to these considerations that I apply myself; and I am far from thinking that any counsel who attends here will knowingly violate, or silently permit to be violated, any established rule of the court, to promote the purposes of any client, or refuse to afford me the assistance which I ask in these cases."

LEGISLATORS.

I have already, in the Appendix to the Preface, p. 61-62, noted the opinion of legislators as shown in the laws of different states, where the civil law has been adopted. I have also alluded to the only decided case in our own country which I have been able to find bearing upon the subject, from which, if any inference may be drawn it is that the decision of our own law, if called for, would be in conformity with the opinion of the civil law.

² So, he who attempts by the formalities of law, &c. The limitation here proposed in our dealings with unscrupulous opponents to that perfect openness and candour which in all dealings with honest men ought to characterize our conduct, whether in private or in public, are sanctioned by most writers upon casuistry. *Jeremy Taylor* in his *Ductor Dubitantium*, book iii. chap. 2, rule 5, has the following observations pertinent to this matter: "This (viz. that it is not lawful to tell a lie) is also to be extended to the case of advocates, who in a good cause must not use evil arts. For we must not tell a lie for God, and therefore not for the interest of any moral virtue, nor for the defence of righteousness; for a cavil or an injurious lie is out of the way of justice, and she must not be directly wronged that she may be indirectly righted. In the civil law it is permitted, that to avoid abuses and the injurious craft of the opposite party, the advocate of the right may use all arts that are not lies and falsity. *Nec videtur dolo fecisse qui fraudem excluserit*, says the law (L. Compat. Sect. Titio, ff. de Legat. Secundo). He may be overthrown by art, so he be not by that which is false. *Sic ars deuditur arte*. But in the case which the lawyers out of Baldus put, the question is evident. *Agricola* borrows of *Sempronius* five hundred pounds and pays him at the day, but without witness. *Sempronius* sues him for the money: *Agricola* owes him none, but cannot prove the payment; but yet may not, when he is particularly interrogated, to save himself from injury deny that he received any. He must confess the truth, though he pay the money again. *Covarvius* affirms, that he may in this case lawfully deny that ever he received any; because he is not indebted, he received none that remains in his hand: and to other purposes the judge cannot question him; and if he does, he is unjust, and therefore *Agricola* is not tied to answer rightly. But this is not well said nor well considered. For the judge being competent may require him to answer; and the intention of the question is not to know whether *Agricola* had paid the money, yea or no; but whether he borrowed it: for if he did, the judge is afterward to inquire concerning the payment: and as *Sempronius* was tied to prove that, so is *Agricola* tied to prove this; and a lie is not to be confuted by a lie, nor the error of *Agricola* in not taking witnesses or an acquittance to be supplied by a direct denial of a truth. But if *Sempronius* had lent

Agricola five hundred pounds, whereof he hath received two hundred pounds, if the judge ask whether he owes him that sum which Sempronius demands, he may indefinitely without more punctuality deny the debt, that is of five hundred pounds, saying he owes it not; and if the law be such that the confession of one part entitles him to the whole, he may deny the whole to be due, in case he hath paid a part. But with these two cautions, 1st. That if he be asked concerning a part, he answers to that as justly as he answers to the whole; 2d. That he do not make use of this subterfuge to defraud Sempronius of what is due debt, but only to defend himself from the undue demand. - These cautions being observed, he hath liberty so to defend his cause, because, *majori summæ negative prolatæ minorem nec naturaliter nec civiliter inesse*, say the lawyers. A man by denying the whole does not deny part, though he that affirms the whole affirms the part; and therefore his defence is just because it is true. But now if in a just cause the advocate or party may not tell a lie, I conclude that much less may he do it in an unjust cause, and for the defence of wrong. But much less signifies nothing, for it may not all be done in either, and in pure negatives there can be no degrees. But in artifices and crafty intercourses there is some difference. These may be used to defend a just cause that can no other way be defended; but they may not be used to promote an evil cause, because they of themselves, though they be indifferent, yet not serving a good end but an evil, do therefore become evil. And therefore the Greek that denied the *depositum* of his friend, and offered to swear at the altar that he had restored it already, did not preserve his conscience and his oath by desiring his friend to hold the staff in which he had secretly conveyed the money. It is true he delivered it into his hand, desiring that he would hold it until he had sworn; but that artifice was a plain cozenage, and it was prettily discovered, for the injured person, in indignation at the perjury, smote the staff upon the ground and broke it, and espied the money. But that made all right indeed, though against the intention of the perjury. Such like arts as these must not be used to do a mischief; if they do charity and justice, though they have not something to legitimate them, they have very much to excuse them."

APPENDIX TO CHAPTER XIV.

(THE LAWYER OF COUNSEL FOR PRISONERS.)

¹THE *law of the land obliges not, &c.* By the common law upon an indictment of high treason, petit larceny, or misdemeanour, standing mute was always equivalent to conviction. Upon appeals or indictments for other felonies or for petit treason, the prisoner who stood mute subjected himself to the terrible sentence of *peine forte et dure* (the nature of which is described by Blackstone vol. iv. p. 326), until by the 12 Geo. III. c. 20, standing mute was in these cases also made equivalent to a conviction. The questionable mercy of the present day towards criminals has effected the change noticed in the text, and now by the 7 and 8 Geo. IV. c. 28, s. 2, it is enacted, "That if any person being arraigned upon or charged with any indictment or information for treason, felony, piracy, or misdemeanour, shall stand mute of malice, or will not answer directly to the indictment or information, in every such case it shall be lawful for the court, if it shall so think fit, to order the proper officer to enter a plea of 'not guilty,' on behalf of such persons; and the plea so entered shall have the same force and effect as if such person had actually pleaded the same."

