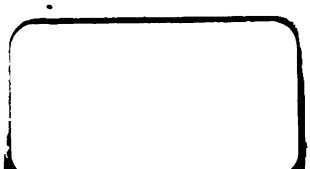

A

POPULAR AND PRACTICAL INTRODUCTION

TO

LAW STUDIES.

A POPULAR

AND

PRACTICAL INTRODUCTION

TO

LAW STUDIES.

BY SAMUEL WARREN,

OF THE INNER TEMPLE, ESQ., F.R.S.

——— "Simul ac duraverit ætas
Membra animumque tuum, nabis sine cortice."——HOR.

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PREFACE.

THE design of the following work, and the motives of the author in undertaking it, are explained at so much length in the INTRODUCTION, as to leave him little else to do here, than bespeak the indulgence of his professional brethren.

It was not without much hesitation, and distrust of his fitness for such a task, that he took upon himself to advise on the choice of the law as a profession, and on the prosecution of it as a study. But for the encouragement he from time to time received from numerous able and experienced friends*, in all departments of the profession,—whose valuable services he takes this opportunity of thankfully acknow-

* He begs particularly to acknowledge the assistance he has derived from the suggestions of Thomas Martin, Esq., of Lincoln's Inn, and Thomas Walmsley, Esq., of the Inner Temple.

ledging,—he should long ago have abandoned his task in despair. The subject he has chosen is so extensive, the design so difficult of execution, and the opinions he has had to consider so conflicting, that he cannot review his labours without a consciousness that many imperfections may be detected in them, if subjected to keen and unfriendly scrutiny. Hostile criticism, however, he will not anticipate from the liberal members of a profession to which he shall ever esteem it a very high honour to belong. Should, on the contrary, his efforts to smooth the rugged access to legal science, and exhibit to the public a just and interesting delineation of the English Bar, prove successful—should this, his humble contribution to the stock of elementary professional literature, be accepted, the time and pains he has expended upon the ensuing pages will be richly recompensed.

S. W.

12, *King's Bench Walk, Inner Temple,*
20th April, 1835.

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INTRODUCTION.

No profession requires, for its successful prosecution, such sedulous and scientific initiation, as that of the Bar; for it is notorious, that its members must depend, from first to last, almost exclusively upon their personal qualifications. A professional 'connexion' is certainly a vast advantage, as securing both early and extensive employment; but of what avail, if it bring business for the discharge of which its possessor is incompetent? A 'connexion' serves in such a case only to advertise, with fatal effect, his ignorance and presumption *; causing it to be reported, of him who has so signally disappointed his friendly clients,

Hic niger est; HUNC tu, Romane, CAVETO!

As for great family connexions — they are often little else, to the law-student, than a splendid incumbrance. He may depend upon it, that the support and influence of a single respectable attorney,

* *The prosperity of fools*, says the Wise Man, *shall destroy them.*

will be of more consequence to him than all the members of the House of Lords put together: and that single attorney, if luckily secured, can be retained only by ability and incessant industry. In almost every other profession a man may succeed, as it were, by deputy; may play Bathyllus to Virgil*; may rely on many adventitious circumstances†; but, at the Bar it is far otherwise; "Proprio Marte" is the motto of all: there the candidate must strip, take his place at the post, and start fair with his competitors—the Honourable son of an earl, straining and panting beside the ignoble son of a peasant—in the desperate race towards the goal of professional distinction. What signifies it to the student, that the "blood of all the Howards" rolls in his veins, if he is distanced, or perhaps knocked up at starting, but to enhance the agonies of defeat?

* "Hos ego versiculos feci—tulit *alter* honores," &c.

† "I have chosen for my sons, or rather, they have chosen for themselves," continued Mr. Percy, "professions which are independent of influence, and in which it would be of little use to them. Patrons can be of little value to a lawyer or physician. No judge, no attorney, can push a lawyer up beyond a certain point; *he may rise like a rocket, but he will fall like the stick*, if he be not supported by his own inherent powers. Where property or life is at stake, men will not compliment, or even be influenced by great recommendations. They will consult the best lawyer and the best physician, whoever he may be."—PATRONAGE, by Miss Edgeworth—a tale worthy the perusal of the youthful student.

En passant, to give the devil his due, the admirable illustration of the rocket is taken from Tom Paine.

And this personal fitness, moreover, is inexorably exacted by a profession full of peculiar and extraordinary difficulty in the acquisition and use of its learning. The vast extent, the "variety almost infinite," the subtlety, complexity, and minuteness of knowledge required by the exigencies of daily practice—knowledge which must be thoroughly mastered, or it had better be wholly let alone—the necessarily brief intervals of preparation for the discharge of the most arduous and responsible duties*; the quick detection, the often public and perilous exposure of incompetence:—surely it is melancholy that THIS should be the profession so signally destitute† of any appropriate, systematic, and uniform method of tuition. Where is such to be looked for? There are, to be sure, Downing College and Trinity Hall, at Cambridge; Lectures very recently founded at the Inner Temple, King's College, the Law Institution, and London University, in the Metropolis; Pleaders', Conveyancers', and Equity Draftsmen's Chambers,

* "A learned man in the laws of this realm," says Sir Edward Coke, in the preface to his Book of Entries, "is long a-making; the student thereof, having *sedentariam vitam*, is not commonly long lived (of this Sir Edward was himself a melancholy instance, being cut off at the premature age, alas! of eighty-five); the study abstruse and difficult, the occasion sudden, the practice dangerous." This was pretty well for 1614: what would he say in 1835?

† "Of all the professions in the world that pretend to book learning, none is so destitute of institution as that of the common law."—*Roger North's Disc. on the Study of the Law.*

in the Inns of Court, where the student is too often, however, borne away breathless and alone upon the rapid current of business; these are the only *places* of legal instruction: and as for "*Treatises* on the Study of the Law," some twenty or thirty have been published at long intervals, during a couple of centuries; while Blackstone's Commentaries, and Sullivan's and Wooddeson's Lectures, are the only works of consequence that make any pretension to the character of *elementary*, if the futile supposition be entertained that a student can succeed in merely *reading* himself into a lawyer. This is the short sum of all the "institutionary assistance" at present within the student's reach; who is driven, at length, to rely upon the precarious and conflicting suggestions of individuals. Thus it is that every passer by directs the anxious and perplexed pilgrim to approach the shrine of legal learning by a different route—that scarce any two individuals can be found to concur in recommending a course of elementary study *. Ought it to be so?

* Even thus it was in Roger North's time, who complains—"that each student is left to himself, to enter at which end he fancies, or as accident, inquiry, or conversation, prompts. And such as are willing," he proceeds, "and inquisitive, may pick up some hints of direction, but generally the first step is a blunder; and what follows, loss of time, till even out of that, a sort of righter understanding is gathered, whereby a gentleman finds how to make a better use of his time: and of those who are so civil to assist a novice with their advice, what method to take, few agree in the same,—some say one way, some another, and amongst them rarely any one that is tolerably just. Nor is it so easy a matter to do it,

Is this dealing fairly by the noblest profession, perhaps, in the world?

'Nevertheless,' says one, 'thousands have succeeded, and splendidly, despite this lack of professional education.' True; but at what a vast and excessive cost of time and labour! What health—what prospects—what lives have been sacrificed, to no purpose! How many more thousands, and those, too, of the most highly gifted, have either been deterred from entering the legal profession, or after a brief unsatisfactory attempt to cope with its difficulties, abandoned it in despair! How many are yet doomed to the same fate, notwithstanding the incessant publication of treatises on specific departments of legal science, and even, above all, the rapidly improving character of chamber tuition!

Though the Bar presents incomparably the most exciting and brilliant scene of action afforded by any of the peaceful professions, its first access is frequently disheartening, ambitious and confident though the student may be. His heart may be "hot within him," but "while he is thus musing, the fire"—*goes out!* Let us suppose him destitute of a brilliant college acquaint-

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that every one should pretend to advise, for most enter the profession by chance, and all his life after is partial to his own way, though none of the best; and it is a matter of great judgment, which requires a true skill in books, and men's capacities, so that I scarce think it is harder to resolve very difficult cases in law, than it is to direct a young gentleman what course he should take to enable himself so to do."—*Discourse on the Study of the Law*, pp. 2, 3.

ance, (which, however, even if he had, he must drop, as the serpent casts its splendid skin,)—an eager, yet "lonely unobtrusive soul," acquainted with scarce a single member of the legal profession, with barely a competence, nay, his daily bread possibly depending upon his daily exertion—no uncommon case. His eye is as bright with intellect, his heart swells with as pure and strong an ambition, as that of his wealthy or aristocratic rival, who, flushed, perhaps, with academic honours, confident amid "troops of friends," is borne to the scene of contest with the cheering assurances of rapid distinction. The former, poor soul! has no kind friend to take him by the hand,—no one cries, "God bless him,"—except, perhaps, a little circle of trembling relatives, whose hearts are very heavy for him. What is he to do? Who is to chalk out his course? He bethinks him of buying some book on the study of the law, and goes into a bookseller's shop, according to whose caprice or interest he purchases, either a meagre epitome of the forms necessary upon entering an Inn of Court, or a work that perplexes him with legal discussion, or balks him with remarks most "stale, flat, and unprofitable," upon 'memory,' 'application,' 'ambition,' and 'the desire of excellence.' He then hastens to the Treasurer's Office, in one of the Inns of Court, where he hears of 'certificates of his respectability,' bonds, sureties, deposits, examinations; an outlay of 150*l.* before one step further can be

taken; then a hundred guineas a year for two or three years to a special pleader, or barrister; various expensive books to be purchased, and more expensive chambers or lodgings engaged. Perhaps he is equal to all this; and having duly obtained certificates, undergone examinations, and given and procured securities for his future good conduct, is, at length, enrolled a "Member of the Honourable Society of ——," and left to shift for himself, with no definite notions of the course he is to pursue, further than to engage himself for a twelvemonth with some teacher of the law. There, even with the best, he must expect to be in a mist for months; and when it is cleared away, he may yet see but a dreary prospect before him!

Surely, now, to such a person, a publication like the present, containing, it is hoped, a plain and intelligible chart of his course for some years, pointing out where lie the shoals and sunk rocks, and where the safe waters; showing him, in short, how to approach the legal profession—what to do, how to do it, and what to leave undone; combining all useful practical information, drawn from approved sources, with the results of individual experience, would not have been unacceptable.

'But,' it may be answered, 'there are the London Law LECTURERS: why not seek for such information from them?' Without entering at large into the merits and demerits of the lecturing system, which

will be briefly considered hereafter, it may be here observed, that there is one respect in which all the law-lecturers, of whom the author has had the means of judging, have seemed to him at fault. They do not attempt to enforce systematic mental discipline, to facilitate the acquisition of legal habits of thought and application. *Law* they give the student in abundance; few leading topics are omitted to be, perhaps, carefully parcelled out before him; but there they stop. No persevering attempt is made to teach him how to make this law *thoroughly his own;* the lecturer is, in short, little else than a speaking treatise, or digest; and unless the student takes very copious and accurate notes, all he has heard will share the fate of the Scotchman's "thorough-paced doctrine," which went "in at ae lug, and out at the ither." And suppose him to have succeeded in preserving the greater portion of every lecture, after infinite pains, and much time devoted to the task; what is his advantage over him who has access, as all may, to the numerous and excellent text-books, to which the lecturer himself is indebted for his compilations *? In a word, these

* "It is not," says Dr. Coplestone, speaking of the system of lecturing, "it cannot be the most effectual means by which instruction is to be conveyed to the minds of the majority of students."—*Reply to the Calumnies of the Edinburgh Review against Oxford*, p. 149.

Hear also Dr. Johnson:—

"People have now-a-days got a strange opinion, that everything

lecturers present the student with, no doubt, a well-tempered weapon, but make no attempt to teach him *how it must be used!*—This is at once the sum of the author's objections to law lectures, and an account of the main object which he has proposed to himself in the present work. The topics here discussed, he cannot help thinking more suitable for the silent meditation of the closet, than the noise and excite-

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should be taught by LECTURES. Now I cannot see that lectures can do so much good as reading the books from which the lectures are taken. I know nothing that can be best taught by lectures, except where *experiments* are to be shown. You may teach Chemistry by lectures; you might teach making of shoes by lectures." —*Boswell's Life of Johnson*, vol. ii. p. 6; and see *ib.* vol. iv. p. 98.

"Thus," says Dr. Arnot, "no treatise of natural philosophy can save, to a person desiring full information on the subject, the necessity of attendance on experimental lectures or demonstrations. Things that are seen, and felt, and heard,—that is, which operate on the external sense, leave on the memory much stronger, and more correct impressions, than where the conceptions are produced merely by verbal description, however vivid."—*El. Ph.*, pref. xlviii.

"The multiplication of books, the facility of procuring them, and the custom of reading them," says Dr. Parr, "may be considered as reasons for the diminished usefulness of lectures."—"*The tutor can interrogate where perhaps the lecturer would only dictate; and therefore, in his intercourse with learners, he has more opportunities for ascertaining their proficiency, correcting their misapprehensions, and relieving their embarrassments.*"—*Works*, vol. ii. p. 568.

It has also been suggested to the author, by an acute and learned friend, that there is this further objection to the system of lectures, viz. it is one necessarily assuming what cannot be,—that each pupil has the same abilities, and the same acquirements. Now in private teaching, the tutor can adapt his instruction to the peculiar wants of his pupils. The attention, too, is constantly kept awake by the consciousness that *each* is *personally* addressed.

ment of a crowded lecture-room. There are, indeed, so many momentous matters to be weighed by the student,—so much searching self-examination required, as to mental and physical fitness for the legal profession, and the particular department selected, before he can come to a just and satisfactory conclusion, as loudly call upon him to devote to them the most sacred moments of his leisure and privacy.

With this brief intimation of the general scope and design of the present publication, the author hopes it will be evident that it has some pretensions to permanency; that its usefulness is in no degree impaired by the extensive changes which have already taken place, and still seem meditated in the practical administration of the law: that so long as there are any fixed principles in legal science, and any mode of acting upon them in practice,—so long as accurate knowledge, and ready clear-headedness in using it, are essential to a successful prosecution of the profession, must that work which keeps such objects steadily in view, be useful.—A very few words will suffice to point out the present state of the Common Law, and the position and prospects both of its students and practitioners.

Till very recently, the system of pleading and practice supplied the student, during the greater period of his pupilage, with little else than the most odious, vulgar, and unprofitable drudgery. It presented to his despairing eyes a mass of vile verbiage,

—a tortuous complexity of detail, which defied the efforts of any but the most creeping ingenuity and industry. There was everything to discourage and disgust a liberal and enlightened mind, however well inured to labour by the invigorating discipline of logic and mathematics. The deep and clear waters —so to speak—of legal principles, there always were, and will be, for *they* are immutable and eternal; but you had to buffet your way to them through "many a mile of foaming filth," that harassed, exhausted, and choked the unhappy swimmer, long before he even got sight of the offing. Few beside those who had had the equivocal advantage of being early familiarised with such gibberish, as "special general imparlance,"—"special testatum capias,"—"special original,"—"testatum pone."—"protestando,"—"colour *,"—"*de bene esse*," &c. &c. &c. could obtain a glimmering of daily practice, without a waste of time, and depreciation of the mental faculties, that was really shocking. Let the thousands who, under the *ancien regime*, almost at once adopted and abandoned legal studies, attest the truth of this remark †. There

* The father of Sir Matthew Hale—worthy soul—actually "gave over the practice of the law, because he could not understand the reason of *giving colour* in pleading, which, as he thought, was to tell a lie!"—*Burnet's Life of Hale*, p. 2.

† "Emisit me mater Londinum," says the 'famous antiquary,' Spelman, "juris nostri capessendi gratia; cujus cum vestibulum salutassem, reperissemque *linguam peregrinam, dialecticum barbaram,*

was, in short, every thing to discourage a gentleman from entering, to obstruct him in prosecuting, the legal profession. Now, however, *nous avons changé tout cela.* There has been a real reform—a practical, searching, comprehensive reform of the Common Law; a shaking down of innumerable dead leaves and rotten branches; a cutting away of all the shoots of prurient vegetation, which served but to disfigure the tree, and to conceal and injure its fruit. Now you may see, in the Common Law, a tree noble in its height and figure, sinewy in its branches, green in its garment, and goodly in its fruit. All who will may climb into its boughs, and 'pluck the truth-fraught apple.' Here, however, it may be permitted us to express an humble but earnest hope, that the gardener will know *when to lay aside* his knife; that he may not be prevailed upon by eager and ignorant by-standers, to

> "Prune and prune, until the quick be cut,
> And the fair fruitage fall beneath the feet,
> Of swinish innovation."

How, then, do we stand? Practically thus.

A single statute, of twenty-three short sections only —the "UNIFORMITY OF PROCESS ACT" (2 Will. 4, c. 39,) with the significant recital that 'the process

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methodum inconcinnam, molem non ingentem solum, sed perpetuis humeris sustinendum, excidit mihi (fateor) animus!"—And see *Burke's Abridgment of English History*, book iii. ch. ix.

for the commencement of personal actions, in his Majesty's superior Courts of Law at Westminster, is, by reason of its great variety and multiplicity, very inconvenient,' has swept away all that was senseless, complicated, and bewildering in practice, and substituted a plain and uniform method in its stead. Adieu, now, for ever, to the barbarous jargon of 'Originals,' 'special originals,' 'testatum pones,' 'bills,' 'latitats' 'quo minus,' 'attachments of privilege,' &c. &c. &c.; thorns, briers, and rubbish, encumbering and choking up the porch and avenues to the legal edifice!—The writs of Summons, Capias, and Detainer, are now the only * modes of commencing actions in the courts of common law; and the rules of practice relating to them are proportionally abbreviated and simplified. Those who shall from henceforth enter the profession, will not be able to appreciate the prodigious changes of which we have been speaking, save when their eyes are directed to hundreds of cancelled pages in the books of practice—and those pages, too, by far the most difficult and

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* The anomalous action of ejectment, and two '*real* actions' only excepted; although it is by no means clear that the former should not be considered as only the species of which the personal action of '*Trespass*' is the genus,—just as Assumpsit and Trover are species of the genus of 'trespass on the case.'—*Dower* and *Quare Impedit* (appropriated respectively to the recovery of Dower, and the presentation to a benefice) are of comparatively rare use in practice.

forbidding of any *. The only wonder is that all this was not done a century ago. How truly preposterous the former system of rigidly appropriating to the respective courts of King's Bench, Common Pleas, and Exchequer, distinct and very different writs, each entailing all manner of tiresome details, swelling the ordinary books of practice to an unsightly bulk, endlessly perplexing and misleading the most skilful practitioners; how absurd the fictions on which they depended, how monstrous the abuses and oppressions they engendered!—Then, again, the mysterious obscurity in which the Terms have been for ages invested, has been recently dissipated, with all its prolix and perplexing incidents. You need now no longer puzzle your head for a whole day about the mode of *dating* a declaration, formerly a difficult and often dangerous task. Writs are no longer returned on days whose denomination is borrowed from the Popish ritual—"on —— next, after fifteen days of St. Hilary,"—on "—— after the morrow of the Purification,"—"—— the morrow of All Souls,"—"of Saint Martin," but at fixed and definite periods, wholly irrespective of Term or Vacation †; the dis-

* And if Sir J. Campbell should succeed in abolishing imprisonment for debt, another great and most intricate head of practice will be utterly swept away with it—to wit, 120 pages of the minute letter-press of Archbold; and the writ of Summons be 'alone in its glory' as the sole process of the Courts!