²Now when the prisoner declares to his counsel, &c. The question here mooted is surrounded with great difficulty, and I do not feel sure that the conclusion at which I have arrived is the correct one. I have been mainly induced to adopt it by the consideration that the general voice of mankind permits a person who has offended against the laws of his country to conceal such offence, except in instances when doing so could entail injury upon others.

³Did the law imperatively &c. This is the conclusion of most of the casuists and divines.

Thomas Aquinas, 2^a. 2^a. quæst. lxxix. lays it down, "that a criminal is bound to

answer truly to what the judge may ask lawfully, but is not bound further to criminate himself."

DR. AMES, in his treatise *de Conscientiâ*, lib. v. c. 54, s. 45, is of the same mind. "Q. Quid juris sit de reo vel accusato? R. Si reus legitime interrogatur, tenetur suum crimen fateri. Ratio 1. Quia neque negare potest veritatem notam, sine mendacio; neque tacere, respondendi officium detrectare, quando interrogatur a superiore qui jus habet interrogandi, sine inobediendiæ peccato. 2. Quia crimen divinâ providentiâ manifestatum (prout debet manifestari ut reus de illo legitime et iudice interrogetur) vel mendacio vel artificio abscondere est aliquo modo contra gloriam Dei. (John vii. 19.) 3. Quia publicum illud bonum quod a iudice in interrogatione legitima debet spectari non debet a reo impediri. 4. Quia reus denegando crimen legitime objectum, indirecte et per consequentiam, dicit eum qui objectat per calumniam esse mentitum cum gravi injuriâ ipsius."

So also REVITUS in his *Prælection* in the twentieth chapter of Exod. ver. 14. "Reus tenetur iudice ordine juris interrogante. 1. Dare gloriam Deo, et veritatem aperire, quamvis sciat se ex eâ confessione damnandum fore. 2. Non se debet per calumniam defendere etiam si innocens sit, sed licitis uti mediis."

JEREMY TAYLOR, in his *Ductor Dubitantium*, book iii. c. 2. rule v. discussing the rule which he there lays down, viz. "That it is not lawful for a guilty person to defend himself by calumny or a lie from the penalty of the law, though it be the sentence of death," after contending that it may be sometimes allowable to tell a lie for the purpose of preserving another from imminent danger, proceeds: "But then from these premises the truth in the instance of the rule is established; for it is not lawful for a guilty prisoner to say 'not guilty,' when he is justly interrogated. *Christianum non mentiri, etiamsi moriatur ex tormentis*, said Clemens Alexandrinus: A Christian will not lie, though to escape death with torments: for the law says, 'Thou shalt not kill,' and the law says, 'Thou shalt not lie;' but the law itself does sometimes kill, but the law does never lie. For although it be said that no man is bound to accuse himself, and indeed the laws of man do not tie him to do it; yet this hinders not the conclusion in this case; for in the present case the man is accused already, and he is not called to be his own accuser, but to confess the fact, if he be justly accused by the law. For why does the judge ask, but to be answered truly? For there being three ways in law of proceeding to definitive sentence, 1, 'The notoriety of the fact; 2, the conviction of witnesses; and 3, the confession of the party; in the destitution of the first, to prevent the trouble of the second, the law interrogates concerning the third: and it is as in the case of Joshua and Achan, 'My son, give glory unto the Lord, and confess thy fault.' It is true it is a favourable case; and when a man's life is at stake, he hath brought himself into an evil necessity; but there is no excusing of a false denial, but it is certainly criminal, and nothing can excuse it, unless the law should give leave to such persons to say what they would, which cannot be supposed in any good government: for then trials of criminal causes between the judge and the thief would be like a match at fencing; and it is infinitely confuted by those laws which use to examine by scourgings or torture: which, whether it be lawful or unlawful, I do not here determine; but I affirm it to be a great testimony that laws do not love to be played withal, and when they ask soberly, intend to be answered truly."

On the other hand, Puffendorf, *On the Law of Nations*, book 4, ch. i. s. 20, 21, having stated it to be a question of difficulty, *Whether a criminal or an offender arraigned on any account may deny the fact with which he is charged, or endeavour to elude the accusation by feigned arguments, and yet not incur the guilt of lying*, sets out the arguments used on both sides, and embraces the opinion that he may, and consequently that the advocate may aid him in such defences.

BISHOP HALL, also, in his *Resolutions and Decisions of divers Practical Cases of Conscience*, after noting the differences of the casuists upon the subject, contends that "It is lawful for the prisoner, though convicted in his conscience of the fact, yet to plead *not guilty* to the indictment at the bar: for as much as he doth therein, according to the sense both of the judge and jury, only hide and keep back that truth, the finding out and eviction whereof lies upon their further search and proof; so as he doth in pleading *not guilty* in effect as good as say, Whatever I find in

myself, I have no reason to confess my guiltiness. I stand upon my lawful defence, and cast myself upon my just trial, yielding myself only so far guilty as your evidence and proofs can make me: let justice pass upon me; I have no reason to draw on my own condemnation. The plea thus construed is lawful and just, wherein not the shuffling equivocation of the offender, but the upright verdict of a legal jury, must carry the cause: to which purpose, that which sounds as a denial in the accused, is nothing else but a professed referring himself to a judicial trial of that fact; which he is not bound to confess.