† "Writs for the commencement of personal actions, viz. *writs*

tinctions between which are now, for most practical purposes, done away with, and business, consequently, distributed evenly through the year *. Thus far the altered periods and mode of *commencing* legal proceedings. The 'amending hand,' however, has grasped, as it were, the very heart-strings of the law: the statute for the "Limitation of Actions," &c. (3 & 4 Will. 4. c. 27, § 36), has swept away—shade of Fitzherbert!—indiscriminately between fifty and sixty species of actions †; a most fertile source of difficulty

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of summons, capias, and detainer, do not specifically mention any return day whatever; the return being regulated by the service and execution of the writ."—*Arch. Pr.* p. 57. (*Chitt.*)

* The interval between the 10th of August and the 24th of October is now almost entirely struck out of the legal year. 2 Will. 4, c. 39, § 11.

† The catalogue of these ancient cobwebs is worth extracting:

"No writ of right patent, writ of right *quia dominus remisit curiam*, writ of right *in capite*, writ of right in *London*, writ of right close, writ of right *de rationabili parte*, writ of right of advowson; writ of right upon disclaimer, writ *de rationabilibus divisis*, writ of right of ward, writ *de consuetudinibus et servitiis*, writ of *cessavit*, writ of escheat, writ of *quo jure*, writ of *secta ad molendinum*, writ *de essendo quietum de theolonio*, writ of *ne injuste vexes*, writ of *mesne*, writ of *quod permittat*, writ of *formedon* in *descender*, in *remainder*, or in *reverter*; writ of assize of *novel disseisin*, nuisance, *darrein presentment*, *juris utrum*, or *mort d'ancestor*; writ of entry *sur disseisin* in the *quibus*, in the *per*, in the *per* and *cui*, or in the *post*, writ of entry *sur* intrusion, writ of entry *sur* alienation, *dum fuit non compos mentis*, *dum fuit infra ætatem*, *dum fuit in prisonâ*, *ad communem legem*, *in casu proviso*, *in consimili casu*, *cui in vitâ*, *sur cui in vitâ*, *cui ante divortium*, or *sur cui ante divortium*, writ of entry *sur* abatement, writ of entry *quare ejecit infra terminum*, or *ad terminum qui præteriit*, or *causâ matrimonii prælocuti*, writ of

and confusion to the reader of our ancient laws. There are now only six, or at the most, nine, including the three real and mixed forms of action known in the common law,—appropriated to the assertion of every imaginable right, the remedy of every conceivable wrong! The last, and perhaps the wisest, of these great and most wholesome reforms, remains yet to be mentioned—that effected in the system of PLEADING by the new rules (H. T. 4 W. 4), which have now received the sanction of Parliament; and by which the remaining forms of action above-mentioned have been thoroughly righted, and their details prodigiously abbreviated and simplified *.

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aiel, besaiel, tresaiel, cosinage, or *nuper obiit*, writ of *waste*, writ of *partition*, writ of *disceit*, writ of *quod ei deforceat*, writ of *covenant* real, writ of *warrantia chartæ*, writ of *curia claudenda*, or writ *per quæ servitia*, and no other action, real or mixed, (except a writ of right of *dower*, or writ of dower *unde nihil habet*, or a *quare impedit*, or an *ejectment*,) and no plaint in the nature of any such writ or action except a plaint for free bench, or dower, shall be brought after the 31st day of December, 1834."

* Thus *restoring* them to their pristine excellence; for, in the reign of our English Justinian, Edward I., "the pleadings were short, nervous, and perspicuous; not intricate, verbose, and formal." —4 *Blackst. Comment.*, 427.

Mr. Chitty, sen. correctly states the following to be the five principal objects of the "New Rules."

'*First*, to compel each party, in an action, more explicitly to state his cause of action, and ground of defence, so that his opponent may be better informed what is the exact point intented to be established. *Secondly*, to diminish the number of counts, and the length and expense of pleading, and long records. *Thirdly*, to prevent the indiscriminate use of the plea of general issue, which

The huge volume of the "Record" is thus shrunk into a sheet, and pleadings will no longer mystify the student, perplex the practitioner, distract the court, oppress the client, or disgust the public.

Such are the leading features of change which the machinery of the law has undergone within the last two or three years; but it would be here out of place to mention the miscellaneous emendations which have been, from time to time, during the same period, effected, sometimes by statutes, but chiefly by rules of court. It is, however, impossible to pass from this subject without specifying the admirable acts of —1 W. 4, c. 7, for 'the more SPEEDY judgment and execution in actions'; 1 & 2 W. 4, c. 58—'for enabling courts of law to give relief against *adverse claims*, made upon persons having *no interest* in the subject of such claims'; and, lastly, the noble act of 3 & 4 W. 4, c. 42—a model of legislation—"*For the further Amendment of the Law, and the better*

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unjustly compels a plaintiff to prove *several facts*, and to incur the *risk* of failure on the trial, upon points wholly foreign to the justice of the case; and not unfrequently *surprises* the plaintiff on the trial, by the setting up of a ground of defence not before communicated, or even hinted. *Fourthly*, to narrow the issue, and limit the number of the points to be tried; and thereby not only to diminish expense but also the risk of failure in proof of comparatively immaterial allegations. *Lastly*, the great reduction of the present expense of a trial, incident to the subpœnaing and conveyance of witnesses to and from the place of trial, and maintaining them there."—*Conc. View of Pl.*, p. 8.

advancement of Justice *." All these statutes and rules—fruits of five years' elaborate, extensive, and enlightened investigation by the law commissioners—have been either framed, or anxiously superintended, by judges of as profound practical learning and sagacity as England ever saw—and have already exercised a most sensible and benignant influence upon every department of litigation, with reference equally to suitors and practitioners: saving to the one, the destructive expense and procrastination so long deplored by all; and, to the other, simplifying and abridging the drudgery of their labours,—rendering the practice of their profession, in a word, more systematic and scientific than ever.

But what is obviously the direct practical effect of all this? At once, that the study and practice of the common law, thus stripped of preliminary and extrinsic difficulty, are become more scientific; and that all pretence for ignorance, or incompetency, is taken away. Error will now be more quickly detected—more dangerous in its consequences to the young practitioner, than ever. As numerous obstacles have been removed, and many facilities afforded, more will be expected from him: henceforth he will not be detained and harassed at the threshold, as heretofore, but may go on at once to the interior of the building.

* It was the first section of this statute that empowered the judges to frame the important pleading-rules before adverted to.

A single page of draft paper will suffice to certify his skill, or expose his inability. He can no longer shelter himself beneath the slovenly and unscientific practice of shaping his case in a dozen different ways, because he is unable either from want of inclination, time, or experience, to pitch at once upon the proper one, and stand or fall by it*. Vigilant attention,

* Mr. Chitty, sen. has some excellent observations on the origin of numerous counts, which are well worth transcribing. He is by far the most distinguished pleader, both as author and practitioner, now living, and perfectly competent to speak with authority. "But," says he, "as population and commerce, and their almost inseparable incident, litigation, increased, and new intricacies and peculiarities in the facts, as well as law, arose—lawyers found themselves more pressed for time, and had less opportunity for due inquiries into, and consideration of the facts and law affecting them, and less time to prepare and settle the pleadings: and hence the present practice commenced of framing the special count, and having several copies made, and then introducing small variations, so as to meet the probable various shades of difference which usually occurred in similar transactions,—so endeavouring to state what it was conceived would, under one form of count or the other, meet the—as yet—unascertained evidence, and thereby avoid the trouble of particularly inquiring into the facts, and also the risk of variance upon the trial, Thus, if a pleader were requested to draw 'a declaration' for a breach of promise of marriage, he would, *without stopping to inquire into all the circumstances of the case*, introduce four or five counts, as, *first*—on a supposed promise to marry on a particular day, leaving the attorney to insert the actual day, or some day about it; *secondly*, a promise to marry on request; *thirdly*, within a reasonable time; *fourthly*, to marry generally, showing as a breach, a request, and non-performance; and *fifthly*, a count on a general promise to marry, and stating as a breach, the dispensation of any request by the defendant's marriage with some other person."—*Concise View of Pl.*, 18—20. This was the ordinary—the every

close and accurate thought, must now be invariably exercised: facts must be well weighed and sifted; and their real bearings ascertained and adjusted to legal forms, with prompt precision. A client will henceforth be able to see, in the twinkling of an eye, whether his pleader or barrister is incompetent—a mere pretender; and he must act accordingly.

The rapid succession of change which the law has undergone during the last year or two, has confounded many young practitioners, and disheartened students from entering our profession. Things seem to have arrived at a dead stand-still. It is supposed that the attempt to acquire legal learning, at present, must be the idiot effort of building upon the shifting sand—never any thing more mistaken. It is through utter misapprehension of the scope and effect of all the late changes.

"I regret to find," says the experienced pleader already quoted, "that students, whether for the Bar or as special pleaders, or as attornies, have of late nearly suspended all study, upon the supposition, that whilst innovations in the law are so frequent, it would be useless one day to learn what must, perhaps, the next day be forgotten and effaced by a contrary regulation. Let me remind

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day practice, till the recent alterations occurred: and could any thing be at once more absurd and scandalous than thus making the pleader's indolence and slovenliness the measure of his remuneration?

them that the REASONS and PRINCIPLES of law can NEVER change; and that now the whole improved system of the law, whether as it regards practice or pleading, may be considered as nearly, if not entirely fixed, as it will be practised for many years; and that all students, therefore, should now return to their studies with redoubled energy *." The practical good sense of these observations is worthy of the student's most serious attention. The great principles of law are, indeed, sublimely independent of the petty changes by which errors of detail are occasionally rectified. They are unaltered, because they are unalterable—pervading equally all systems of jurisprudence, in all ages and countries—being based upon truth and justice—upon the very nature and reason of things, and especially underlaying, so to speak, every department of our own immortal laws. Not to speak of our ancient and noble system of real property, accommodating itself by slow, stern steps, to the necessities of modern times, it is impossible to gaze but with mingled astonishment and admiration at the comparatively recent structure of COMMERCIAL LAW, which—

'a fabric huge
Rose like an exhalation'

at the bidding of those great legal architects who,

* Chitt. Conc. View, Pref. v.

from Lord Mansfield * down to Lord Eldon, have "magnified and made honourable" the administration of our laws: applying the purest, most abstract, and profound principles of legal science, with unwavering wisdom, to the sudden, novel, vast, perplexing exigencies of trade and commerce,—building up, by a long series of golden decisions, a system which must ever be contemplated as one of the greatest triumphs of practical jurisprudence.

Complicated and ever-varying as are the facts which give rise to mercantile questions, the law regulating them is, in general, settled and precise. There are but few important points now left open to discussion; but there will, of course, always be occasion, not only for an exact knowledge of principles, but of the method of applying them in practice. It is quite impossible to convey to the non-professional reader any adequate idea of the difficulties arising out of apparently very simple commercial transactions, and of the consequent readiness and accuracy required in dealing with them. This important and arduous branch of the profession the student will find one of the earliest to which his attention will be called in practice; and the great tests of his knowledge, not only in this, but every department of the

* "Lord Mansfield may be truly said to be the founder of the Commercial Law of this country."—*Per Buller J.*, Lickbarrow *v.* Mason, 2 T. R. 73.

law, are to be found in his acquaintance with the rules of PLEADING and EVIDENCE. Almost all the Common Law is divisible into these two. By the one you *shape*, by the other you *support* a case; and PRACTICE is but the settled mode of doing this. These three are inseparably connected together; they mutually act and re-act upon one another: and no one is competent to the most ordinary business, who is not well grounded in each. An ignorance of, a superficial acquaintance only with, any of them, has often led to the most serious and mortifying dilemmas in open court, as it is almost invariably ruinous to the reputation of the chamber practitioner; and as the law of pleading and evidence, where changed, is changed only so as to render its acquisition easier, and use simpler than before, it is obvious, that ignorance and incompetence are left more than ever without excuse, or means of concealment, as industry and skill are more likely than ever to conduct their possessor to early distinction.

Thus, then, with every warning, every encouragement before him, our student has a start in his career over many of his seniors, who are burthened with knowledge now grown obsolete and useless—only misleading its possessors, who are suddenly called upon, both to forget the old and acquire the new system. The tyro may at once address himself to the real study of the law; and, if he chooses, make

rapid advances towards the pretensions of a practical lawyer.

A practical lawyer! A character contemned by some and despaired of by others: the former being those "genteel vagabonds*" who, swallowed up in idleness, conceit, and dissipation, nevertheless affect to be law-students!—the latter, those who, diligent and persevering, yet destitute of judicious tuition, egregiously over-estimate the difficulties to be overcome. Need a word be uttered to assert the usefulness and dignity of legal studies†? Against whom are they to be vindicated? What manner of men are they who presume to speak contemptuously of them? Who but those poor foxes that leer at grapes far out of their own reach—men frequently destitute both of talent and powers of application! We are not, however, wasting a word on the boobies that abuse what they have not first *attempted* to understand;

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* Roger North, Disc. p. 4.

† "Melancholy and untrue is the picture which they draw of the legal study, who represent its prominent features to be those of subtilty and impudence, and of a labour dry and barren; rather would I compare it to a mountain, steep and toilsome on its first approaches, but easy and delightful in its superior ascent, and whose top is crowned with a rich and lasting verdure."—*Raithby, Study and Practice of the Law* (p. 6, 2d ed.) He might have added, in the fine lines of Goldsmith—

"Though clouds and darkness round its base be spread,
Eternal sunshine settles on its head."

but thinking, rather, of those who, lively and clever enough for lighter matters, do not carry weight of metal sufficient to make any serious impression on the study of the law. Healthy and bracing as is its pursuit, the intellect that engages in it must be one manly and vigorous *. A frivolous and volatile mind

* Listen to Sir William Jones describing his first impressions of legal studies:—"I have just begun to contemplate the stately edifice of the laws of England—'the gathered wisdom of a thousand years'—if you will allow me to parody a line of Pope. I do not see why the study of the law is called dry and unpleasant; and I very much suspect that it seems so to those only who would think *any* study unpleasant, which required a great application of the mind, and exertion of the memory."

"Our profession," said one of its brightest ornaments—Mr. Dunning, afterwards Lord Ashburton—"is generally ridiculed as being dry and uninteresting; but a mind anxious for the discovery of truth and information, will be amply gratified for the toil in investigating the origin and progress of a jurisprudence which has the good of the people for its basis, and the accumulated wisdom and experience of ages for its improvement."

"The science of jurisprudence," says Sir James Mackintosh—"is certainly the most honourable occupation of the understanding, because it is the most immediately subservient to the general safety and comfort."—And he goes on to quote, from Edmund Burke—"The science of jurisprudence—the pride of the human intellect, which, with all its defects, redundancies, and errors, is the collected reason of ages, combining the principles of original justice, with the infinite variety of human concerns."

"A science," says Blackstone—"which employs, in its theory, the noblest faculties of the soul, and exerts, in its practice, the cardinal virtues of the heart; a science which is universal in its use and extent, accommodated to each individual, yet comprehending the whole community."

The magnificent eulogium of Hooker (Eccl. Pol. Book I., ad finem) is too well known to require quotation.

is knocked up in a moment; and then, probably, creeps off to abuse the law as a "low and debasing pursuit—cramping—paralysing to all the powers of the mind!" *Eheu!* As well might a child, with its little wooden axe, attempt to clear a North-American forest, in competition with the sturdy settler, felling away from day to day, from month to month, with stout arm and keen axe—as a mind, weak in constitution, or frail of purpose, undertake to wrestle with the stubborn difficulties of law. It is, indeed, a science well worthy of Lord Bacon's eulogium on mathematics:—

"Pure mathematics do remedy and cure many defects in the wit and faculties intellectual; for if the wit be dull, they sharpen it; if too wandering they fix it; if too inherent in the sense, they abstract it."

A mind habituated to legal investigation, is, necessarily, an eminently acute and logical one: for its faculties are constantly exercised and sharpened by the severest exercise. It has, indeed, been said, that the tendency of legal studies is to warp, contract, and impoverish the mind: never was there advanced a charge so thoughtless and unwarrantable. "Mr. Grenville," said Burke, "was bred to the law, which is, in my opinion, one of the first and noblest of human sciences; a science which does more to quicken and invigorate the understanding than all the other kinds of learning put together; but it is not apt, except in those who are happily born, to open and liberalise the mind, *exactly in the same proportion.*" It is this latter

cautious and measured expression that has been hastily made the foundation of many vague but violent accusations against our profession. If, to be sure, legal pursuits ALONE engross a man's attention throughout life, he will become, of course,—however great,—a *mere* lawyer: and what say you of a mere metaphysician?—a mere mathematician?—a mere linguist?—a mere physician?—a mere politician?—a mere parson?—in short, a *mere* anything?—A mere lawyer! But if, also, a good—a great lawyer, is he not, at worst, as practically useful to his fellow-creatures, as the follower of any calling known among men? Does he not patiently and resolutely devote his best energies to their assistance in the most momentous, perplexing, and harassing concerns of life?