“But when the hand of God hath once found out the man in his sin, and he finds himself legally convicted of his crime, it greatly behoves him (as Joshua charged Achan after the lot had discovered his sin) to give glory to God in a free and full confession of his wretchedness, and to be more open and ingenuous in his acknowledgement than he was close and reserved in his plea; wherein as he shall discharge his conscience to that great and holy God whom he hath offended, so he shall thus tender some kind of poor satisfaction to that society of men whom he hath scandalized by his crime. In which regard I cannot but marvel at the strange determination of learned *Axpelaceta*, the oracle of confessaries, who teaches that the prisoner, who being rightly interrogated by the judges, stood stiffly in denial of the fact, and is upon his condemnation carried to his execution, is not bound at his death to confess the crime to the world, if he have before secretly whispered it in the ear of his ghostly father, and by him received absolution: a sentence that allows the smothering of truths, and the strangling of just satisfaction to those who are concerned as parties in the offence, and lastly, highly injurious to public justice, whose righteous sentence is by this means left questionable and obnoxious to unjust censure. How much more requisite were it that a public confession should in this case save the labour of a private, whereby certainly the soul of the offender would be more sensibly unloaded, justice better vindicated, more glory would accrue to God, and to men more satisfaction.

“But however it be lawful for the accused to stand upon these points of legality in the proceeding against him; yet, for my own part, should I be so far given over as to have my hand in blood, and thereupon be arraigned at the bar of public justice, I should out of just remorse be the first man that should rise up against myself and (which in other men's cases were utterly unlawful) be my own accuser, witness, and judge: and this disposition I should rather commend in those whose conscience hath inwardly convicted them for heinously criminal, that since they had not the grace to resist so flagitious a wickedness, yet they may endeavour to expiate it before men by an ingenuous confession, as before God with a deep and serious repentance.”

APPENDIX TO CHAPTER XVI.

(THE LAWYER DRAWING DEEDS.)

¹ *SECONDLY, he wills that, &c.* The following just observations on the prevailing form of settlements are from a note in Hayes, *On Conveyancing*, 3 edit. p. 371:—“The policy of such settlements is extremely questionable: it is difficult to refer them in the absence of the motives already indicated (the desire to support hereditary rank or to found a family) to any rational principle. The present possessor has the absolute dominion; his character is known, his right unquestionable. He is asked to reduce himself to a mere tenant for life in favour of an unborn son, of whose character nothing can be predicated, and who, if he can be said to have any right, cannot possibly have a preferable right. At no very distant period the absolute dominion must be confided to somebody, and why should confidence be reposed in an unborn child rather than in the living parent? Such a settlement has no tendency to protect or benefit the father whose advantage and comfort ought first to be consulted. It does not shield him from the consequences of his own imprudence. On the contrary, if his expenditure should in any instance exceed his income, he, as a mere tenant for life, is in danger of being obliged to borrow upon annuity, a process which, once begun, proceeds generally, and indeed, almost

necessarily, to the complete exhaustion of his life income. But it may be urged, that the settlement preserves the inheritance for the son, or his committee or creditors. The son may be an idiot or a spendthrift. He may be tempted to raise money by *post obit*, to levy a fine, and by that means acquire a bare fee in his father's lifetime. If to these not improbable results we add all the family feuds generated between the tenant for life and remainder-man, in regard to the enjoyment and management by the former of that estate which was once his own, particularly with reference to the cutting of timber, the disadvantages of thus fettering the dominion will appear greatly to preponderate. At best, such a settlement is a speculation; at worst, it is the occasion of distress, profligacy, and domestic discord, ending not unfrequently, as the Chancery Reports bear witness, in obstinate litigation ruinous alike to the peace and to the property of the family. Sometimes the father effects an arrangement with the eldest son on his coming of age; the son stipulating for an immediate provision in the shape of an annuity, the father for a gross sum to satisfy his creditors, or to portion his younger children, and for a resettlement of the estate. This arrangement, perhaps, is brought about by means, or imposes terms which, in the eye of equity, render it a fraud upon the son; and here we have another source of litigation. If, however, a strict settlement is deemed expedient, the objections here urged may be in some degree obviated by reserving to the settler a power of appointing to any of the sons or issue male of the marriage for any estate or interest, and he should also be invested with ample powers and discretion in regard to leasing, as well for husbandry as for mining purposes, and in regard to timber, buildings, alterations," &c.

² *He commends the maxim, &c.* Previous to the interference of our courts of equity in the matter, the whole law relating to husband and wife was controlled by the maxim, "That a husband and wife are one person." It is not easy to trace in the Reports, the rise of that branch of equity which gives to a woman rights in property separate from her husband. So late as the year 1710, (*Harvey v. Harvey*, 1 P. W. 125), the *power* of courts of equity to decree such rights seems to have been questioned. The *policy* of their doing so may still be doubted.

APPENDIX TO CHAPTER XIX.

(THE LAWYER AN ARBITRATOR.)

¹ *REJOICES when to terminate differences, &c.* The policy of referring disputes to arbitration has been questioned on the ground that arbitrations, so often end in protracted litigation. The experience of those societies, whose members are in the habit of settling their differences by arbitration, shows that this consequence is incident rather to the frame of the submission, and the mode of proceeding under it, and more than all, to the interference of lawyers imbued with technical habits of thought, than to the nature of arbitrations generally. In the Society of Friends, all differences among the members of which are terminated by arbitration, we do not hear that such consequences ensue, but the contrary.

² *The arbitrator may decide wholly according to equity, &c.* It has been attempted, at different times, to make it imperative upon arbitrators, acting under the control of our courts of law and equity, to decide according to the strict rules of law and technical equity, and to restrain them from deciding according to conscience. These attempts have fortunately failed, and the law would now seem to be as stated by Lord Eldon in *Younge v. Walter*, 9 *Vesey*, 365. "If there is a question of law, and the parties choose to refer that to the decision of an arbitrator, instead of the court, why may not he take all moral considerations into his judgment? If they refer to a person to decide all matters in difference, according to law, and he means to decide according to law, and mistakes, the court will set that right. But if a distinct question of law and nothing else is referred, and the parties choose to say they will not take the decision of the court, but will take whatever an arbitrator shall say is the law between them, why may they not so agree?"—See *Watson on Arbitrations*, p. 228.

APPENDIX TO CHAPTER XXV.

(THE LAWYER'S REGARD FOR PROFESSIONAL RULES.)

¹ HENCE *in those rules, &c.* The manner in which professional rules may clash with conscience and good feeling is often illustrated in the matter of *retainers*. Some instances of this are given by a writer in the *Law Magazine*, vol. iv. p. 417, in an article on Retainers. "It is well known (says the writer) to every practitioner, that the papers in a cause are frequently laid before some barrister in its earliest stage; that he even recommends the bringing or defending of the action in the first instance; that he draws all the pleadings of one party, and advises on the evidence; in short, that he brings the case down to the point of hearing or trial, and is, in some degree, answerable for its success or failure. Yet after all this, unless the form of an express retainer has been gone through, some sharp practitioner may, at any moment before the brief for trial or argument is actually delivered, thrust into his hand a retainer for the adverse party. Now what a situation is this for a man who has any feeling or conscience? for we plead guilty to the credulity of supposing that such a monster may exist as a lawyer with a conscience. To be compelled to maintain that all that he has done and advised is wrong; to unravel the web that he has himself spun, or else be wanting in duty to his newly acquired client; to be a deserter to the enemy's camp, and treacherously to discover the weak points of his *quondam* friends: or to be conscious of possessing such a secret, and doubtful whether he ought to avail himself of the knowledge or not; in short, to be driven to the alternative of sacrificing the interests either of his new client or of his old one. Is it right, we ask, to place any man in such a dilemma? Nor let it be thought that the case is imaginary; we have ourselves known instances of its actual occurrence. A person, deservedly eminent at the Chancery bar, had recommended a suit, advised upon the answer, and drawn exceptions which stood for argument, but he had not been formally retained for the plaintiff. The attorney, for the defendant, in the mean time, offered him a retainer to argue against his own exceptions, which he thought himself bound, however of course reluctant, to accept. Another learned gentleman, celebrated for his practice in bankruptcy, had resisted, no doubt, with his accustomed zeal and ability, the claim of a creditor upon a bankrupt estate, in behalf of which he had frequently appeared, on other occasions, also as the advocate. Well, he succeeded after several meetings before the commissioners in procuring the rejection of the disputed claim; whereupon the creditor petitioned, and lo! who should appear in support of the petition, labouring with equal zeal and ability to establish that the proof ought to have been received, but the same learned gentleman who had so successfully advocated its rejection. To be sure he had not been *retained* upon the *petition*, and was, therefore, *compelled* to accept the retainer of the creditor, which arrived before the brief of the assignees. Are these instances enough? If not, we can multiply them *ad nauseam*."

APPENDIX TO CHAPTER XXVII.

(THE LAWYER IN VACATION.)

¹ FOR *strive as he may, &c.* This sentiment is put into the mouth of Coleridge, by the editor of his *Table Talk*, vol. ii. p. 7. He is made to say, "I think that, upon the whole, the advocate is placed in a position unfavourable to his moral being and indeed to his intellect also in its higher powers. Therefore, I would recommend an advocate to devote a part of his leisure time to some study of the metaphysics of the mind, or metaphysics of theology: something, I mean, which shall call forth all his powers, and centre his wishes in the investigation of truth alone, without reference to a side to be supported. No studies give such a power of distinguishing as metaphysical, and in their natural and unperverted tendency they are ennobling and exalting. Some such studies are wanted to counteract the operation of legal

studies and practice, which sharpen indeed, but, like a grinding stone, narrow whilst they sharpen."

APPENDIX TO CHAPTER XXXIV,

(THE LAWYER'S CONSIDERATION CONCERNING ECCLESIASTICAL AFFAIRS.)

WHAT he shall think in respect of the outward form, &c. I have here intended to allude to the three principal forms of opinion upon the subject of the visible church which now divide Christians.