Trust us, however, if this "mere" lawyer moves all his days like a horse in a mill, his round is a pretty extensive one! "For my part," says Mr. Raithby, "I protest I do not know any pursuit in life that requires such various powers: taste, imagination, eloquence." Consider, for a moment, what a lawyer must know, and what he has to do, if supposed to be in but moderate practice. He must be, more or less, acquainted with the leading details of the mechanical arts and sciences*, of trade, commerce, and manufac-

* "The sparks of all sciences in the world," says Sir Henry Finch, "are taken up in the ashes of the law."—Book I. p. 6.

tures; of the sister professions; even of the amusements and accomplishments of society—for in all of these, questions are incessantly arising which require the decision of a court of justice, for which purpose their most secret concerns must be laid bare before the eyes of counsel, who is expected to be quite *au fait* at them!—A thorough knowledge of constitutional history, also, and the many important topics subsidiary to it, can hardly be dispensed with. If he practises at the Bar, he superadds to all these, a keen insight into character, the power of extracting truth, detecting falsehood, and unravelling the most intricate tissues of sophistry. His mind is in a high state of health and discipline; he is capable of profound abstraction, of long and patient application, and, in short, has such perfect controul over his well-tempered faculties, that he can concentrate them upon any subject he chooses, passing rapidly from one to another of the most opposite character. Take a sample of his every-day employment. His "opinion" is sought upon a case, which discloses numerous commercial, or other, relations, deranged by the sudden death, marriage, bankruptcy, or separation of one of the parties concerned. Mark the apparently inextricable confusion into which extensive interests, rights, and liabilities are precipitated—wheels within wheels—all parties at fault—all stating their case in different ways—cross accounts of many years to be mastered—probably large sums of money at stake. Is it nothing, now,

to answer such a case as this, with rapidity and skill—to adjust these conflicting claims with a precision that often satisfies the most clamorous contendants, preventing, perhaps, a long and expensive course of litigation? See the comprehensive grasp of thought—the accurate analysis—the rapid generalisation—the perfect mastery over details—the almost *simultaneous* contemplation and balancing of numerous particulars—the extensive research—the decision—exhibited on such occasions by the well-trained legal intellect! This is no highly-wrought picture. All the qualities and accomplishments above mentioned will be found displayed, more or less, in the daily business of a well-employed chamber or court practitioner. What, again, is to be said of the large emoluments he derives from his honourable and responsible toils—the station he occupies, the influence he exerts, in society—the rank he attains both in the senate, and on the Bench *?

Surely, to enter and prosecute successfully such a profession as this, is worthy of great and early sacri-

* Lord Coke, in the preface to his second Report, gives an alphabetical list of "near two hundred great and noble families which had even in his time risen by the law," and amongst them our chancellors. Old Fortescue (the chancellor of Henry VI.) talketh loftily in the same vein:—

"*Mihi quoque non minimi muneris Divini censetur esse pensandum, quòd ex judicum sobole, plures de proceribus et magnatibus regni hucusque prodierunt, quàm de aliquo alio statu hominum regni qui se Prudentiâ et Industriâ propriâ opulentos, inclytos, nobilesque, fecerunt.*"—De Laudibus Leg. Ang. cap. LI.

fices on the part of the aspiring tyro,—should be an object of high and eager ambition. Can, then, too much pains be bestowed upon the facilitating his commencement? C'EST LE PREMIER PAS QUI COUTE, is as true in the legal as in the military campaign! An early disgust, if unfortunately contracted, often throws a hateful air over the whole pursuit. "The spectre that frights so, stands at the entrance; when that is put by, the walk will be easy, and, at last, pleasant; for every day's work makes the next easier; and when the work becomes, as in time it will be, engaging, then the very exercise that was so very laborious, will be rather a pleasure, and be at last an habitually agreeable diversion, and entertainment of time; and if the understanding and consequences are rightly considered, reason itself will get the better of aversion: for what can a man do better than that which he knows is best for him *?"

It will be the author's endeavour, in the ensuing pages, to enter heart and soul into this "labour of love;" to become the humble and vigilant pioneer of the pupil, levelling the road wherever necessary and practicable, and throwing up, from time to time, such works as shall not fail to beat down all opposition. Let it, however, be distinctly understood, that this work pre-supposes itself in the hands of one who is *downright in earnest* in embracing our

* Roger North.—*Disc.* p. 6.

profession,—who will not coquet with it, or skim, swallow-like, over its surface only. He who is inclined to act *thus*, will find this work a very sad and tiresome affair; he had better exchange it for some of the light literature of the day. Let him rest assured that there is no royal road to the knowledge of law, any more than to that of the mathematics. No indolent luxurious stranger can saunter into the legal garden, and pluck the fruit that has been reared by the assiduity and skill of another,—for "whoso KEEPETH the fig-tree shall eat the fruit thereof*." He cannot purchase it at any price; but must himself prepare the soil, plant the tree, and tend it to maturity. Verily, "by the sweat of his brow shall he earn" his legal livelihood. "*Nil sine magno* LEX *labore dedit mortalibus!*"

The author cannot close this first section of his labours without adding two general observations, which it may be useful for the practical reader to carry along with him. They relate to the *peculiar* difficulties besetting the commencement of the legal profession; and the principle of that system of study recommended in the ensuing pages.

It is a trite remark, that the entrance upon *any* study is generally very irksome and discouraging. This is eminently the case with legal studies; and its preliminary difficulties have two special sources:

* Prov. xxvii. 18.

first, in the nature and number of its TECHNICAL TERMS*. The poor tyro can stir scarce a step, without encountering expressions either altogether new, or used in a sense totally different from the one to which he has been accustomed. True, he may have at hand both a law dictionary and an able tutor; but he is wearied by the incessant necessity for appealing to them, and distracted by the minuteness and multiplicity of the information they afford. He is apt to get irritated and desponding; with "the vast, the unbounded prospect," lying before him, he feels that he can make no sensible progress. He finds it impossible to recollect distinctly a tithe of what he is told; and yet is aware that this distinctness is a capital requisite—a *sine quâ non*, in legal matters; that a single half-understood, or mis-understood expression, will carry after it a film of indistinctness which will obscure every subject in which that term is used. "The task of unlearning the import of words the young student is already acquainted with," observes Locke, "and affixing to those familiar terms new and precise ideas, is one of no small difficulty, and requires not only the strictest attention, but constant care and frequent repetition†."

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* "—its thousand TECHNICAL intricacies"—*Raithby*, p. 50-1.

† If the young student is not already familiar with it, he is recommended to peruse with attention Mr. Locke's "Remarks on the Abuse and Imperfections of Words, with their Remedies."—Book III. c. 10, 11.

This is specially true of legal terms. Mr. Ritso has forcibly observed, "that the reason we have so much seeming obscurity to contend with, at least upon our commencement of this study, is, not the want of evidence in things, but the defect of preparation in ourselves, and more particularly our not being *conversant* in the meaning of the terms of art, which experience has shown to be necessary in this branch of learning, for the sake of certainty, brevity, and convenient precision."—"Having succeeded in distinctly and fairly understanding *the terms of art*, we are enabled to perceive, in a short time, and with very little labour, that the various doctrines and rules of pleading are of a nature to be demonstrated upon the principles upon which they were originally suggested, of plain reason, and common intendment*." It is of the highest importance to call the young lawyer's attention, at the very outset, to this, his greatest enemy—the grand stumbling-stone by which many an eager youth has been tripped up at starting, and gone halting through the remainder of his journey. The necessary suggestions on this subject will be found detailed in a subsequent part of the work.

The other source of preliminary difficulty is to be found in the necessity for *rapid transition* from one topic to another, by which professional practice is characterised; rendering it nearly impossible to pur-

* "Introduction," &c. p. 184.

sue, with effect, a connected and systematic course of reading. The varied nature and urgency of common law business requires the student to be perpetually plunging into new subjects, with the leading details of which he has not time to familiarise himself. This is apt to induce a hasty scrambling habit, against which he cannot be too vigilantly on his guard. There is only one way of meeting this difficulty; placing himself at once under the superintendence of a competent teacher: one whose tact and experience will keep business and systematic reading ancillary to each other; who will chalk out a proper line of study, and illustrate it by actual practice. This will be found the only safe, quick, practical introduction to the profession. To stimulate the flagging energies, and temper the undue ardour of the student, is indeed a difficult and responsible task, fit to be undertaken by those only who have at once the love, the gift, and the opportunities of teaching: and of such there is no inconsiderable number thus actively and successfully engaged. Let it not, then, be imagined that this publication is intended to supersede the necessity of studying, and that, *totis viribus*, under a pleader or barrister. Nothing *can* supersede it; nothing compensate for the want of it, as is generally the mortifying discovery, when it is too late to remedy the evil. The present work aspires only to be the student's pocket companion—his vade-mecum, during the momentous period of his pupilage; suggesting

to him a few things he might possibly otherwise have not known, and recalling some that he may have forgotten.

The only other topic remaining, is an intimation of the mode suggested by the author of teaching the law. While most who have undertaken to advise on this subject have chosen the SYNTHETIC, the author insists strenuously on the ANALYTIC: and his own reasons for doing so, though fully drawn up, it has become unnecessary to use, since it has occurred to him rather to quote the sentiments of a very distinguished individual—a great authority in such matters—Dr. Whateley, the Archbishop of Dublin:

"There is, however," he observes, in the Introduction to his treatise on Logic, "a difficulty which exists more or less in all abstract pursuits; though it is, perhaps, more felt in this (*i. e.* logic, for which we may well substitute *law*,) and often occasions it to be rejected by beginners, as dry and tedious; *viz.* the difficulty of perceiving to what ultimate end—to what practical or interesting application, the abstract principles lead, which are first laid before the student; so that he will often have to work his way patiently through the most laborious part of the system, before he can obtain any clear idea of the drift and intention of it.

"This complaint has often been made by chemical students, who are wearied with descriptions of oxygen, hydrogen, and other invisible elements, before they

have any knowledge of such bodies as commonly present themselves to the senses. And, accordingly, some teachers of chemistry obviate, in a great degree, this objection, by adopting the *analytical* instead of the *synthetical* mode of procedure, when they are first introducing the subject to beginners; *i. e.* instead of synthetically enumerating the elementary substances, proceeding next to the simplest combination of these—and concluding with those more complex substances which are of the most common occurrence, they begin by *analyzing* these last, and resolving them step by step into their primitive elements; thus at once presenting the subject in an interesting point of view, and clearly setting forth the object of it. The synthetical form of teaching is indeed sufficiently interesting, *to one who has made considerable progress in any study;* and being more concise, regular, and systematic, is the form in which our knowledge naturally arranges itself in the mind, and is retained by the memory: but the analytical is the more interesting, easy, and natural introduction; as being the form in which the first invention or discovery of any kind of system must originally have taken place *."

Hear also the august author of the Advancement of Learning:—

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* Elements of Logic, pp. 15—17; 3rd edit.

"Knowledge that is delivered as a thread to be spun on, ought to be delivered and intimated, if it were possible, *in the same method wherein it was invented;* and so is it possible of knowledge induced. But in this same anticipated and prevented knowledge, no man knoweth how he came to the knowledge which he hath obtained. But, nevertheless, 'secundum majus et minus,' a man may revisit and descend unto the foundations of his knowledge and consent, and so transplant it into another, as it grew in his own mind. For it is in knowledge as it is in plants; if you mean to use the plant, it is no matter for the roots; but if you mean to remove it to grow, then it is more assured to rest upon roots than slips: so the delivery of knowledge, as it is now used, is as of fair bodies of trees without the roots, good for the carpenter, but not for the planter. But if you will have sciences grow, it is less matter for the shaft or body of the tree, so you look well to the taking up of the roots; of which kind of delivery, the method of the mathematics, in that subject, hath some shadow: but generally I see it neither put in use, nor put in inquisition, and therefore note it for deficient *."

The author begs to refer his reader to the chapters hereafter appropriated to the development of these principles, in their application to the study of the

* Works, vol. ii. p. 202, 3.

law; and, in the mean time, pauses to address the adventurous, but perhaps hesitating, student, in the well-known words of the poet—

" —— quæ timido quoque possent addere mentem :
I bone, quò virtus tua te vocat : i pede fausto
Grandia laturus meritorum præmia * !"

* Hor. Epist. lib. ii. ep. 2.

CHAPTER I.

ON THE CHOICE OF THE LEGAL PROFESSION.

STUDENT, throbbing with the honourable desire of distinction! have you REFLECTED upon the step you are taking, in entering into the brilliant struggles of the Bar? Have you endeavoured to form anything like a distinct idea of the kind of life that awaits you, of the

"long, the rough, the weary road"

that must be traversed, before you can stand beside yon bright figures that, glittering in the distance, have so dazzled your young eye? Have you considered—have you heard, of their mighty labours? Bear with him who thus begs of you to pause for a moment, and ponder your prospects: who seeks, in all faithfulness, not to discourage you—not to damp your glowing energies, but to guide them; to sober and strengthen you, while "plodding your way through the heavy road, to the high places of the profession."

One of the earliest lessons learnt by the young common lawyer, in chambers, is, the great importance of choosing a proper *form of action*, as it is called: for if, through ignorance or inadvertence, he pitch upon the wrong one, however impregnable may be the merits of his case, however great the expense incurred, or the interests that are at stake; however late the stage of litigation that has been reached, and perilous the consequences of delay or interruption, the mischief is irreparable. The whole tissue of the proceedings must be unravelled, and the naked shivering suitor flung back, in all the anxiety and agitation of defeat, to the point from which he set out, to risk beggary, perhaps, by a second effort, or abandon for ever the prosecution of his just rights.—Surely, now, the *choice of a profession* is of incomparably more importance and difficulty than the choice of an action; and of all professions, that of the law, especially in its higher departments, demands the gravest deliberation and inquiry before adopting it. Listen to the advice given by a quaint and sagacious old lawyer, so long ago as 1675. Despite its straight-laced pedantic form, it is worth giving at length *.

* The sight of the Latin quotations with which the following passage is so plentifully seasoned, reminds one of Sir Thomas Browne's remark [almost equally applicable, by the way, to his own writings], "and, indeed, if elegancie still proceedeth, and English pens maintain that stream we have of late observed to flow from many, we shall, within few years [he was writing in 1646] *be fain to learn Latin to understand English*, and a work will prove of equal facility in either." *Pseud. Epidem.—Epist. to the Reader.*

" Many, applying themselves to the study of the Law, without due and serious consideration of the qualifications such a student ought to be furnished withal, have missed of that content and delight which is treasured therein; and instead thereof, have met with trouble and vexation of spirit, judging it to be *studii, non sui morbum*, an inseparable incident to this study: thinking it unattainable and full of difficulty, because they are not qualified for the same; according to that of Seneca, *Multis rebus in est magnitudo, non ex naturâ sûa, sed ex debilitate nostrâ.* And certainly it can be no otherwise, where any undertake a profession *invitâ Minervâ* (as we say), when both their genius and qualifications check them in their choice. For those things delight every man, and those only which are Οἰκεῖα τῇ φύσει, as the philosopher speaks, suitably fitted and accommodated to their genius and frame of nature.

" That our student therefore may find the pleasure thereof answerable to his expectation, this study must be his choice upon mature deliberation; following Seneca's advice herein, *Considerandum est utrum natura tua agendis rebus, an otioso studio contemplationique aptior sit.* And this choice is matter of great difficulty, wherein a man carrieth himself diversely, and wherein he shall find himself hindered by several considerations; which draw him into divers parts, and many times hurt and hinder one another. Some herein are happier than others: who, by the goodness and felicity of nature, have known both speedily and

easily how to choose; and by a certain good hap (or rather Providence), without any great deliberation, are as it were wholly *carried* into that course of life which does best befit them. Others not so fortunate, who failing *ipso limine*, in the very entrance, and wanting the spirit or industry to know themselves, and in a good hour to be re-advised how they might cunningly withdraw their stake in the beginning of the game, are in such sort engaged, that they cannot without shame recal themselves from that which they have as wilfully as inconsiderately undertaken; but endure much trouble in persisting therein, and so are constrained to lead a tedious and wearisome life, full of discontent and repentance; and, which is worst of all, lose both time and labour, and spend their goods and beat their brains, without any either profit or delight; and after a long time spent therein, know not how to give a reason why they are rather for this or any other calling, except because their ancestor professed the same, or that they were unawares carried into it, which made Seneca say, *Pauci sunt qui consilio se suaque disponunt, cæteri eorum more qui fluminibus innatant, non eunt, sed feruntur.* Whereas every science requires a special and particular wit and habilities, according to which every man ought to steer his course. Hippocrates saith, that man's wit holdeth the like proportion with sciences, as the earth doth with seed; which though of herself she be fruitful and fat, yet it behoves to use advisement to what sort of

seed her natural disposition inclineth; for every sort of earth cannot without distinction produce every sort of seed: answerable to that of the poet,

Nec tellus eadem parit omnia, vitibus illa
Convenit, hæc oleis, hic bene farra virent.

This choice being so difficult, that our student may not herein miscarry, *nec quicquam sequi quod assequi nequeat*, he must make a strict enquiry into these two things—*his* nature, and the nature of the *study*. That his nature, (that is, his capacity,) temperature, aud whatsoever he excelleth in, be answerable to the study. *Id quemque decet quod est suum maxime sic faciendum est, ut contra naturam universum nil contendamus, eâ servatâ, propriam sequamur* *."

A mischoice of the legal profession, of which every Term, it is to be feared, affords but too many instances, is attended with peculiarly serious and mortifying circumstances. The keen competition—the too frequently unfriendly rivalry † to be encountered,—the publicity of the struggle,—the obstacles impeding the

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* *Studii Legalis Ratio*. By W. P., pp. 1—5, [1675.]