I. The *first* is that of the Roman Catholics, thus expressed at length by Domat in his *Civil Law*, tom. ii. book 1, text x. "There is this in common to the clergy and to the laity in every Catholic country, that they compose all of them together two different bodies, of which every one is a member; the body spiritual of the church, and the body politic of the state: for all the laymen of a state are, as well as the clergy, members of the church; and all the clergy, as well as the laity, are members of the body politic, and subjects of the prince. But there is this difference between these two bodies, that the spiritual body which is made up of the clergy and laity in a kingdom, makes a part of the body of the universal church which reaches to the whole universe, and which being only one, comprehends all the catholics of all countries, whether clergymen or laymen: whereas the politic body of a state has its limits within its own territories, under the government of its prince, and independent of all others in matters temporal: so that the clergy and laity who are under the government of one prince, are members of no other body politic: but all the clergymen and laymen of all the kingdoms and churches are united and linked together as to spirituals in such a manner as that they compose all of them together only one church, the unity of which consists in this, that all the nations have been called to one and the same faith, to one and the same law of one only God in one only religion, which he has established and taught unto men by his only Son, which is preached in all places, and is perpetuated throughout all ages by the bare mission of his apostles and their successors, under one sole head of the said church, successor of St. Peter, upon whom Jesus Christ hath founded it, and which he has always governed and will govern to after ages, by the channel of the said mission, which nothing can ever interrupt, and to which nothing strange or foreign can be united."

II. The *second* is that held by some early divines of the Church of England, and latterly put forward by the writers in the *Tracts for the Times*. That I have not misstated the views of these writers, the following quotations from their Works will show:—"The doctrine (of apostolical succession) in dispute is this: that Christ founded a visible church as an ordinance for ever, and endowed it once for all with spiritual privileges, and set his apostles over it, as the first in a line of ministers and rulers like themselves, except in their miraculous gifts, and to be continued from them by successive ordination; in consequence, that to adhere to this church thus distinguished, is among the ordinary duties of a Christian, and is the means of his appropriating the gospel blessings with an evidence of his doing so not attainable elsewhere."—*Tracts for the Times*, vol. iii. no. 74.

"Herein is the difference between the ministry of such persons as have received this commission from the bishop, and of those who have not received it: that to the former, Christ has promised that his presence shall remain, 'Lo, I am with you always, even to the end of the world;' and that when they minister the word and sacraments (which are the keys of the kingdom of Heaven), what they do upon earth in His name, according to His will, shall be ratified and made good in Heaven. 'Whatsoever thou shalt bind on earth shall be bound in Heaven; and whatsoever thou shalt loose on earth shall be loosed in Heaven.' But to those who have not received this commission, our Lord has given no such promise. A person not commissioned from the bishop may use the words of baptism, and sprinkle or bathe with the water on earth, but there is no promise from Christ that such a man shall admit souls to the kingdom of Heaven. A person not commissioned may break bread and pour out wine, and pretend to give the Lord's supper, but it can afford no comfort

to any to receive it at his hands, because there is no warrant from Christ to lead communicants to suppose that while he does so here *on earth*, they will be partakers in the Saviour's heavenly body and blood. And as for the person himself who takes upon himself without warrant to minister in holy things, he is all the while treading in the footsteps of Korah, Dathan, and Abiram, whose awful punishment you read of in the book of Numbers. (Compare Numbers xvi. with Jude ii.)—*Tracts for the Times*, vol. i. no. 35, and afterwards in the same Tract.

“Remember, then, that whether your pastors be rich or poor, honoured or despised by the world, it is only the having received this commission that makes us ‘bold in our God to speak unto you the gospel of God’ (1 Thess. ii. 2): and it is only this that can give you any security that the ministration of the word and sacraments shall be effectual to the saving of your souls. Learn, then, to cherish the blessing which God has vouchsafed to you, in having given you pastors who have received this commission. *The dissenting teachers have it not.* They lay no claim to regular succession from the apostles: and though the Roman Catholic clergy have indeed been ordained by the hands of bishops, they are mere intruders in this country, have no right to come here, and besides, have so corrupted the truth of God's word, that they are not to be listened to for a moment.”—*Tracts for the Times*, vol. i. no. 35.

In the 33rd of the *Plain Sermons by Contributors to the Tracts for the Times*, headed *The Apostolic Church*, and upon the text, “And they continued steadfastly in the apostles' doctrine and fellowship, and in breaking of bread and prayers. And fear came upon every soul;” we find this passage, to the same effect as the one last quoted: “And as we have by God's blessing the apostles' doctrine, so also the apostles' fellowship. Our bishops derive all their spiritual authority by succession from the apostles downwards, we, the inferior clergy, all ours from the bishops. If this be denied us, we are nothing better than usurpers, self-appointed ministers, useful, perhaps, for the peace and order of society, but spiritually powerless.”

“Surely there is a close analogy between the state of the Jews after the captivity and our own; and if so, a close understanding and acknowledgment of it will tend to teach us our own place, and suggest to us our prospects.

“It is scarcely necessary to notice the general correspondence between the fortunes of the two churches. Both Jews and Christians ‘left their first love,’ mixed with the world, were brought under the power of their enemies, went into captivity, and at length, through God's mercy, were brought back again from Babylon. Ezra and Nehemiah are the forerunners of our Hookers and Lauds, Sanballat and Gesham of the disturbers of our Israel. Samaria has set up its rival temple among us.”—*Tracts for the Times*, vol. i. no. 31.

III. *The third view* above stated is that which satisfied the comprehensive mind of Bacon, as is seen in the quotation made in the text: and (whatever may be urged to the contrary) is that embraced by Hooker, who in the *forms* of ecclesiastical governments could see nothing that was not *positive*, and consequently liable to change. This is the drift of the whole of the third book of his *Ecclesiastical Polity*, in which he defends Episcopacy from the attacks of the Presbyterians of those days, who asserted “That in Scripture there must be of necessity contained a form of church polity, the laws whereof may in no wise be altered,” and that Presbyterianism was that form. In that book, alluding to the conviction in his own mind that Episcopacy was the form of church government (as he elsewhere in the same book expresses himself) “which best agreeth with the sacred Scriptures,” he says: “If we did seek to maintain that which most advantageth our own cause, the very best way for us, and the strongest against them, were to hold even as they do, that in Scripture there must needs be found some particular form of church polity which God hath instituted, and which for that very cause belongeth to all churches, all times. But with any such partial eye to respect ourselves, and by cunning to make those things seem the truest which are the fittest to serve our purpose, is a thing which we neither like nor mean to follow. Wherefore that which we take to be generally true concerning the mutability of laws, the same we have plainly delivered, as being persuaded of nothing more than we are of this, that whether it be in matter of speculation or of practice, no untruth can possibly avail the patron and

defender long, and that things most truly are likewise most behovefully spoken." Book iii. c. x. s. 8.

²*Nor that some forms, &c.* This sentiment is thus expressed by Hooker, *Eccles. Pol.* book iii. ch. xi. 14. "In which respect (viz. that much which the Scripture hath taught concerning church polity may become unrequisite, sometime because we need not use it, sometime also because we cannot) for mine own part, although I see that certain reformed churches, the Scottish especially, and French, have not that which best agreeth with the sacred Scripture, I mean the government that is by bishops, inasmuch as both those churches are fallen under a different kind of regiment; which to remedy it is for the one altogether too late, and too soon for the other during their present affliction and trouble; this their defect and imperfection I had rather lament in such case than exagitate, considering that men oftentimes without any fault of their own may be driven to want that kind of polity or regiment which is best, and to content themselves with that which either the irremediable error of former times, or the necessity of the present, hath cast upon them."

APPENDIX TO CHAPTER XXXV.

(THE LAWYER UPON SUNDAYS.)

¹*THAT he may early upon the Saturday, &c.* This suggestion is taken from Sir Matthew Hale. In his advice to his children he says, "I would not have you meddle with any recreations, pastimes, or ordinary work of your calling, from Saturday night at eight of the clock till Monday morning. For though I am not apt to think that Saturday night is part of the Christian Sabbath, yet it is fit then to prepare the heart for it."

APPENDIX TO CHAPTER XXXVI.

(THE LAWYER BECOME JUDGE.)

¹*THE lawyer whose probity, &c.* Having before (p. 76-77) given Fuller's beautiful description of the *Good Advocate*, I here give his description, equally beautiful, of the *Good Judge*.

"The Good Advocate, whom I have 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 Nicholls, 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.

"Maxim 1. *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 can be pertinent, and cannot give evidence about a hen, but first they must begin with it in the egg. All which our judge is contented to hearken to.

"²*He meets not a testimony half-way, but stays 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 browbeat a pregnant witness, or purpose to make his proof miscarry, he checketh them and helps the witness that labours in his delivery. On the other side he nips those lawyers, who under pretence of kindness to lend a witness some words, give him new matter, yea, clean contrary to what he intended.

"*Having heard with patience, he gives sentence with uprightness.* For when he put on his robes he put off his relations to any; and like Melchisedec, 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.

"⁴*He silences that lawyer who seeks to set the neck of a bad cause once broken with a definite sentence;* and causeth that contentious suits be spued out as the surfeits of courts.

"5. *He so hates bribes, that he is jealous to receive any kindness 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 touchstone whereby to try gold, but gold is the touchstone whereby to try 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.

"6. *When he sits upon life in judgment, he remembereth mercy.* Then (they say) a butcher may not be of the jury, much less let him be the judge. Oh let him take heed how he strikes that hath a dead hand. It was the charge Queen Mary gave to Judge Morgan, Chief Justice of the Common Pleas, that notwithstanding the old error among judges did not admit any witness to speak, or any other matter to be heard in favour of the adversary, her Majesty being party; yet her Highness' pleasure was that whatsoever could be brought in the favour of the subject should be admitted and heard.

"7. *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 clear as the noonday, yet God forbid that 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 dial if it points at a false hour, when the fault is in the wheels of the clock which direct it and are out of frame.

"8. *The sentence of condemnation he pronounceth with all gravity.* It is 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.

"9. *Such as are unworthy of life, 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 Weipenstein, 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 poor wretch, as he hung, repeating verses out of the Hebrew Psalms, wherein he called to God for mercy. Andreas hereupon took occasion to counsel him 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 baptized, though presently after he were hanged again (but by the neck, as Christian malefactors suffered), which was accordingly granted him.