† A painful remark, this, to make; but Mr. Raithby expresses himself much more pointedly: "The student," he says, [p. 61, 2], "will have to contend with men, who, so far from having any motive to spare him, will, perhaps, consider it as perfectly justifiable *to expose his ignorance*, or *deride his imbecility*." If the present author may venture to express an opinion, he would say, that he thinks this insinuation equally unkind and unjust, at least as far as his own personal observation has gone.

acquisition of the necessary knowledge,—the harassing nature of business, and of responsibility with scarce any intermission or alleviation: these are a few of the considerations which imperiously call for the most searching self-examination, before such a 'warfare is undertaken.' For of what avail is the most perfect intellectual aptitude, if united to physical incompetency, of which one or two very mournful instances have lately fallen under the author's notice! What, on the other hand, are a melodious voice, a commanding appearance, an iron constitution—

——" robur et æs triplex,
Circa pectus,"—

if not conjoined with intellectual adequacy? What, again, are shining talents, if not of the *kind* practically suitable for our profession? And what, finally, signifies the combination of all mental and bodily accomplishments, if not supported, attempered, and ennobled, by those high *moral* qualities—that gravity, energy, steadfastness, and integrity, without which all other qualifications are "mere leather and prunella?"

It is taken for granted, that the student, as he will not adopt the law capriciously, so will neither suffer himself to be *forced* into it by the caprice or tyranny of others *. Should this, however, unhappily be the

* How forcibly speaks old Philips!—
" *Eo inclinandum*, quoth Seneca, *quo te vis ingenii defert.* With-

case, the parent will have placed his child in the situation of a *toad under the harrow*, for life, or perhaps its greater and more valuable portion; and

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out this, whosoever attempts this, or any other study or profession whatsoever, doth but labour in vain: and if the reason hereof be but considered, here is no cause for wonder; for the same philosopher tells us that *coacta ingenia male respondent, et reluctante naturâ, irritus labor est.* This was the reason that Isocrates, laying hands on Ephorus, drew him from the court of judicature, knowing him to be inclined to, and fitter for, another employment. *Isocrates Ephoram infectâ manu subduxit, utiliorem componendis monumentis historiarum ratus.* And for any to attempt this study *invita Minerva*, as they say, is plain folly; nor can it be imagined that any man with a loathing mind and forced industry, can compass such a laborious study, not being able to take any delight therein. Whatsoever such a man doth, is but to plunge himself the deeper in difficulties; whereas, on the other side, a propensity to the study renders the work less tedious, the pleasure that the student finds therein, far exceeding any trouble or vexation whatsoever. And this delight in the study makes the student thoroughly to understand and apprehend the same; and it doth not only dilate the spirits, but doth also quicken the memory, according to the saying, *Quæ magna æstimamus memoria infigimus.* In a word, without inclination to a study, there can be neither pleasure nor proficiency therein." —*Stu. Leg. Ra.* 51, 52.

And Lord Bacon—

"Men ought to take an impartial view of their own abilities and virtues; and again, of their wants and impediments, accounting these with the most, and those other with the least. * * How their nature sorteth with professions and courses of life, and *accordingly* to make election, if they be free; and, if engaged, to make the *departure at the first opportunity*, as we see was done by Duke Valentine, that was designed by his father to a sacerdotal profession, but quitted it soon after, in regard to his parts and inclination. And to consider how they sort with those whom they are like to have for competitors and concurrents," &c. &c.—*Advancement of Learning.*

is fearfully answerable for all the vexation and disappointment which sour the temper and benumb the heart, and too generally drive their victim into ruinous dissipation, inspiring him with unfilial anticipations of the period when he may be enabled to "fly like a bird from the snare." Why, foolishly ambitious and mistaken parent, or other relative, will you act thus? Why stick a verdant shoot into an ungenial soil? If *you*, however, are so blind, may your child's eyes be opened; may your obstinacy be over-mastered by *his* spirit, till you are compelled to desist from offering so gross an outrage to nature and feeling!

Well, then, student, duly meditating upon this most momentous subject, are you really sufficient for these things? Let us first inquire what manner of man you are PHYSICALLY. Can you bear the long confinement and intense application required for the study—to say nothing of the practice—of the law? The question is not whether, with all the confidence, resolution, and enthusiasm of genius, you can go through this preliminary struggle, but, can you go through it safely—unscathed—without having ultimately to acknowledge that *here* your health received a mortal shock? What if, while one hand is sowing in your mind the rich seeds of wisdom, the other is scattering those of disease and death in your constitution?—If you cannot, then, answer this first question satisfactorily, can you yet say whether your

pecuniary circumstances will enable you to 'take it easily,' to mitigate the severity, by extending the period of your studies? If these questions cannot be answered affirmatively, either by you or your medical adviser, you must really pause, painful and disheartening as it may be, for life is at stake! Alas, what is the use of your being 'called to the Bar,' and to the grave, at the same time?—of completing your library—your copious note-books, and choice 'precedents'—only to give them to others, in the faltering accents, the bitter moments, of a premature death-bed!

You will observe, that whichsoever branch of the profession you select, this arduous course of study must be undergone; and that if you really intend to earn the character of a practical lawyer—to pretend to but moderate fitness for business, in order that you may acquire a livelihood by it—there is no department of the law, not even the calmest and obscurest, the practice of which will not require much confinement, labour, and anxiety. There are, however, very many whom a chamber life will suit, that the turbulent excitement of court practice would destroy. In the tranquil occupations of a conveyancer, equity draftsman, and special pleader, a weak constitution may be nursed, and its energies husbanded, for very many years. The hours of attendance here are from ten to five; frequently also till a late period in the evening; and this for at least nine months in the

year. This constant sedentariness, however, is not all. Business will exact, especially during the early years of the practitioner, before he has acquired the confidence and dexterity which long practice alone can confer, or warrant—from morning to night, a degree of anxious absorbing attention, which cannot fail to try a weak constitution severely. There are many to whom such close confinement, and intense, monotonous, unremitting mental exertion, are the short sure avenue to the grave; and folly, indeed, must it be to adopt hastily that line of life which exacts both of them from the very beginning. Let not the student, however, be disheartened, or fall into a fanciful nervous humour, which alone is sufficient to disable him for *any* pursuit. Though he have good reason to apprehend that his health is none of the strongest, a judicious attention to it—method and moderation both in living and studying—avoiding scenes of dissipation, as he would fly from a place swarming with deadly serpents—will carry him through many a storm, into the repose and security—"the chair-days of most reverend age." It is impossible to imagine any calling in life in which early regularity and attention to health are of such vast consequence as in the law. Nothing can sustain the enormous pressure of an established and extensive practice, in more advanced life, but a constitution which has been gradually strengthened and case-hardened by early and systematic care.

The student will make up his mind, in adopting chamber practice, to abandon many social pleasures and intervals of relaxation, at least during the day; for at his chambers he *must* be found during business hours, or business will not find *him;* business must be got through in the usual and appointed times, or clients will soon desert him. From an extensive acquaintance, therefore, with all its dissipating incidents, he must resolutely retreat. If he cannot make up his mind to *this*, and yet will persist in entering the profession, let him do so: he will have to repent at leisure—when he finds himself, poor soul! become one of those scarecrows that are pointed out by experienced friends, to warn off students from improper courses!

There are some particular habits and qualities essential to success in this less stirring, but lucrative and important branch of the law. To the clear head and close thought which are essential to them all, the chamber-practitioner must unite a deep meditative humour, great patience in going through matters of long, and often tiresome details, and rigorous accuracy in minutiæ,—besides the incessant manual labour, and vigilant superintendence, required for 'drawing' and 'settling' pleadings and conveyances. The more particular consideration of all these matters, however, will be found in its proper place *.

* See *post*—"Different Departments of the Profession."

Perhaps, however, the ambitious student meditates a higher flight; he is eager to enter upon court practice, either at the Equity or Common-Law Bar. Then the first question to be asked, is one all-important. Are his LUNGS equal to the severe task he is about to impose upon them? Of keeping them in almost constant play from morning to night? The Bar requires signal strength in that organ! The question, be it observed, is not whether the *voice* is strong, flexible, harmonious—though this is a capital point—but whether that on which the voice *depends*, is to be relied upon. The pipes of an organ may be capable of giving out tones of great power and exquisite richness; but what if the bellows, beneath, be crazy, and give way? Let us ask, then, the student, whether there is an hereditary tendency to *consumption*, in his family, of which symptoms, however slight, have been discovered in himself? Because, if so, coming to the BAR, is downright madness. Any honest and skilful medical man will tell him so. It is not the perpetual and often violent exercise of the voice, alone; it is the EXCITEMENT, the ceaseless wearing of body and mind, that will kill him, as inevitably as it is encountered and persisted in.

How frequently is this predisposition the fell attendant upon genius! Supporting it with a precocious energy, flattering and deluding it with a semblance of strength, that only accelerates its destruction! What avail the noblest intellect, consummately

disciplined, the most brilliant and profound acquirements—a perfect aptitude for business—resplendent prospects—to him whose sun is appointed 'to go down at noon!'—'But does not this apply, with nearly equal force, to all professions?' By no means. At the Bar, the lungs are in incessant exercise; the consuming fire of excitement is ever kept up by eager, restless rivalry, fed by daily contests, public and harassing; by anxieties that haunt the young lawyer, not during the day only, but also the night. 'We seldom or never, however, hear of such instances as you are speaking of.' Perhaps not; you may not be in the way of it; youth, besides, averts its eye from the dismal spectacle of premature decay, and shuts its ears to the voice of admonition. Nevertheless, such cases occur! but there is an obvious reason for their infrequency amongst those standing in the most conspicuous ranks—the most distinguished and successful members of our profession. They could not have *reached* their present station, if they had had to fight all along against this fatal tendency. All who have been able to stand so long in the flames, may safely be pronounced fire-proof; whatever other disorders they may be 'heirs to,' *this* is not one of them. No, this cruel fiend early despatches its victims; it lurks about the threshold, and strikes them *there!*

May these lines, however *now* contemptuously hurried over and disregarded by the impetuous student,

not be recalled, ere long, amid the sad scenery of a sick-chamber, by one drooping in premature decay—decay which might have been long avoided by only ordinary prudence—by discretion in the choice of a profession!—'But must these dreadful apprehensions in all cases serve to seal the lips of eloquence, and consign a Cicero to inglorious inaction and obscurity?' By no means. How many have rashly adopted and obstinately adhered to the Bar, whose qualities both mental and physical, would have irradiated the pulpit, or possibly even, after due delays, the senate! Who might, in short, have long distinguished themselves in any other walk than that which they have so fatally chosen! How many might have adorned the ranks of literature and philosophy, transmitting to posterity a brilliant reputation, had they not rashly plunged into the dead sea of law—for such it is to them—to be instantly and ingloriously extinguished! Supposing, however, the bias towards legal studies cannot be overcome, let it be yielded to, but prudently. Let the frail candidate for forensic labours and honours resolutely perform a long chamber-noviciate. *Mora dat vires.* In this comparative repose, the physical powers may rally, and succeed in making head against morbid tendencies: and perseverance in this process of 'case-hardening,' may at length warrant their possessor to undertake, gradually, and cautiously, the trying duties of public life, whether at the Bar or in the Senate.

Smile not, young reader; frown not, at this apparent excess of caution, but rather let it be as a word to the wise; and BE YOU WISE IN TIME.

Let us, then, take it for granted that there exists no *physical* disqualification. How is it with your 'inner man?' The shell may be sound, where the kernel is shrivelled, or gone. Have you ever thoroughly examined your own mind, so as to be able to form a tolerably fair judgment of its pretensions *?

Have you a capacity and *disposition* for persevering application? Are you conscious of a logical and argumentative turn of mind? Are your perceptions quick and clear †? Is your memory capacious and retentive? Your judgment sound? Are you capable

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* See how a great living *poet* engages in this momentous task!

"Several years ago," says Mr. Wordsworth, "when the author retired to his native mountains with the hope of being able to construct a literary work that might live, it was a reasonable thing that he should take a review of *his own mind*, and examine how far nature and education had qualified him for such employment. As subsidiary to this preparation, he undertook to record, in verse, the origin and progress of his own powers, as far as he was acquainted with them."—Preface to "The Excursion."

† "*A clear intellect*," says a judicious writer on legal education—"by which I mean the faculty of darting in a moment upon the truth, is, indeed, a choice gift of nature; it may be improved, but it can never be acquired †; it is that power before which ambiguity and confusion fly away; it is that influence which irradiates whatever

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† *Quære!*

of extensive and deep research? Not only of acquiring learning, but *using* it? Do you believe that you are, or can become, equal to the 'occasion SUDDEN,—the practice dangerous'—spoken of by Lord Coke?—Have you, or can you acquire, the collectedness, presence of mind, self-reliance, self-controul, which this will require? That ductility, elasticity, activity; that expansive and contractile power of mind which can adapt itself to everything, and pass in a moment from one engagement to another, of the most different character—from labyrinth to labyrinth—with unwearied energy, with a mind unconfused? Have you the admirable art of persuading, and convincing? Of detecting falsehood, and confounding guilt? If you have not valid pretensions to such qualities as these, or most of them, you certainly need not abandon your design of entering a court of law or equity, but must content yourself with a comparatively humble station in it. You may earn your five hundred or a thousand a year, as well as the reputation of a 'clever man,' a 'sound lawyer,' but cannot hope to become a Scarlett or a Sugden.

If you have these mental requisites, but yet are

system it pervades, which separates in an instant the most entangled and perplexed ideas; it descends to the minutest circumstances in the affairs of man, and dissipating the mists with which they may be enveloped by craft or by ignorance, draws forth to the light that little secret motive which gives them their real character, and which is so often sought in vain."—*Raithby*, p. 37.

conscious of an invincible *mauvaise honte*—a timidity which will disable you from acting a bold and prominent part in public business, let not *this* deter you from entering our profession. There are the less conspicuous, but by no means less honourable, lucrative, and responsible departments of chamber-practice above-mentioned, waiting to receive you;—where are ever to be found men distinguished by their eminent abilities, and general as well as professional acquirements. Fearne, Hargrave, Butler, and their surviving successors—

'a noiseless but a noble throng'

are, in their way, objects as worthy of imitation, and their stations of ambition, as their more brilliant rivals of the common-law bar.

Possessing every needful pre-requisite, physical, intellectual, and moral, above adverted to—and sketched briefly only as hints for self-examination and inquiry—the Student need not be apprehensive about entering the legal profession as a candidate for its highest honours. He must, however, be patient. Unless he is blessed with 'a connexion,' it is highly probable that years may elapse before the door of practice will open to him. "This length of time in the approaches to practice must be endured," says Roger North, "for what inconvenience is it, when a man has once firmly dedicated his *whole life* to the law? If any good fortune invites to any steps

forwarder—there he is to embrace the opportunity; if not, he cannot be secure of moderate success in the profession, but by entering by proper means, and not *per saltum*, leaping over hedge and ditch, to come at it. An egg may have more than its natural heat, but will hatch or be addle; therefore let the motions be rather phlegmatic than mercurial—for 'tis a true saying, 'soon ripe, soon rotten *.' He must not think, with puerile eagerness, of shutting his elementary law-books to hurry into court, there to harangue a jury, or argue before the judges. In the tedious interval which must elapse between preparation and employment, will be required all the young lawyer's fortitude and philosophy. He must be content to 'bide his time'—to 'cast his bread upon the waters, to be found' only 'after many days.' He must never give up; he must not think of slackening his exertions, thankless and unprofitable though they seem to be. Does he imagine that *his* is the only unwatered fleece?—Let him consider the multitude of his competitors, and the peculiar obstacles which, in the legal profession, serve to keep the young man's 'candle,' be it never so bright, so long 'under a bushel.' How many, with pretensions superior to his own, are still pining in undeserved obscurity, after years of patient and profound prepa-

* Disc. Stu. Law, pp. 34—5.

ration * !—It is impossible to disguise this sad fact—it would be cruel and foolish to attempt it. The student of great, but undiscovered merit, will sometimes be called upon, his heart aching, but not with ignoble envy !—to give his laborious and friendly assistance to those who, immeasurably his inferiors in point of ability and learning, are rising rapidly into business and reputation, through accident and connexion. THIS, also, our student must learn to bear ! He must repress the sigh, force back the tear, and check the indignant throbbings of his heart, when, in the sad seclusion of unfrequented chambers, or the sadder seclusion of crowded courts, he watches year, perhaps, after year passing over him, 'each leaving—as it found him.' 'Tis a melancholy but a noble struggle to preserve, amid such trials as these, his equanimity—'in patience to possess his soul'—To be

> True as the dial to the sun,
> Although it be not shone upon.

Let him neither desert, however, nor slumber for a moment at his post. "In this lottery," happily observes the author of Eunomus, "the number of great

* "Lord Thurlow attended the Bar several years unnoticed and unknown. The practice of Lord Chancellor Camden was at one time so inconsiderable, as almost to determine him on abandoning the profession. Lord Grantley is said to have toiled through the routine of circuit, and a daily habit of attendance in Westminster Hall, for many years, without a brief."—*Will. Stu. Law*, p. 134.

prizes will ever bear a small proportion to the number of competitors. You, or any of your contemporaries, may or may not in the end have the very prize on which you fixed your eye at the onset; but can he EVER have it, *who takes his ticket out of the wheel, before the prize is likely to be drawn?* For our comfort, however, in this lottery of the profession, there are comparatively but few blanks, if, indeed, there are strictly any. The time and labour we employ, which may be considered as the price of our tickets, must always produce useful knowledge; though the knowledge that is acquired may not be attended with the profit or eminence that we expected *."

There never yet, said a great judge, was a man who did justice to the law, to whom *it* did not, at one time or another, amply do justice. His success is often as sudden, as splendid and permanent. In a moment, in the twinkling of an eye, the desolate darkness is dissipated; the portals of wealth, popularity, and power, are thrown open; and he does not walk, but is in a manner thrust onward into their radiant regions. *Non it sed fertur.* For all this he is fully prepared; the 'viginti annorum lucubrationes' bear him up under the most unexpected accumulation of business, and enable him calmly to take advantage of this 'occasion sudden'—

* Wynne's Eun, Dial. II. p. 295—6.

doing honour to himself, as well as to those who are honouring him!