"10. *He is exact to do justice in civil suits betwixt sovereign 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 false spectacles which (in point of law) shall be found to have deceived them.

"11. *He counts the rules of state and the laws of the realm mutually support each other.* Those who made the laws to be not only desperate, but even opposite terms to maxims of government, were true friends neither to laws nor government. Indeed, *salus reipublicæ is charta maxima*: extremity makes the next best remedy: yet though hot waters be good to one in a swoon, they will burn his heart out who drinks them constantly when in health. Extraordinary courses are not ordinarily to be used when not enforced by absolute necessity.

"And thus we leave our good judge to receive a just reward of his integrity from the Judge or judges at the great assize of the world."

The following are noted by Sir Matthew Hale as "*things necessary to be continually had in remembrance*," written when he was a judge.

"1. That, in the administration of justice, I am entrusted for God, the king, and country; and, therefore,

"2. That it be done (1) uprightly; (2) deliberately; (3) resolutely.

"3. That I rest not upon my own understanding and strength, but implore and rest upon the direction and strength of God.

"4. That, in the execution of justice, I carefully lay aside my own passions, and not give way to them however provoked.

"5. That I be wholly intent upon the business I am about, remitting all other cares and thoughts as unseasonable and interruptions.

"6. That I suffer not myself to be prepossessed with any judgment at all, till the whole business and both parties be heard.

"7. That I never engage myself in the beginning of any cause, but reserve myself unprejudiced till the whole be heard.

"8. That in business capital, though my nature prompt me to pity, yet to consider there is also a pity due to the country.

"9. That I be not too rigid in matters purely conscientious, where all the harm is diversity of judgment.

"10. That I be not biassed with compassion to the poor, or favour to the rich, in point of justice.

"11. That popular or court applause or distaste have no influence in any thing I do in point of distribution of justice.

"12. Not to be solicitous what men will say or think, so long as I keep myself exactly according to the rule of justice.

"13. If in criminals it be a measuring cast, to incline to mercy and acquittal.

"14. In criminals that consist merely in words, where no more harm ensues, moderation is no injustice.

"15. In criminals of blood, if the fact be evident, severity is justice.

"16. To abhor all private solicitations, of what kind soever, and by whomsoever, in matters depending.

"17. To charge my servants (1) not to interpose in any matter whatsoever; (2) not to take more than their known fees; (3) not to give any undue precedence to causes; (4) not to recommend counsel.

"18. To be short and sparing at meals, that I may be fitter for business."

^a *Unless plainly obliged, &c.* Lord Kenyon, in the cause of *Webb v. Russel*, 3 Term Rep. p. 403, concludes his judgment with these words:—"It seems to me, with all the inclination which we have to support the action (and we have hitherto delayed giving judgment in the hopes of being able to find some ground on which the plaintiff's demand might be sustained) that it cannot be supported. The defence which is made is of a most unrighteous and unconscientious nature, but, unfortunately for the plaintiff, the mode which she has taken to enforce her demand cannot be supported."

APPENDIX TO CHAPTER XXXVII.

(THE LAWYER'S DEATH.)

¹ *It was a bright evening, &c.* I cannot better conclude this little volume than by the following beautiful extract from Bishop Burnet's *History of his own Times*, written June 1708, when he thought himself near his end. "I will conclude this whole address to posterity with that which is the most important of all things, and which alone will carry every thing else along with it; which is to recommend in the most solemn and serious manner the study and practice of religion to all sorts of men, as that which is *the light of the world and the salt of the earth*. Nothing does so open our faculties, and compose and direct the whole man, as an inward sense of God, of his authority over us, of the laws he has set us, of his eye ever upon us, of his hearing our prayers, assisting our endeavours, watching over our

concerns, and of his being to judge and to reward or punish us in another state according to what we do in this. Nothing will give a man such a detestation of sin, and such a sense of the goodness of God, and of our obligations to holiness, as a right understanding and a firm belief of the Christian religion; nothing can give a man so calm a peace within, and such a firm security against all fears and dangers without, as the belief of a kind and wise providence, and of a future state. An integrity of heart gives a man a courage and a confidence that cannot be shaken. A man is sure that, by living according to the rules of religion, he becomes the wisest, the best, and happiest creature that he is capable of being. Honest industry, the employing of his time well, and a constant sobriety, and undefiled purity and chastity, with a quiet serenity, are the best preservers of life and health: so that take a man as a single individual, religion is his guard, his perfection, his beauty, and his glory. This will make him the *light of the world*, shining brightly, and enlightening many around him.