Has the ambitious student, in the last place, those pecuniary resources which will enable him to give his mind to the study of his profession, without distraction? It will be a sad thing for him, if in addition to the exhaustion of his professional studies, he is harassed by clamorous creditors, and defeated in his anxious endeavours to acquire 'by daily toil his daily bread,' either as a reporter for the newspapers, or contributor to magazines. His intellect, he will find, cannot last long, when burning thus at *both ends*. No doubt some of the greatest men that ever adorned the Bar, have struggled to it amidst poverty, and even starvation; men whose superior energies would conquer everything: but it is equally true that thousands, miscalculating their means and prospects, have early fallen victims to that 'heart sickness' which arises from 'hope deferred,' have been at once *crushed* by pecuniary embarrassment;—withering under bodily and mental disease—and too often, alas! suffering themselves to be driven into dishonour—into reckless profligacy! If the writer were to express his own opinion—one which he has heard corroborated by many men of great experience and discretion—he would suggest that a clear income of *at least* 150*l.*, and that too managed with strict economy, is, generally speaking, a *sine quâ non* to a successful entrance into the profession. This alone will secure that peace

of mind—that repose and calmness of the feelings—which will enable the student *toto pectore studiis incumbere*. Except on such terms as these, the author would certainly be no consenting party to any friend or relative of his own 'coming to the Bar.'

All these things well weighed, it is for the intelligent reader to act accordingly. He will have no one to thank but himself, if, after all that has been said, he misses his way, by obstinately struggling into a profession for which he is utterly unfitted; or, *being* fitted for it, 'with all appliances and means to boot,' yet throws himself away by adopting one that is unworthy of him. LEGI TE TOTUM DEDICA; NAM DIGNUS ES ILLA, ET ILLA TE DIGNA *.

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* Seneca.

CHAPTER II.

STUDENTS:

THEIR CHARACTERS, OBJECTS, PRETENSIONS, AND PROSPECTS.

THE varied throng of candidates for admission to the Bar, will be found, perhaps, separable into three classes: and then we shall be enabled, by looking more distinctly into the characters and objects of each, to form a just estimate of their respective pretensions and prospects. It is proposed to devote this chapter to such an inquiry; shortly suggesting what each individual has to expect, and what not;—what to learn, and what to unlearn. The *study*, and the *student* will then, it is hoped, have been fairly introduced to each other.

The first class comprises merely nominal students; the second, those who seek to qualify themselves for the duties of the legislature or magistracy; the last, those who purpose becoming actual practitioners. Of these, then, in their order.

I.—The class of merely NOMINAL students, numerous though it be, need not long occupy our atten-

tion. Many young gentlemen enter, or are sent into, the legal profession, as others into the army, navy, or perhaps the church—purely to *say* that they belong to it; and are influenced in doing so, seldom by any other feeling than that of indolence or indifference. Some, to be sure, contrive to gratify their vanity by the hope of being sometimes spoken of as "*the learned gentleman;*" and feel as much satisfaction in being able to assume, at will, the grave imposing vesture of counsel, as others experience in wearing the gay and dashing uniform of the soldier. They are entitled, by this means, to a good seat in the courts, when interesting trials are on; and to go the circuit, and share its excitement, frolics, and variety. It is not, in short, a very expensive way of securing a pleasant, and sometimes eminent acquaintance—of purchasing, as it were, *a free admission*—both before and behind the scenes—to the entertainments of the legal theatre! A few there may be, who are forecasting enough to anticipate the possibility of their present means not always enabling them to continue the life of a fine gentleman; and that it may therefore be advisable to secure a *chance* of employment at the Bar, if, unfortunately, there should ever be occasion for it. They will be possessed certainly of long standing; and will, besides, no doubt, find it as easy to assume business-habits, when needful, as their wig and gown. Chambers will thus be a shelter from the pitiless pelting of the storm

of poverty. They will be found delightfully calculated for wine-parties, as well as hiding-places from inquisitive relatives, and impertinent creditors. Numberless, also, are the places of amusement in the vicinity of the inns of court—excellent taverns, billiard-rooms, and theatres, both great and small. If overcome with excitement at any of these vivid scenes, you can retreat to chambers at a moment's notice, bar your outer door, and sleep off a debauch in sacred silence!

——— "Jam clarum mane fenestras
Intrat, et angustas extendit lumine rimas.
Stertimus, indomitum quod despumare Falernum,
Sufficiat —
" —' Verumne? itane? ocius adsit
Huc aliquis? Nemon'?—Turgescit vitrea bilis;
Finditur; Arcadiæ pecuaria rudere dicas*!"

Jovial companions are to be found in your own and every neighbouring staircase. Never need the student be at a loss for an account of himself, when questioned by one who is pleased to think himself entitled to receive one. Is he absent from his chambers? He is at those of the pleader, or barrister, under whom he *studies!* Is he not there?—He is gone down to court, either at Guildhall or Westminster, to hear a great cause tried, in which he has drawn the pleadings. Is he not to be found *there?* He has returned, indefatigable man, to his chambers, there to digest the legal acquisitions of the day!

* Pers. Sat. III.

But, to be serious. These are the students that form the dead weight of the profession; these the precious personages, that, under the name of "briefless barristers," contrive to attract the sympathising notice of the public as melancholy instances of neglected merit—afflicting evidences of an over-stocked profession!

II.—The second class of students is a select and distinguished one, consisting almost exclusively of those young men of rank and fortune who, born to an exalted station, are not satisfied with barely occupying it, but are inspired with the proud ambition of "magnifying and making it" still more "honourable;" they will not inherit, but purchase greatness.

> ——— "Honours happiest thrive
> When rather from *our* acts we them derive
> Than our foregoers."

Duly appreciating the importance of the duties which will, ere long, devolve upon them, they are nobly anxious to qualify themselves for filling worthily the important office of magistrates, or sustaining the more splendid responsibilities of legislators and statesmen, by obtaining, if so disposed, and competent, that from which much will be hereafter expected—a thorough and comprehensive knowledge, both theoretically and practically, of their country's constitution and of the legal relations and duties of civil life. To the paramount importance of acquiring such knowledge, all

the greatest and wisest men have borne testimony *. Without it, a man will advance but vain and frivolous pretensions to exercise the functions of a statesman or a legislator. It is true he may be eager enough to meddle with such matters; he may be, indeed, "given to change;" he may become, perhaps, a showy declaimer, fluent in the use of pompous common-places—that is, if either house of parliament will tolerate his inanities; he may acquire credit as a useful committee-man on small bills—and importance, even, as an expert financier; but on stirring and grand CONSTITUTIONAL questions, he will be, he needs must be, an inglorious mute; his "vote and influence" may be solicited by the contending parties, but nothing further will be expected, or indeed permitted. Such information as is required on *these* occasions, however great may be his zeal, or talents, he neither has, nor can get. No *cram* will suffice; nothing but the careful leisurely acquisition of early years, assiduously kept up—at once generating and justifying confidence and self-reliance—will enable a man to acquit himself, on such occasions, even creditably. And how often, in these pregnant times, do such occasions arise—what melancholy exhi-

† The emperor Justinian thus addresses the youth of his dominions who had devoted themselves to the study of jurisprudence:—

"*Summâ igitur ope, et alacri studio has leges nostras accipite; et vosmetipsos sic eruditos ostendite, ut spes vos pulcherrima foveat; toto legitimo opere perfecto, posse etiam nostram rempublicam in partibus ejus vobis credendis gubernari.*"—Justin. in Proem. Inst.

bitions are too frequently the consequence! In the very last session of parliament, the incompetence of the House of Commons for the task of legislation, called forth even from one of its most enthusiastic friends, the late Lord Chancellor (Brougham), this remarkable reproof:

"If there had been no House of Lords, the House of Commons must have stopped its legislation; or if it had worked on, it would have been COVERED WITH BLUNDERS AND ABSURDITIES." "He mentioned this,"—alluding to a clause which the Commons had insisted upon inserting into the Justice of the Peace Bill,—"as a proof of the ABSURD LEGISLATION of the lower house*." He might, and perhaps ought to have added, the *dangerously* absurd legislation of the lower house: for what is to become of a country when either its existing laws, or proposed enactments, are thus ignorantly tampered with? Would to God that those eager young gentlemen who consider that the letters "M.P." tacked to their names, operating as though by magic, impose at once the duty and confer the ability, as they certainly do the *inclination*, to fall a-tinkering our laws, would devote to the learning and understanding of them, but a tithe of the trouble they devote to mending and making them!—Whence are to be found crowding our statute-books, "acts to amend acts," as was wittily observed by a friend of

* Debates in the House of Lords, *Times*, 15th August, 1834.

the author's, "to amend acts, to repeal acts, to alter amendments of acts, and so on, in infinite succession; preambles, containing *pedigrees each as long as that of a thorough-bred racer!*"

The baneful empirical activity of the House of Commons, however, is scarcely more to be dreaded than the spiritless indifference and supineness into which the House of Lords, except on two or three occasions, seems latterly to have sunk. "I would ask," says Dean Swift, in his Essay on Modern Education, "how it hath happened, that in a nation plentifully abounding with nobility, so great share in the most competent parts of public management, hath been, for so long a period, chiefly intrusted to Commoners, *unless some omissions or defects of the highest import may be charged upon those to whom the care of educating our noble youth had been committed* ?*"

Could it be otherwise than gratifying and encouraging to the country, to see a nobleman sending his sons—even his eldest—for a year, at least, to one of the Inns of Court, to study under a competent tutor, instead of thrusting him into public life as it were, *unfledged?* Say, even, that he did nothing else than read over the immortal Commentaries of Blackstone, with one able to point out the alterations that have taken place since they were published, to direct his attention to

* Works, vol. iv. pp. 40, 41.

the points of peculiar practical importance, and show him where to look for sound information on all the leading subjects of constitutional law. Say that a hundred guineas have been thus expended: would it be thrown away? Could a twelvemonth thus spent have been better spent?

The young legislator will see, in a lawyer's chambers, the noble system of our Constitution in all its vast, intricate, and "perfect working;" coming home to the business and bosom of every individual,—regulating all the transactions of society,—"the very least as feeling her care, the greatest as not exempted from her power." Our physicians dare not attempt to administer the simplest physic, our surgeons to perform the commonest operations on the human body, without having first learned the difference between diseased and healthy structure and function —without having seen and studied all its inward parts, devoting to the most secret and minute their profoundest attention; but our state physicians will administer the most potent medicines, our state surgeons perform the most capital operations, without having even affected to learn the plainest principles of state medicine, pathology, or surgery, or devoted an hour to dissection! What, then, *can* they be, but most impudent and presumptuous quacks? And what is to become of the state patient *?

* Long after this paragraph had been written, the author hap-

Well, indeed, would it be—a cheering and noble spectacle to the people of this kingdom—if not only our hereditary legislators, but *all* who are members of, or likely to obtain seats in, parliament, would set themselves more earnestly about acquiring a practical insight into the working of our laws. We wish not to make them *lawyers*—to weary and disgust them with details—though it would be well for them, even in these matters, to know, if not the law, at least where it is to be found; but call upon them to cultivate an early and enlightened acquaintance with that constitution of which they are the natural guardians, and whose provisions they will be so soon called upon to administer.

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pened to discover the following passage in the writings of Lord Bacon:—

"And for matter of policy or government, that learning should rather hurt than enable thereunto, is a thing very improbable: we see it is accounted an error to commit a natural body to empiric physicians, which commonly have a few pleasing receipts, whereupon they are confident and adventurous, but know neither the causes of diseases, nor the complexions of patients, nor peril of accidents, nor the true method of cures; we see it is a like error to rely upon advocates or lawyers, which are only men of practice, and not grounded in their books; who are many times easily surprised when matter falleth out besides their experience, to the prejudice of the cause they handle: so, by like reason, it cannot be but a matter of doubtful consequence, if states be managed by empiric statesmen, not well mingled with men grounded in learning. But contrariwise it is almost without instance contradictory, that ever any government was disastrous that was in the hands of learned governors."—*Advancement of Learning.—Works*, vol. ii. pp. 16, 17.

To the Justice of the Peace a much more accurate knowledge of legal principles and practice is manifestly indispensable. To him it is not so much a credit to know the law, as a high disgrace to be ignorant of it. How can he administer, who does not understand, the law?—called upon, too, as he frequently is, to decide very difficult questions *promptly!* An ignorant, can scarcely fail of being an unjust judge; and unless the magistrate is well grounded in the principles of law—especially of *evidence*, as well as moderately skilled in applying them, he must reckon on being often placed in the most mortifying circumstances; on being puzzled and ridiculed by an impudent pettifogger, and set at defiance even by a criminal.

Let, then, the distinguished individuals of whom we have been speaking, enter our profession, with cheerful resolution to undergo its honourable discipline. They will find it not only the true source of constitutional learning, but the finest school for talent, perhaps, in the world. Infinite pride, conceit, and pedantry, are rubbed off in a single month's friction of its fearless rivalry; and a volatile temper may have here its best, and perhaps latest chance of being sobered and settled into business habits. "Goe now, yee worldlings," says old Bishop Hall, "and insult over our palenesse, our needinesse, our neglect. Yee could not be so jocund, if you were not ignorant; if you did not want knowledge, you

could not overlooke him that hath it: for me, I am so farre from emulating you, that I professe I had as leive be a bruit beast as an ignorant rich man. How is it, then, that those gallants which have privilege of bloud and birth, and better education, doe so scornfully turne off these most manly, reasonable, noble exercises of scholarship? An hawke becomes their fist better than a booke: no dog but is a better companion *."

The profession, it is repeated, opens wide its arms to receive such visiters; but reasonably, confidently expects them, in return, to exalt it in public estimation, not by the bare fact of their having belonged to it, but by exhibiting proofs of the high culture they have received,—of their leaving it wiser and better men than they entered it. Should, however, any aristocratic idler now enter our profession with a view of finding thereby only a ready access to place and sinecure, we may pretty confidently assure him that he will find himself mistaken. The time for this sort of speculation is gone by. Whatever disposition may exist at any time to create and dispense such patronage as is sought for by these gentry, the vigilance of the Bar, thank God, and fearless surveillance of the press, render success in such attempts a task of daily increasing difficulty. Legal office, of any kind, can now be rarely obtained, or at

* Epist. to Mr. Matt. Milward.

least *kept*, by any one who is not able to discharge its duties; and in order to do so, the candidate must

> " Doff his sparkling cloak, and fall to work,
> With peasant heart and arm,"—

must forget, for a while, grand connexions, fastidious tastes, and fashionable life, and enter himself in the number of those who constitute our *third* class. Nor let him fancy that in doing this, he is " condescending to men of low estate." No, indeed; he is entering a stern *republic* in coming to the Bar. Nothing will suffer, in its perpetual collisions, but that preposterously short-sighted pride—that leprosy of " exclusiveness," which blights like a disease some of the inferior and more recent members of the aristocracy; as the hem of a splendid garment is generally most liable to be tarnished and defiled! No magnificent airs of puppyism and presumption will be tolerated at the Bar; in vain are their half-closed eye and curled-up lip brought into play; they are laughed at, and their owner unceremoniously thrust aside! " I confesse I cannot honour blood without good qualities; nor spare it with ill," quoth the same stern old Bishop already quoted. " There is nothing that I more desire to be taught, than what is true nobility: what thanke is it to you that you are *born* well? If you could have lost this privilege of nature, I feare you had not been thus farre noble: that you may not plead desert, you had this before you were; long ere you could either know or prevent it; you are deceived

if you think this any other than the *body* of gentility: the *life* and *soule* of it is, in noble and vertuous disposition, in gallantnesse of spirit without haughtinesse, without insolence, without scorneful overlinesse: shortly, in generous qualities, carriage, actions. See your error, and know that this demeanor doth not answer an honest birth *."

III. The third class, for whose use this volume is chiefly designed, comprises all those who come to the Bar in search at once of a livelihood and distinction; and this class it will be necessary to subdivide.

First, come the University men—English, Scotch, and Irish; and foremost among these, the STARS of their respective years—senior wranglers, double first-class men, fellows of colleges, and prizemen of all kinds and degrees, classical and mathematical,—a brilliant band! Hear what Lord Coke saith of the advantages of a college education, as exemplified by "our great master," Littleton himself:—"By this argument, logically drawne *à divisione*, it appeareth how necessary it is that our student should (as Littleton did) come from one of the universities to the studie of the common law, where he may learne the liberall arts, and especially logick, for that teacheth a man, not only by just argument to conclude the matter in question, but to discerne between truth and falsehood, and to use a good method in his studie,

* Ep. vi.—"*A Complaint of the Mis-education of our Gentry.*"

and probably to speak to any legall question, and is defined thus:—*Dialectica est scientia probabiliter de quovis themate disserendi*, whereby it appeareth how necessary it is for our student *."

Perhaps it may be safely said that of this division of students, those who have distinguished themselves in mathematics are, *cæteris paribus*, best adapted for the law; but, in fact, *all* of them have undergone such systematic discipline, and evinced such a degree of intellectual superiority, as cannot fail of mastering every difficulty that the law can propose to them. Look at the Bench, and foremost ranks of the Bar, for numerous and splendid instances! How can it be otherwise, where the *inclination* equals the power? He that has been accustomed to wrestle with the difficulties of Newton and La Place, to wind his way through the mazes of algebraic calculation—to work out the profoundest problems of a "rigid and infallible geometry†"—cannot be baffled by any of the subtleties and complexities of law. Logic so practical and masterly as his, what difficulties can withstand? What multiplicity distract? If the bow has not been over-bent, the mind and body paralysed by excessive exertion—men such as these commence their legal career under the happiest auspices; and but few are

* Co. Litt. 235.b.

† Dr. Chalmers. See this expression commented upon in Maxwell's "Plurality of Worlds."

the considerations of which those of them need be reminded, who select the Common Law Bar. They will soon discover that a vigorous and well-trained intellect is not alone a passport to success. Those qualities and accomplishments, which during a long and exclusive devotion to the mathematics, have been too much disregarded, must now be assiduously attended to. Business habits must be acquired—promptitude and decision,—the "*consulto*" and "*mature facto*" of Sallust. The young lawyer must hasten out of the silent, distant regions of abstract speculation, where his faculties have been "rapt in Elysium," and learn *to think* amid the hubbub of the world—on the spur of the moment—without being obliged to retreat into the study before his thoughts can be collected. "Another precept of this knowledge [of ourselves]," truly observes Lord Bacon, "is, by all possible endeavour to frame the mind to be pliant and obedient to occasion *." The acquisition of much valuable practical information has been, perhaps, altogether neglected. This also must be remedied: but, above all, unless the student be happily *gifted* with eloquence, the art of public-speaking—of extempore debate—will require early and persevering attention. "Reading may make a full, and writing a correct man:" but it is "*speaking* only that maketh a ready man"—and none but he has any

* Advancement of Learning.

business at the Common Law Bar. 'Tis useless to tell an attorney, in eager accents of admiration, that Mr. Such-an-one was senior wrangler, and first Smith's prizeman; nay, even, that he is an admirable lawyer; if the unhappy individual is nevertheless "a dumb dog that cannot bark,"—is unable to address a judge or jury without confusion, hesitation, stuttering; at once irritating the court, wearying the jury, disgusting the client, and filling his less generous rivals, not with manly sympathy, but secret exultation. "The Cardinal hath a world of wisdom within him, Senõr, truly, and with his *pen* would set the world by the ears: but as for *speech*, there we heed him not; he is a very poor thing; being in a manner tongue-tied *."

If, therefore, this hint be too long neglected, or the student find himself incapable of successfully following it up, he will consult his own dignity—his best interests, by preferring chamber to court practice. Men of the description now under consideration, forming, sometimes, an overweening estimate of their pretensions—of their powers and attainments—are too apt to look with contempt upon means which conduct their inferiors to rapid success. What cares a consummate geometrician—a brilliant classical scholar, about *manner?* Exactly as little, perhaps, as clients, as a jury, care about, or will tolerate, *him*. Why will he

* Don Lopez, a comedy.

thus delay his own distinction *, indefinitely postponing employment, for want of a little resolution at the first, to rub off academic rust? To prepare himself for the public struggles into which he is ambitious of entering with dexterous unwilling witnesses, and ready, witty counsel? It is hoped that he will find some future portions of this work not unworthy of his attention, on this subject; for there is much that is peculiar in legal training—that nothing can point out availably, but a practical familiarity with the profession. Let us lastly remark, that the student who has but just quitted the scenes of academic distinction, is too apt to be unduly elated. It will require, perhaps, no inconsiderable effort, before the swell of excitement and exultation can be made to subside; before the *facile princeps* of his day can get himself into that calm working trim which is essential to the advantageous commencement of his professional career. Let him turn again his dazzled eye, for a moment to one of the earliest lessons of his boyhood !

—— Sapienter idem
Contrahes, vento nimium secundo
Turgida vela.

In a few years, he will assuredly, form a very different—a much soberer estimate of these things;

* Sir William Blackstone, even, was an instance of the sad effects of the deficiencies of which we are speaking. " Being deficient in elocution, and not possessed of the popular talent of an advocate," says one of his biographers, " his progress was slow." He is represented as having been excessively discouraged at his want of professional employment.

considering them as merely means to an end! He must be content to propose to himself a considerable interval of severe labour, during which time he will slip away entirely from the eye of public observation, and the voice of applause. Let him know, however, that during this blank interval in which he disappears from the surface, he is but diving beneath, that he may anon reappear with the pearl he has been seeking—the pearl of professional distinction. He may depend upon it, that thus only can he justify the high expectations of others, and realise the proud hopes he himself entertains. To such a man as this, on whom has been lavished all that its noble academic institutions can bestow, the country has a right to look for extraordinary self-denial and exertion. Much will be expected, where much has been given! The country is, however, seldom disappointed, by these her choicer sons, who have from time to time fitted themselves, by a long and arduous course of preparation, for the noble duties of asserting, defending, and administering the laws of England.—It is impossible to over-rate the importance to a country of preserving the ministers of its laws "pure and undefiled."

"The honour of a liberal profession," says Gibbon, "has indeed been vindicated by ancient and modern advocates, who have filled the most important stations with pure integrity and consummate wisdom: but in the decline of Roman jurisprudence, the ordinary promotion of lawyers was pregnant with mischief and disgrace. The noble art which had once been pre-

served as the inheritance of the patricians, was fallen into the hands of freedmen and plebeians, who with cunning rather than skill, exercised a sordid and pernicious trade. Some of them procured admittance into families for the purpose of fomenting differences, of encouraging suits, and of preparing a harvest of gain for themselves or their brethren. Others, recluse in their chambers maintained the dignity of legal professors, by furnishing a rich client with subtleties to confound the plainest truths, and with arguments to colour the most unjustifiable pretensions. The splendid and popular class was composed of the advocates, who filled the forum with the sound of their turgid and loquacious rhetoric. Careless of favour and of justice, they are described, for the most part, as ignorant and rapacious guides, who conducted their clients through a maze of expense, of delay, and of disappointment, from whence, after a tedious series of years, they were at length dismissed, when their patience was almost exhausted *."

Much of what has been said above, is applicable to many others of those who come to the bar from the universities, without having obtained, because, probably they did not *seek* honours. Some of them had not the ambition, others the physical strength, which was requisite. These may be, at the first, less splendid but ultimately, perhaps, not less efficient or successful

* Dec. and Fall, chap. xvii.

competitors for *forensic* honours, as a hundred names could easily be cited to prove. How can they have failed to profit by the enlightened education they have received—to bring, to the study of the law, not only a liberally-stored and well-trained mind, but a high tone of moral feeling?

Secondly.—Those who come to the bar, after a noviciate performed in an attorney's office, are not inconsiderable in numbers; and, if possessed of several peculiar advantages, have also certainly to contend with some disadvantages. However justifiable may have been the somewhat haughty tone, in which this class of students was spoken of by the illustrious author of the Commentaries, in *his* days, it is now *generally* otherwise. The attorney's clerk of 1835, is, or ought to be, a very different person from the attorney's clerk of 1753. The character of ordinary business is greatly altered and improved; and the youth who now enter that walk of the profession, are, for the most part, of great respectability, and have received a liberal education. Further than this, it is, generally speaking, only the *élite* of their number, that, yielding to the promptings of superior energy and talent, determine to scale the heights of the profession. It would be easy to run over a catalogue of eminent names in corroboration of this remark.

Such students have had opportunities undoubtedly, of learning easily and thoroughly what cannot, by scarce any pains, be acquired elsewhere than in the

scenes which they have just quitted—the practical working of the law, in all its details: but they are sometimes apt to over-estimate the importance of such knowledge. They will have to guard specially, against the consequences of a long familiarity with technicalities rather than with principles — which certainly is calculated to contract the mind, and even lower the tone of moral feeling *. "By strictly adhering

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* "Making, therefore," says Blackstone, "due allowance for one or two shining exceptions, experience may teach us to foretel that a lawyer thus educated to the Bar, in subservience to attorneys and solicitors, will find he has begun at the wrong end. If practice be the whole he is taught, practice must also be the whole he will ever know; if he be uninstructed in the elements and first principles upon which the rule of practice be founded, the least variation from established precedents will totally distract and bewilder him. *Ita lex scripta est*, is the utmost his knowledge will arrive at; he must never aspire to form, and seldom expect to comprehend, any arguments drawn, *a priori*, from the spirit of the laws, and the natural foundations of justice."—1 Bla. Com. 32. "By serving a clerkship, indeed, under the eye of a *steady* and *prudent* master," remarks an experienced writer, "the student will, in some measure, be kept clear of the temptation I have been mentioning. He may easily gain an insight into *practice*,—but then his mind, unused to expatiate, will be confined to the narrow limits of official knowledge. The painfulness of acquiring a taste of law, for the want of the necessary helps, which are drawn from learning, will go near to damp his imagination: and there is scarce any advantage in serving a clerkship, which may not be reaped by the student, without breaking too much upon the time allotted by him for his course of studies and attendance upon courts; because, after he has finished his college education, and begun seriously to apply himself to the study of the law, he may, under the guidance and directions of some able and experienced man, bestow some leisure hours to great advantage, by going through the

to form," observes the celebrated Lord Kames, "without regarding substance, law, instead of a rational science, becomes a heap of subterfuges and inconveniences, which tend, sensibly, to corrupt the MORALS of those who make the law their profession *." Those who render themselves liable to such censure may, to adopt a very matter-of-fact illustration, be compared to the women who are engaged at their fruit-stalls in the dirty work of shelling walnuts: their fingers are blackened with the external rind of thousands, —but they never crack the shell,—never once taste or even see the kernels!—It is certainly possible to have a mere *journeyman's* knowledge of law; and it was of such proficients that Dean Swift spoke as "underworkmen, who are expert enough at making a single wheel in a clock, but utterly ignorant how to adjust the several parts, or regulate the movements †."

Persons of this class are apt, besides, in the incessant hurry of a five or six years' attendance to the business transacted in an attorney's office, to neglect the acquisition of *general knowledge*. This is a very serious deficiency; requiring much pains and per-

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forms of business, and learning so much of the practice, as to give him a general notion of the conduct of a cause, from its first process to its determination."—Simpson's Reflections, p. 26—7.

* Hist. Law, Tr. p. 54.

† "Sentiments of a Ch. of England Man."—*Works*, *vol.* 3, *p.* 47.

severance, but more *judgment* in supplying it. It is laughable to see the directions which are laid down for their 'guidance' in the elder books, and in some even of the modern 'hints,' 'suggestions,' and 'treatises' which are recommended to their perusal, on quitting the office for an inn of court. There is now lying before the author a work published within the last ten years, containing a preposterous catalogue of works 'on general knowledge' to be 'carefully and methodically read,' that must have made many a young man's hair stand on end!

Let not these students, finally, entertain an idea, perhaps too prevalent, that there exists towards them any feeling of dislike or contempt, on the part of those who have never passed through an attorney's office. If such a feeling do any where exist, it originates, probably, in a very silly and contemptible jealousy: but, at the same time, let them take care, by cultivating a gentlemanly demeanour, and scrupulous uprightness of conduct, to avoid giving real grounds for a suspicion that they resort to undue means of obtaining business. Not that such cases frequently occur; but there *are* circumstances, which, to ill-natured and less favoured rivals, are susceptible of misrepresentation—food for sneers and sarcasms. Let them say with the poet, "our head shall go bald, till *merit* crown it."

It is one thing, and very honourable, to have commenced the career of an attorney's clerk, with the

bonâ fide intention of practising in that department—or visited an office, for a short period, to gain an insight into the course of business; and another, to sneak and skulk into it, with the real but secret design of forming a connexion to supply employment hereafter. It is this latter, only, that excites, as it surely ought, the indignation and contempt, not of the Bar only, but every honourable member of the profession. Of such despicable conduct as this, however, the author, happily, never knew an instance; but that it *has* occurred is unquestionable.

These are the two principal sources from which our third class is filled. The remainder, it would be a needless task to attempt specifying in detail. Some are drafted into the legal from other professions—or even businesses, which they have quitted in disgust, either shortly after entering upon them, or, after prosecuting them for years; and who may, perhaps, be best designated as ὀψιμαθεις *; a few honourably struggle out of the more obscure ranks of society; and of these, the Bar of the present day is said to contain one or two cheering and, indeed, noble instances; others come fresh from the dainty and delicate handling of private tutorage; and very many, after that perilous interval of indecision and indolence

* "Our good Daniel," says the ingenious author of the 'Doctor,' "had none of that confidence which so usually and so unpleasantly characterizes self-taught men:"—an acute observation, which some of the individuals alluded to in the text, will do well to bear in mind.

which foolish parents sometimes suffer to elapse between the period of their children's quitting school, and that of finally settling in a profession. In such cases, it is often an anxious question, whether, supposing his age to be somewhere between seventeen and nineteen, a youth should be sent to one of the Universities, or entered at once at an inn of court: a point which should be referred to such discreet and experienced members of *both branches* of the profession, as may chance to be accessible to the parent. Dissolute and expensive habits may be as easily acquired at an inn of court, as at the Universities. Generally speaking, it cannot be supposed that any father would hesitate to give his child the unquestionable advantages of a college education, who had the means of supporting him with comfort, not only at, but AFTER college. If, however, the *paternæ angustiæ* must be consulted,—if it becomes an object to put the son into the way of speedily acquiring a livelihood; then, the sooner he is entered at an inn of court, and settled with a pleader or conveyancer, the better. He may thus, with due industry, be qualified for practice in three years, and eligible for a call to the Bar, in five. The author is inclined to think, upon the whole, after much inquiry and reflection, that the age of seventeen or eighteen is one very eligible for commencing, in these cases, the *practical* study of the profession.

Thus, then, from all these quarters, is collected a miscellaneous throng of candidates for admission to

the Bar. Here is the confluence of the streams—or rather, the starting-post, whither—to borrow an illustration from the turf—horses, from all parts, with all characters and pretensions, are collected for a great heat! *We*, however, must turn, for a while, from the exciting and brilliant race-course to the all-important scenes of the TRAINING.

CHAPTER III.

ON THE FORMATION OF A LEGAL CHARACTER.

PART I.—GENERAL CONDUCT.

May it be presumed that, of those described in the foregoing chapter, a few, conscious of standing at the threshold of the bar with habits unsettled, characters immature, and education incomplete, will listen with candour and attention to the suggestions which may be respectfully offered, as helps towards the formation of a legal character, before proceeding to what may be termed the strictly *business* portions of this work? Surely something more than aptitude for the acquisition of law learning is to be looked for in him who comes to the bar with proper feelings and objects—who aspires to become an honour to an honourable profession; one which fills so large a space in the public eye; which is fraught with such heavy responsibilities as conservator of all that is dear and valuable in society—the property, liberty, life and character of every member of the community; which enables a

man to become the greatest blessing, or the greatest curse, to his fellow-creatures; which—a very Hippomenes to Atalanta—at once supplies its members with the most ennobling incentives to perseverance in the path of rectitude, and the most incessant, alluring, and potent temptations to deviate from it; which affords almost equal scope for the exercise of the best and basest qualities of human nature—for integrity and corruption, for generosity, fortitude, fidelity, as well as "envy, hatred, malice, and all uncharitableness;" capricious, moreover, and often tantalising to its most worthy votaries: well may the student, anxiously and distrustfully pondering all these things, exclaim, who is sufficient for them! Let him not suppose that the above is an over-wrought picture of the profession he has selected: for every day's experience will serve but to corroborate its fidelity. Numerous as are, and have been, the ornaments of our profession, their numbers would probably have been tripled, had but a correct and comprehensive estimate been formed of it at the outset—had its candidates but been cautioned against its peculiarly-besetting dangers, fewer would have been deflected from the paths of honour and integrity, or would have rested satisfied with a low tone of moral feeling, or even intellectual mediocrity.

Many, quite aware that our's is a learned, forget that it is also a LIBERAL profession; they seem to think it impossible to be lawyers, without being also *mere* lawyers: thus when brought to the brink, hurry-

ing down out of the translucent water, with reptile propensities, into the mire beneath—their congenial element. Such, however, are the appetencies of inferior organisation! *These* are the true pettifoggers! Your mere lawyer is but a pettifogger; and pettifoggers are to be found elsewhere than among the attorneys; however they may contrive to creep into, with the hope of being at once disguised and dignified by, a wig and gown. Yes, truly—

"Pigmies are pigmies still, though perched on Alps!"

Far better things, however, than these, are hoped of him who is perusing these lines! He will take special care not to lose sight of the duties he owes to society, in those which he owes to his profession—to himself; not to forget the heart, in cultivating the head; not to sink the MAN in the lawyer! It is, indeed said of the law, as of metaphysics and mathematics, that it tends to deaden the sensibilities; but it is not so. It is the undue prosecution of these pursuits that is attended with such baneful effects. But when to an exclusive absorbing devotion to the study and practice of the law, is joined a mean, selfish, grovelling character—such a result is inevitable. Can it, however, be said, that these persons *have* a heart to be petrified?

Thus also it is with the mind. The eye that is able to "inspect a mite," is also able "to comprehend the heavens:" but a *mole's* is not so; and some men

bring to the law a mole-eyed mind. They, crawling oft-times from their under-ground darkness, are only blinded by the broad day-light; they are not formed for coming out upon the open, bright, breezy eminences, and gazing at the diversified prospects of cultivation and refinement; the glorious realms of literature, art, science, and philosophy, are for ever hid from them,—"dark with excessive bright!"

Far better things are expected, it is repeated, of him who reads these pages. He is not required to bring to the bar dazzling abilities, the lot of but few; he is, however, given credit for a frank, manly character, both in heart and mind. Grant, even, that he has but moderate pretensions to intellect; if, nevertheless, he be prudent, reasonable, and teachable, he still has in him, to use the language of an old writer, "the stuff whereof a right worthy lawyer is to be made, so it be but rightly worked up;" and by *beginning* well, bids fair to overtake, and end better than very many that preceded him. The race is not *always* to the swift, as he will soon find! Let him, then, not despise the friendly and practical cautions that follow!