“Then take a man as a piece of mankind, as a citizen of the world or of any particular state. Religion is indeed then the *salt of the earth*; for it makes every man to be to all the rest of the world whatsoever any one can with reason wish or desire him to be. He is true, just, honest, and faithful in the whole commerce of life, doing to all others that which he would have all others do to him. He is a lover of mankind and of his country. He may and ought to love some more than others; but he has an extent of love to all, of pity and compassion not only to the poorest but to the worst; for the worse any are they are the more to be pitied. He has a complacency and delight in all that are truly though but defectively good, and a respect and veneration for all that are eminently so. He mourns for the sins and rejoices in the virtues of all that are round about him: in every relation of life religion makes him answer all his obligations. It will make princes just and good, faithful to their promises, and lovers of their people. It will inspire subjects with respect, submission, obedience, and zeal for their princes. It will sanctify wedlock to be a state of Christian friendship and mutual assistance. It will give parents the truest love to their children with a proper care of their education. It will commend the returns of gratitude and obedience from children. It will teach masters to be gentle and careful of their servants, and servants to be faithful, zealous, and diligent in their master's concerns. It will make friends tender and true to one another: it will make them generous, faithful, and disinterested. It will make them live in their neighbourhood, as members of one common body, promoting first a general good of the whole, and then the good of every particular as far as a man's sphere can go. It will make judges and magistrates just and patient, hating covetousness and maintaining peace and order without respect of persons. It will make people live in so inoffensive a manner that it will be easy to maintain justice whilst men are not disposed to give disturbance to those about them. This will make bishops and pastors faithful to their trust, tender to their people and watchful over them; and it will beget in the people an esteem for their persons and their functions. Thus religion, if truly received and sincerely adhered to, would prove the greatest of all blessings to a nation. But by religion I understand somewhat more than the receiving some doctrines, though ever so true, or the professing them and engaging to support them not without zeal and eagerness. What signify the best doctrines if men do not live suitable to them; if they have not a due influence upon their thoughts, their principles, and their lives? Men of bad lives with sound opinions are self-condemned, and lie under a highly aggravated guilt; nor will the heat of party arising out of interest, and managed with fury and violence, compensate for the ill lives of such false pretenders to zeal, while they are a disgrace to that which they profess and seem so hot for. By religion I do not mean an outward compliance with forms and customs; in going to church, to prayers, to sermons, and to sacraments with an external show of devotion, or which is more, with some inward forced good thoughts, in which many may satisfy themselves, while this has no visible effect on their lives, nor any inward force to subdue and rectify their appetites, passions, and secret designs. These customary performances, how good and useful soever when well understood and rightly directed, are of little value when men rest on

them, and think that because they do them they have therefore acquitted themselves of their duty, though they continue still proud, covetous, deceitful, full of envy and malice. Even secret prayer, the most effectual of all other means, is designed for a higher end, which is to possess our minds with such a constant and present state of divine truths as may make these live in us and govern us; and may draw down such assistances as may exalt and sanctify our natures.

“So that by religion I mean such a sense of divine truth as enters into a man and becomes a spring of a new nature within him; reforming his thoughts and designs, purifying his heart and sanctifying him, and governing his whole deportment, his words as well as his actions; convincing him that it is not enough not to be scandalously vicious, or to be innocent in his conversation, but that he must be entirely, uniformly, and constantly pure and virtuous; animating him with a zeal to be still better and better, more eminently good and exemplary; using prayer and all outward devotions, as solemn acts testifying what he is inwardly and at heart, and as methods instituted by God, to be still advancing in the use of them further and further into a more refined and spiritual sense of divine matters. This is true religion which is the perfection of human nature, and the joy and delight of every one that feels it active and strong within him. It is true this is not arrived at all at once; and it will have an unhappy allay hanging long even about a good man; but as those ill mixtures are the perpetual grief of his soul, so it is his chief care to watch over and to mortify them; he will be in a continual progress, still gaining ground upon himself, and as he attains to a good degree of purity, he will find a noble flame of life and joy growing upon him. Of this I write with the more concern and emotion, because I have felt this the true and indeed the only joy which runs through a man’s heart and life; it is that which has been for many years my greatest support. I rejoice daily in it; I feel from it the earnest of that supreme joy which I pant and long for; I am sure there is nothing else can afford any true or complete happiness. I have, considering my sphere, seen a great deal of all that is most shining and tempting in this world; the pleasures of sense I did soon nauseate; intrigues of state and the conduct of affairs have something in them that is more specious: and I was for some years deeply immersed in these, but still with hopes of reforming the world, and of making mankind wiser and better. But I have found *That which is crooked cannot be made straight.* I acquainted myself with knowledge and learning, and that in a great variety and with more compass than depth; but though *wisdom excelleth folly as much as light does darkness*, yet as it is a *sore travail*, so it is so very defective that what is *wanting* to complete it *cannot be numbered*. I have seen *that two were better than one*, and that a *threefold cord is not easily loosed*; and have therefore cultivated friendship with much zeal and a disinterested tenderness; but I have found this was also vanity and vexation of spirit, though it be of the best and noblest sort. So that upon long and great experience I could enlarge on the preacher’s text, *Vanity of vanities and all is vanity*; but I must also conclude with him, *Fear God and keep his commandments, for this is the All of man*, the whole both of his duty and of his happiness. I do therefore end all in the words of David, of the truth of which upon great experience and a long observation I am so fully assured, that I leave them as my last words to posterity. *‘Come, ye children, hearken unto me; I will teach you the fear of the Lord; what man is he that desireth life and liveth many days, that he may see good: Keep thy tongue from evil and thy lips that they speak no guile; depart from evil and do good; seek peace and pursue it. The eyes of the Lord are upon the righteous, and his ears are open to their cry, but the face of the Lord is against them that do evil, to cut off the remembrance of them from the earth. The righteous cry and the Lord heareth and delivereth them out of all their troubles. The Lord is nigh unto them that are of a broken heart, and saveth such as be of a contrite spirit.’”*

THE END.

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