I.—No profession so severely tries the TEMPER as that of the law—and that both in its study and its practice. *First,* As to its study. The young student is perpetually called upon to exercise calmness and patience, though fretted by the most provoking difficulties and interruptions. He is apt to feel, in a

manner, enraged, when he finds, from time to time, how much he has utterly forgotten, that he had most thoroughly learned; and the increasing difficulties of acquiring legal knowledge, and turning it to practical account. Do all that he can—strain his faculties to the uttermost—approach his subject by never so many different ways, and in all moods of mind, he will nevertheless be sometimes baffled after all; and, on being assisted by his tutor, or possibly even by one of his juniors, be confounded to think that so obvious a clue could have escaped him. How often has the poor student, on these occasions, *banged* his books about, and shuffling them up, with perhaps a curse, rushed out of chambers in despair * ! How apt is the recurrence of such mortifications to beget a peevish, irritable, desponding humour, which disgusts the victim of an ill-regulated temper with himself, his profession, and every body about him ! Now let him, from the first, *calculate* on the occurrence of such obstacles, that so he may rather overcome them, than suffer them thus to overcome him. " When you find, therefore, motions of resistance, awaken your courage the more, and know there is some goode that appeares not; vain endeavours find no opposition. All crosses imply a secret commodity: resolve then to will because you begin not to will; and rather oppose yourselfe, as Satan opposes you, or else you doe

* There have been instances of even suicide terminating the frenzy sometimes occasioned by unsuccessful law studies.

nothing *." True—legal studies are difficult—often, apparently, insurmountable: but what of that?—DIFFICULTY is a friend; the best friend of the student, not his enemy—his bug-bear! Hear the philosophic Burke. "Difficulty is a severe instructor, set over us by the supreme ordinance of a parental guardian and legislator, who knows us better than we know ourselves, as he loves us better, too. *Pater ipse colendi haud facilem esse viam voluit.* He that wrestles with us, strengthens our nerves, and sharpens our skill. Our antagonist is our helper. This amicable conflict with difficulty obliges us to an intimate acquaintance with our object, and compels us to consider it in all its relations. It will not suffer us to be superficial. It is," he adds, "the want of nerves of understanding for such a task; it is the degenerate fondness for tricking short cuts, and little fallacious facilities, that has, in so many parts of the world, created governments with arbitrary powers." "The patient man," says Bishop Hall, "hath so conquered himselfe that wrongs cannot conquer him; and herein alone finds that victory consists in yielding. He is above nature, while he seemes belowe himselfe. * * Hee trieth the sea after many shipwrecks, and beats still at that doore which he never saw opened. * * This man only can turne necessity into vertue, and put evill to good use. He

* Epist. Decad. V. Ep. viii.—Bp. Hall.

is the surest friend, the latest and easiest enemy, the greatest conqueror, and so much more happy than others, by how much he could abide to be more miserable *." Truly, these are golden sentences, worthy to be ever borne about with the student, as having the virtues of an amulet!

"When thou sittest to eat with a ruler," says the wise man, "consider diligently what is before thee: and put a knife to thy throat, if thou be a man given to appetite." And so, reverently adopting this language, when the student sits down to the study of the law, let *him* "put a knife to his throat, if he be a man given to" haste and impetuosity of temper †. It will never do. 'Tis no use to fume and fidget, and

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* Characters of Virtues and Vices, b. i.

† —"That necessary ornament of a lawyer," says Phillips—"patience. *Virtus contumeliarum et omnes adversitatis impetus æquanimiter portans;* the want whereof is no small disadvantage. * * There is not any passion that standeth more in need of moderation, than this doth; both because it is one of the frequentest that we are troubled with, and the most unruly, as that which doth bear a sway over the rest, and, of all others, hath the least recourse to reason: and hence it is that the most ignorant are most affected with this passion. Οἱ λογισμῷ ἐλαχίστα χρώμενοι θυμῷ πλείστα ἐις ὀργὴν καθίστανται. And it doth not only prejudice business; as to carry men inconsiderate to every thing, and put them wholly out of frame, so as not to be able to do any as they could: as Cicero saith, *Semper ira procul absit, cum quâ nihil recte, nihil consideratè fieri potest, nec ab eis, qui adsunt, probari.* * * But is likewise hurtful to the body; for saith Seneca, *Iræ exitus furor est, et ideo ira vitanda est, non immoderationis causâ, sed et sanitatis.*" This one defect, where it gains footing, shall marr all other virtues and parts, be they never so excellent and adorning."—Stu. Leg. Ratio. pp. 43, 45.

try to enter into its secrets, as the angry housekeeper, who having got hold of the wrong key, pushes, shakes, and rattles it about in the lock, till both are broken and the door still unopened. Take time, eager student *; for there is a time for every thing, even in the law: a time for study, and a time for relaxation. The clearest and strongest eyes, by too long exertion, become over-strained, and every thing is misty and confused. So is it with the mind. You can do nothing *invitâ Minervâ*. Are you foiled, after hours, it may be, of patient thought and research? Quit your books; put on your hat and gloves; take your stick into your hands, and sally forth in search of air and exercise, wherewith to recruit your exhausted spirits. After but a brief interval, you will come

* "There can be no study without time," says South; "and the mind must abide and dwell upon things, or be always a stranger to the inside of them. There must be leisure, and a retirement, solitude, and a sequestration of a man's self from the noise and toil of the world."—*South*, vol. ii. p. 347.

"Sir Matthew Hale," says Bishop Burnet, "was naturally a quick man; yet, by much practice on himself, he subdued that to such a degree, that he would never run suddenly into any conclusion concerning any matter of importance. FESTINA LENTE was his beloved motto, *which he ordered to be engraved on the head of his staff*, and was often heard to say that he had observed many witty men run into great errors, because they did not give themselves time to think, but, the heat of imagination making some notions appear in good colours to them, they, without staying till that cooled were violently led by the impulses it made on them; whereas calm and slow men, who pass for dull, in the common estimation, could search after truth and find it out, as with more deliberation, so with more certainty."—*Life of Hale*, pp. 86, 87.

back in cheerful mood; your head cleared, your temper cooled, and the difficulty disappears in a trice! "A man must use his body," says Lord Hale, "as he would his horse and his stomach; *not tire them at once, but rise with an appetite* *;" and this, if it be only for temper's sake, to render the study of the law a pleasure, instead of a plague.

Its practice, *secondly*, by these means will lose many asperities. The young practitioner must not fret at the delay of business: and, above all—not at this trying period only, but throughout his career—oh, let him "beware of JEALOUSY!" "Puisse, Messieurs," said M. Dupin *aîné*, addressing his brethren of the Bar, in 1829, "cette emulation se développer de plus en plus au milieu de vous, mais sans jamais altérer le sentiment de la confraternité! C'est assez vous dire qu'il faut se garder de l'envie: elle rend plus malheureux encore ceux qui l'éprouvent que ceux qui en sont l'objet. L'envie dégrade l'envieux; car il ne fonde son elevation que sur l'abaissement ou l'humiliation d'autrui; tandis que l'émulation, en laissant aux autres tout leur mérite, nous inspire seulement le louable désir de faire encore mieux †."

He that brings to the law a disposition that "pines and sickens at another's joy," an eye jaundiced, a

* Seward's Anecdotes, vol. iv. p. 416.

† Discours pron. a l' Ouverture des Conf. de la Bibliothèque des Avocats.—Thémis, tome dixieme, p. 568.

heart blighted with envy,—however great may be his learning, however splendid his talents, will certainly lead the life of a fiend. "The envious man," says Bishop Hall, "feeds on other's evils, and hath no disease but his neighbour's welfare.—Finally, hee is an enemie to God's favours, if they fall beside himself; the best nurse of ill fame; a man of the worst diet, for he consumes himself, and delights in pining; a thorn-hedge covered with nettles; a peevish interpreter of good things; and no other than a leane and pale carcase quickened with a fiend." The torments of the Inquisition will be light and tolerable to those which *he* must endure. Oh, 'tis a pitiful, a despicable, a horrid propensity that some have of going about sneering, detracting, toad-spitting, at their more successful brethren,—"uttering innuendoes cursed" against merit, wherever it shows itself! Do YOU, reader, ever feel these demoniacal promptings? Then in this case, also, you had better "put a knife to your throat," for your very soul is cankering within you. But no, we will not insult you by such a supposition. Strive, if strife be needful, to cultivate a manly, frank, and generous spirit! Do not let your fellows, when they rejoice, rejoice *at your cost;* "joy rather with their joy,"—give the cordial, cheering, sincere look, and ready hand of congratulation, to successful merit, wherever, whenever it appears! If, at such times, a sudden excruciating twinge *should* be felt, then say with one of old,

"down, down, devil,"—for you may be sure that your greatest enemy is at work within. The victory you thus achieve will be really a glorious one, as the struggle is severe, though secret; and a series of such victories will erect you into a noble character! *Emulation*—the very life-spring of honourable exertion at the Bar—is thus accurately distinguished by Bishop Butler from the base quality of which we have been speaking:—

"Emulation is merely the desire and hope of equality with, or superiority over, others, with whom we compare ourselves. To desire the attainment of this equality, or superiority, by the *particular means* of others being brought down to our level, or below it, is, I think, the distinct notion of *envy*. From whence it is easy to see, that the real end which the natural passion, emulation, and which the unlawful one, envy, aims at, is the same: namely, that equality or superiority; and, consequently, that to do mischief is not the *end* of envy, but merely the means it makes use of to attain its end *."

But once more. You will sometimes meet with very unreasonable men, both among your brethren and clients, as well in public as in private. A cutting unkind expression may fall, in a moment of irritation, even from the placid Bench; your *leader*, charged with the exciting cares of conducting his

* Works, vol. ii. p. 43.

case, may treat you sharply, and perhaps rudely; and your *client*, broiling beneath, may grow testy and unreasonable. All these, undoubtedly, are exquisitely trying and provoking; but not to him who bears about with him the talisman of an even and well-regulated temper! The author, some time ago, heard a judge in open court utter an extremely severe and uncalled for sarcasm against a very able and well known counsel. The latter, however, ready as he was, uttered not a word in reply, but fixed upon the judge, for a moment, a steadfast unwavering look,—

" a cold rebukeful eye,"

and then calmly proceeded with his argument, as if he had not been interrupted. He—the judge—the whole court felt where the triumph was! Suppose, now, instead of exhibiting this admirable self-possession and command of temper, he had flounced about, and entered into an unseemly altercation with the Bench!

Then as to the ill-humour of your senior: really it is surprising, all things considered, that it is so rarely displayed. A manly mind will make allowances for the occasional hastiness, the unguarded expressions, of a man that is half beside himself with the anxiety and excitement of conducting an important case in court. A temperate and timely expostulation—a firm remonstrance—will soon set very ugly matters straight; while a snarling, captious,

audacious, truculent demeanour, will only expose its exhibitant to worse treatment—to merciless contempt and ridicule. It is possible to mistake rudeness for wit, and insolence for spirit. Let the young counsel, if he will, resolve never to submit to a real insult from any man, be he who or what he may—he will be very contemptible if he do; but let him also resolve never to *offer* an insult, or be quick at taking offence. If he do so, if he be such, he will be a fool for his pains, and will meet with a fool's treatment. Conduct yourself with similar discretion and forbearance towards clients. The anxieties and responsibilities which *they* have to bear are very great; the exigencies on which they consult you sudden, and sometimes even alarming; and the temper must be angelic, that will not occasionally be "screwed beyond its pitch." Not that you are to assume a cringing, servile, sycophantic bearing, which *they* will be the first to see through, and despise; be you from this "far as the poles asunder." There never yet was a client either gained or retained by "*courting*," as it is termed—by any poking underhand means—that was not a very weak, or very vain man; and who did not, sooner or later, turn tyrant. Really respectable solicitors are, of course, unapproachable by such paltry means. But this is a digression.—When you are engaged with clients, be calm, patient, and collected; bear in mind the advice given by Lord Bacon: "Give good hearing to those that

give the first information in business, and *rather direct them in the beginning, than interrupt them in the continuance of their speeches;* for he that is put out of his own order will go forward and backward, and be more tedious while he waits upon his memory than he could have been if he had gone on in his own course; but sometimes it is seen that the moderator is more troublesome than the actor *." Finally, a good temper is an inestimable advantage to a lawyer, old and young; and will carry him, as it were with rail-road ease, comfort, and rapidity, over all obstructions, to the end of his journey; it will lengthen his life as well as make it happy. A *bad* one will strew his way throughout with thorns,—will convert every one with whom he has to deal into an enemy, and himself, in short, into his greatest.

—— " The thorns which I have reaped, are of the tree I planted. They have torn me, and I bleed ! "

II. The *general conduct* of the law-student is a matter of high concernment, depending upon native tendencies, education, and association. It would be a thankless task to dwell at-large upon so trite a topic: nevertheless, the author ventures to offer a few practical suggestions—the results of no inconsiderable observation.

First, our profession unavoidably offers very dangerous facilities for DISSIPATION. The reader need

* Bacon's Essays—of Dispatch.

not start off under the apprehension of a *sermon;* but let him bear to be reminded, that every year of his legal life will give him cause to rejoice at, or regret the want of, early sobriety of conduct, and consistency of character. "Pho!" may exclaim a mettlesome young reader, "let me alone, for that! There *are* fish that never swim so well as in troubled waters; and there are men who compensate for days of hard study by nights of debauchery." True; there may, possibly, be a few who succeed in their studies, and even profession, in spite of their systematic profligacy; whose minds have the power of settling at will upon any subject proposed to them; whose iron constitutions are impervious to the drippings of daily dissipation; with whom

"Gutta *non* cavat lapidem sæpe cadendo."

But do they *never* hear of men breaking down most suddenly and unaccountably in the very prime of life,—in the very moments of success? The seeds sown in a hard constitution, by debauchery, may be long in germinating—but, alas, when least expected, the baleful crop makes its appearance; and then the heart aches with remorse at the revived recollections of early misconduct; amid the horrors of early decline —of dread consumption—the heart is left to *its own bitterness,*—destitute of hope for the future, or consolation for the past. To say nothing of moral or religious considerations, could the eye of the young

law-student be brought to look steadily forward for a few years, and see how heavily his bodily and mental energies will be taxed in the discharge of his professional duties, how he would *husband* them! How he would "prepare for a rainy day," by doing early justice to his constitution!

As for one of the grosser besetments—intemperance—intoxication,—that is now becoming a *vulgar* vice; a circumstance that will weigh more in the estimation of some than all other considerations put together. How can a man sit down hopefully to his studies, with his system disordered, his temples throbbing, his head swimming, his eyes strained and bloodshot with over-night excesses? Is this the way to fit a student for his studies? To render them easy and attractive? How can the mind, polluted and choked with associations derived from incessant scenes of riot and excess, "cleanse" itself "of that perilous stuff that weighs upon the heart!" Passing by the consequences of such conduct upon his own mind, with what mortal peril is it fraught to his character—his reputation! Is it of consequence to the young counsel to stand well with solicitors, and others who are likely to put business in his way? Then let him beware how he so fatally compromises himself, as to indulge in dissolute habits, which are soon known and noised abroad. Reports of this sort, whether well or ill-grounded, are like water spilled on the ground—not to be gathered up again! It is of the last importance

to our student to acquire early the character of a steady *working man*. There are undoubtedly persons of brisk, lively parts, who think otherwise; to whom it is extasy to swagger about in the streets, at all hours, in dandified costume * and raffish company,

* How different all this from Sir Matthew Hale! who, on commencing his studies—"discarding his gay clothing, assumed a plain and student-like habit." [This, however, he carried to the other extreme, "exhibiting the greatest negligence in his personal appearance; insomuch that on one occasion he was *impressed* as a fit person to serve his Majesty, and was released only in consequence of being recognised by some passing acquaintance."—*Rosc. Lives.*]

"The Lord Keeper Guilford's youthful habits," observes Roger North, "were never gay, or topping the mode, like other Inns of Court gentlemen, but always plain and clean, and showed somewhat of firmness or solidity beyond his age. His desire was rather not to be seen at all, than to be marked by his dress. In these things, to the extreme was his aim: that is, not to be censured for a careless sloven, rather than to be commended for being well-dressed."

"The student's habit, likewise," quoth old Phillips, "ought to be decent and neat, not gay and apish: nor may he spend any part of the time allotted for study in a curious and antic dress, which, after all the pains bestowed, doth not become a man. Neither is it only an effeminate part, but is likewise a sure sign that they are frothy and empty, and accordingly resolved to put a good face upon the matter, and, peacock-like, to place their worth and excellency on their outside;—of whom Seneca saith '*Nosti complures juvenes vesti et concâ nitidos de capsula totas nihil ab illis speraveris forte, nihil solidum.*"—*Stu. Leg. Ra. p.* 40, 41.

"Sir Matthew Hale," says Burnet, "was a great encourager of all young persons that he saw followed their books diligently; to whom he used to give directions concerning the mode of their study, with a humanity and sweetness that wrought much on all that came near him: and in a smiling way he would admonish them if he saw any thing amiss in them; *particularly if they went too fine in their clothes*, he would tell them it did not become their profession. He

whiffing cigars with an impudent air, talking town slang, and insulting, possibly, female passengers; to frequent low taverns, gaming-houses, theatres, and race-courses. This is certainly one way of learning *life*—of acquiring a knowledge of men and manners, and so preparing the scion of the Bar for the displays of Nisi Prius!—Oh, that the student would lay these things to heart—that he would early eschew scenes and conduct so pregnant with mischief to all his best interests; and, above all, be prudent in the selection of his associates!—Let him ponder a memorable passage which is to be found in the life of Sir Philip Sidney.

"Algernon Sidney, in a letter to his son, says that in the whole of his life he never knew one man, of what condition soever, arrive at any degree of reputation in the world, who made choice of, or delighted in the company or conversation of those who in their qualities were inferior, or in their parts not much superior, to himself."

And one scarce less notable, in Roger North's Discourse:—

"The fate of men's lives is too often determined

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was not pleased to see students wear long perriwigs, or attorneys go with swords; so that such young men as would not be persuaded to part with those vanities, when they went *to him*, laid them aside, and went as plain as they could, to avoid the reproof which they knew they might otherwise expect."—*Burnet's Life of Hale*, pp. 98, 99.

to good or evil, by their company; and as the choice of company is more nice and difficult, so are the hazards of young gentlemen's swinging into utter perdition greater; but *a student of the law* hath more than ordinary reason to be curious in his conversation, and to get such as are of his own pretension, that is to study and improvement, and I will be bold to say that they shall improve one another by discourse as much as all their other study without it could improve them *."

Gay life, and gay companions, cannot be kept without *money:* and many are they who have purchased a few months' pleasure, as it is called, with future years of vexation and inextricable embarrassments!—But it is useless: we are called prosers!—Oh, then, the delights of being in debt! of dodging duns, of gulling creditors,—occupations admirably calculated to give respectability to the character, and composure to the thoughts! There is nothing, sure, that sets such an edge upon attention, that so whets the appetite for abstruse pursuits, as the apprehension of an arrest—the 'delicious agony'—the suspense, of borrowing money, and secret visits to the pawnbroker! The repose and seclusion of a sponging-house are capitally adapted for the perusal of such legal bagatelles as Fearne on Contingent Remainders and Executory Devises—and afford the utmost facili-

* Disc. Stu. Law, p. 30.

ties for learning all the nice and various *law of arrest!* Verily an ounce of experience is worth a ton of speculation!—But what will you do, let it be respectfully asked of him who does not happen to command the purse of a family Crœsus, when you come to commence business? How are you to lay in a library? To take proper chambers? To keep clerk and laundress? To purchase your annual certificate? To *live*, after all this? What cruel folly thus to embroil yourself at the very outset!

Secondly.—If the student has access to 'good society,' as it is called, let him beware of yielding to its insidious encroachments upon his time and health. If he really work hard during the day, how can he stand, either physically or mentally, the excitement, and consequent exhaustion, of incessant dinner and night visiting? He will, however, soon find this out for himself; that he cannot long serve two masters, law and fashion; that if he would become a good lawyer, he must drop the *bon vivant* and fine gentleman. It soon gets noised about that Mr. So and So is "a delightful fellow,"—"always out,"—"goes into the best society," &c. &c. &c.; and solicitors are too considerate to think of disturbing such enjoyments! Not that the student should morosely exclude himself altogether from cheerful and elegant society—far, very far otherwise; but there is moderation in all things; a medium between a rake and a recluse.

Thirdly.—The same prudence which teaches a

young man to avoid squandering his hours in the frivolous occupations of pleasure-hunting, will also enable him to preserve a "moderation, discretion, and forbearance, in his very work." Let him economise his time, for the purpose of study, if he will; but let him *apportion* that time wisely. There cannot be an error more egregious than that which is often to be met with in eager law students at the commencement of their studies—that of poring over their books from morning to night, utterly careless of health,—of the means of preserving both body and mind; thus wearing themselves out at the very beginning, "well-nigh chancing shipwreck at starting," as some of our greatest lawyers have had to lament,—and that, too, by unprofitable labour. Let not our student think it a worthy thing to be able to boast of reading "*so many* hours a day,"—eight, twelve—it may be sixteen: whoever hears him, will but pity, or despise him, and think very little better of him than if he boasted of being so long employed in *eating*. Indeed he might as well! Does it never occur to him that mental food as much requires DIGESTION as bodily food? The very beasts that perish are wiser than to act thus: they may eat, even voraciously—but once satisfied, they lie down to sleep, if left to themselves. Stuffing and cramming, according to the manner of some, may ensure the painful turgidity of an ill-used turkey; but can never conduce to the healthy development and

discipline of the human understanding *. Lord Coke's significant words—"*præpostera lectio*," the too ambitious student would do well to meditate upon. Five, or at the very most six hours a day, of thoughtful reading, of real work, will, generally speaking, suffice for the youthful student, unless he means early to incapacitate himself for prosecuting his studies. *Non quam multa, sed quam multum*, should be inscribed upon his study door. Lord Hale said, "that he studied sixteen hours a day for the first two years after he came to the Inn of Court, but almost brought himself to his grave, though he was of a very strong constitution, and after reduced himself to *eight* hours; *but that he would not advise any body to so much*: that he thought SIX hours a day, with attention, and constancy, was sufficient;" adding the words already quoted, "that a man must use his body as he would his horse, and his stomach, not tire him at once, but rise with an appetite †."

* "I had heard much of ———," said an eminent person to the author, alluding to a young man who had recently entered upon public life,—"and was disposed to think well of him, till I heard him say that for the last four years he had READ *fourteen hours a day!* I have never thought anything of him since. From that time, whatever I have seen or known of him, has convinced me that he spoke truly."

† Sew. Anec. vol. iv. p. 416. This saying, by the way, is taken by Lord Hale from the writings of Bishop Hall.—See Epist. Decad. V. Ep. viii. "The attempts to parcel out a particular period of the day," says a judicious commentator on Roger North's discourse, "or a certain number of hours as sufficient for

There is one point, however, concerning the due economy and disposal of his time, which yet remains to be urged most strenuously upon the young lawyer, and that is, EARLY RISING. The author is one of those who, through too long neglect of this invaluable habit, has suffered much inconvenience; but who for the last few years has so far cultivated it, as to give himself cause for abundant self-congratulation. *Experto igitur crede.*—Those who have been accustomed to the enervating habit of lying in bed till nine or ten o'clock, must turn over a new leaf, on entering our profession. To say nothing of business beginning, in court even, punctually at ten, and the consequent necessity of dressing, breakfasting, and *preparing* for transacting it,—why will not the student accustom himself to such a habit before-hand? Why not

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the study of the law, are perfectly nugatory; it is as though a physician were to prescribe a certain dose of medicine for all his patients, without regard to their age, strength, or constitution. '*Four* hours in a morning, close application to his books,' says Mr. North, 'is the sufficient quantum;' while, according to Sir Eardly Wilmot, '*six* hours of severe application' is necessary. There are, no doubt, cases in which four hours' study would be more than sufficient, and others in which six hours would not be enough. It is not uncommon to see a man of quick apprehension and powerful memory more effectually mastering the study with a small devotion of his time, than another individual of a duller intellect, whose labours are unceasing. The only mode, therefore, of judging whether a sufficient time is devoted to the study, is by examining the progress made."—*Notes and Illustrations to Roger North's Discourse*, pp. 58, 59, (note 6).—" Sir Henry Finch," says North (p. 8), " used to say, study all the morning, and talk all the afternoon !"

secure an orderly disposition of his time through the day, by beginning it well? A fortnight's perseverance in rising early—say at seven, and eventually at six o'clock, will enable him easily to form a habit that will bring him blessings incalculable in after life. Look at the *time* he will gain by it! Two or three of the very best hours of every day; when he is refreshed both in body and mind,—when all around is silent and peaceful, *provocative* of meditation,—the great glaring world, not yet awoke from *its* slumbers, neither distracting him with its own hubbub, nor sending its emissaries to disturb or seduce him! It will enable him to get through every day's business, however difficult and miscellaneous, leisurely and methodically; for how true it is, that he who loses an hour in the morning, generally wastes the remainder of the day in running after it! Not that the student need fasten upon his law-books the moment he rises from bed,—that will be a matter of choice: but to whatever subject he devotes his energies, those energies will be assuredly at their best. Hearken to the cheering and spirit-stirring strains of Milton!

"My morning haunts are where they should be, at home; not sleeping, or concocting the surfeits of an irregular feast, but up and stirring: in winter, often ere the sound of any bell awaken men to labour, or to devotion; in summer, as oft as the bird that first rises, or not much tardier, to read good

authors, or cause them to be read *, till the attention be weary, or the memory have its full freight; then with useful and generous labours preserving the body's health and hardiness, to render lightsome, clear, and not lumpish obedience to the mind, to the cause of religion and our country—liberty, when it shall require our firm hearts in sound bodies to stand and cover their station †."

This habit of early rising, however, be it observed, will demand the accompaniment of early *retiring*, if it is to be *kept up*, advantageously. And what of this! Is it a thing to be regretted? No, but rather beloved and welcomed as 'a salutary, peace-giving, blessed necessity!

In a word: if our student has not resolution enough to commence his legal career with early-rising, we shall well nigh give him up!

Then, again, let the student firmly resolve to abstain from his professional or other labours on the sabbath-day. We urge not this topic on any religious grounds, those he will find elsewhere than in such a work as this; but purely on those of prudence and expediency. Let him shut up all his books, and put away his papers, on the Saturday night, resolving not to look upon—not to *think* of them (except in rare cases) till the following Monday. *His mind must have an interval of rest;* and this day is set apart for such a

* A touching allusion to his blindness.

† Prose Works.

purpose, amongst others and higher, with infinite wisdom and goodness. God forbid that the student should be expected to convert this "day of rest" into one of religious *labour*, gloom, and uneasiness. The "sabbath was made for man, not man for the sabbath;" but can there be a more just and noble exercise than that of, at least once in the day, attending in the House of the God that made him, and will hereafter judge him,—ridding himself of the distractions, purifying himself from the pollutions of worldly thoughts, and cherishing those of devout hope and thankfulness? Is example necessary? Amongst a "cloud of witnesses" may be cited the illustrious Lord Hale, who "was so regular in the duties of religion," says Burnet, "that for six-and-thirty years' time he never once failed going to church on the Lord's day!"

Nor let the student rob himself of the salutary leisure afforded by holidays and vacations. It is but a short-sighted policy to do so, with reference equally to his mind and body. He will do infinitely more, and that more pleasantly, after a week or a month's absolute intermission of his studies, than he would by devoting all the vacation to them. *Ne quid nimis* should be rung in his ears daily by those who have access to an over-labouring student. They should address him in the weighty words of "the English Seneca:" "Moderate your own vehemencie; suffer not yourselfe to doe all you could doe; rise ever from your deske, not without an appetite. The

best horse will tire soonest, if the reins lie ever loose on his necke: restraints in these cases are encouragements: obtaine therefore of yourselfe to deferre and take new daies. How much better is it to refreshe your mind with many competent meales, than to buye one day's gluttonie with the fast of many? And if it be hard to call off our mind in the midst of a faire and likely flight, know that all our ease and safety begins at command of ourselves; he can never taske himselfe well, that cannot favour himselfe. *Persuade your heart that perfection comes by leisure*—the rising and setting of many sunnes (which you think slackens your worke) in truth ripens it. That gourd which came up in a day, withered in a day; whereas those plants which abide age, rise slowly*."

III.—Ambition! what shall be said of it?—That the first fruits of a legitimate *professional* ambition, will be the patience, sobriety, and steadfastness of which so much has been already said. If it beget not *these*, it will be all moonshine—the mere will-o'-the-wisp that has led thousands out of their way into the dreary bogs and marshes of failure,—there to sink

"Unseen, unpitied, hopeless!"

True legal ambition is an eminently calculating and practical quality. It disposes the student to apportion his strength to his task; to set his eyes upon

* Bp. Hall, Epist., Decade V. Ep. VIII.

worthy objects, and go about the attaining them, worthily—to look, before he leaps. It deals with matter-of-fact alone, utterly discarding any reliance on *chance*—a word which is banished from its vocabulary. It sets a fool speculating on possibilities; a wise man calculating probabilities. The one thinks, with vain sighs and wishes, on the *end* alone; the other does but glance at it—and then resolutely sets about considering the *means*: the one it makes passive, the other active. It is, in short, the balance-wheel in the well-regulated mental mechanism;—a mere disturbing force in one ill-regulated. If the most eager and gifted of its votaries were to ask *us* for information, we would earnestly whisper in his ear—"Be calm; calculating; long-sighted; take it easily; think not of hop, step, and jump, in the law, but rather gird up your loins for a severe struggle—a long pilgrimage; for the prize is very splendid, but very distant. You cannot hasten the order of things, the march of events, any more than the husbandman the course of vegetation. However anxious for his crops, however rich the soil, however propitious the weather, he must drop his seed into the ground, and wait and watch till it makes its appearance in due season. So is it especially with the legal husbandman!—Learn your profession thoroughly; do not attempt to become, as Lord Bacon has it, "a lawyer *in haste*"—the thing is impossible; learn slowly and well that which will so enable you to acquit yourself

brilliantly when "the occasion sudden" shall have arrived. A contrary method will mar all your prospects, rendering you bloated with conceit, and inflaming your friends with most fallacious expectations."—'But,'—murmurs an impetuous spirit—'look at the heights to be scaled—the ground to be gone over: nothing but desperate efforts will suffice.' Did he ever witness a great race? Did he see the noble horses, when brought to the starting-post, and the signal was given, plunge off at their top speed? Or did he not rather observe how slowly, cautiously and skilfully their riders managed the start, so as to put their horses *gradually* to their utmost, that they might so be able to shoot with lightning-swiftness past the *goal?*

The study *is* a vast and difficult one, truly: so the cable looked fearfully thick, inextricably twisted together; and yet a very little mouse nibbled through it, and soon set the great ship a-drifting!

These may seem illustrations, common-place enough; nevertheless it is all we have to say upon Ambition, except to conclude in the words of a very great man—himself one of the most glorious models of a true ambition—

"Remember; resemble; persevere *!"

IV.—Ambition, such as we have endeavoured thus plainly to pourtray it, cannot fail of generating

* Burke—of Lord Rockingham.

another capital quality of a promising law-student—DECISION OF CHARACTER, and that both in intellectual and moral matters. No genius, no industry, no energy, will avail without *this*—especially in the legal profession. The student may, perhaps, select his course wisely—but how difficult to *adhere* to it—through good and evil report—through all doubts, obstacles, and discouragements! The fruit of his labours is so slow in appearing, the toil so incessant and severe, that the stoutest hearted student is apt to grow a wearied, and begin to waver from his purpose. He hesitates. *Is* he in the right, or, at all events, in the *best* way? Is he not wasting his time? Throwing away his labour?--He begins to slacken, pause, and look about him. How did So and so manage? he wonders—what would Such an one recommend? He consults one, and another; hears of a new course of study; several of his acquaintance say there is nothing like it; *he* is quite in the wrong, he may depend upon it! The celebrated ———— took *this* method! Our poor fickle friend listens and sighs. Forthwith the vessel tacks—and tacks—and sails this way, and that way, till the day-light is gone, and the port further off than ever! Let the student, now, be early on his guard against this wretched frailty of purpose—this hesitating, fluctuating humour; and if he cannot overcome it—quit the law.

Priusquam incipias, consulto, sed UBI CONSULUERIS, MATURE FACTO, *opus est*,—must be his maxim.

Let him reflect upon the disposition young men have to laud, at the expense of all others, the particular course of study which *they* have adopted, caring not whether or not they have been really successful or not; never thinking, in this blind flattery of their own superior discernment, of the difference between intellects, which, like different soils, require different modes of cultivation! Let the student deliberate as long as he chooses, before adopting his line of study—but, once fairly adopted, let him make a point of adhering to it with manly firmness; unless, after a reasonable trial, it proves to be an erroneous one. Let him not go gadding, flittering, and gossiping about among his friends—plaguing both them and himself with asking their opinions on what he is doing, but "pursue the even tenor of his way," and in due time he will assuredly reap a rich harvest, "But," he says, "I admire all this; I see its necessity—would I could put it in practice!

——— Video meliora, proboque;
Deteriora sequor!

Let him, however, rely upon it, that, the knowledge of the disease being half the cure, the more sensible he is of his deficiency, the more he must strive to supply it. A series of these efforts will beget the habit—*Vires acquirit eundo.* Consider how all-important it is! What can be done in the business of life without it? Is it not worth *daily* struggles to acquire it? Why will he let his escutcheon be tar-

nished with this unseemly blot, when a few hard rubbings will get it out?

> The flighty purpose never is o'ertook,
> Unless the deed go with it: From this moment
> The very firstlings of my heart shall be
> The firstlings of my hand. And even now
> To crown my thoughts with acts, be it thought done* !

It is needless, however, to attempt pursuing this important subject further, since it has been handled with signal ability by Mr. Foster: whose essay on "Decision of Character" the student is recommended to read with earnest attention. It is full of just and stirring thoughts—of acute and sagacious observations; and many individuals, now variously distinguished in life, have been heard by the present author to express their fervent obligations to Mr. Foster, for the high and healthy tone which the Essay in question communicated to their youthful character.

Thus has it been attempted to sketch briefly—it is feared, also, imperfectly—some features of what may be termed the moral portraiture of a young lawyer. The necesary compression of copious materials—somewhat suddenly imposed upon the author—has, he fears, impaired the general effect of the chapter. He hopes, nevertheless, that the foregoing pages will not be found destitute of practical *hints* which may suggest profitable reflection to the serious, intelligent, and candid reader.

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* Macbeth.

CHAPTER IV.

ON THE FORMATION OF A LEGAL CHARACTER.

PART II.—GENERAL KNOWLEDGE.

The engrossing nature of legal pursuits, whether in study or practice, is too apt to render those who undertake them indifferent both to the acquisition and retention of that general knowledge, that large acquaintance with men and things, which is essential to constitute a superior member of society, especially of a liberal profession. Against this, then, let our student be ever on his guard. The considerations are numberless and most weighty by which this topic might be urged upon him. Let him assure himself, that the longer the acquisition of such knowledge is neglected, the more difficult will be the remedy, more poignant his regret, more frequent his exposure to mortification; while an early, systematic, and prudent cultivation of it, will ensure him numerous and often overwhelming advantages over those who have not thought it worth their while to adopt a similar course.

Does he imagine that he is to be for ever in chambers, or in court,—eternally writing opinions, and drawing pleadings? Then we have done with him, as one of those dismal plodders who are past praying for,—mere legal beetles, ever crawling amidst the duskiest passages of an Inn of Court! How can a man of this description venture into polite society? He must *there* either talk the slang of his profession, or be condemned to total silence: for what does he know of its topics?—of the political movements, at home or abroad?—of the varied and interesting details of literature, scholarship, the fine arts, science, philosophy? Excuse may be made for him, by good natured people, on the score of an overwhelming practice, which leaves him neither time nor inclination for other pursuits; but, making the largest allowances, will they avail to ward off the contempt which must ever attach to *blank* ignorance of all such matters? What, however, if this lawyer be found to have after all but a *moderate* practice! Then the excuse holds not; for that must be a mean and narrow mind indeed, that is choked up with so little. It is true that, as before intimated, a tolerably extensive sweep of useful practical knowledge—*i. e.* of the details of trade, manufactures, commerce, &c. &c.—must be possessed necessarily by even the *mere* lawyer; but can an intellect of any but the most grovelling description rest satisfied with *this?* What Burke said of Mr. Grenville—two men in this respect the very anti-

podes of each other—is worthy of being borne in mind by every young lawyer, be his pretensions at starting what they may.

" Sir, if such a man fell into errors, it must be from defects not intrinsical; they must be rather sought in the particular habits of his life; which, though they do not alter the ground-work of character, yet tinge it with their own hue. He was bred in a profession. He was bred to the law; which is, in my opinion, one of the first and noblest of human sciences,—a science which does more to quicken and invigorate the understanding than all the other kinds of learning put together; but it is not apt, except in persons very happily born, to open and to liberalise the mind exactly in the same proportion. Passing from that study, he did not go very largely into the world, but plunged into business,—I mean into the business of office,—and the limited and fixed methods and forms established there. Much knowledge is to be had, undoubtedly, in that line; and there is no knowledge which is not valuable. But it may be truly said, that men too much conversant in office, are rarely minds of remarkable enlargement. Their habits of office are apt to give them a turn to think the substance of business not to be much more important than the forms in which it is conducted. These forms are adapted to ordinary occasions; and therefore persons who are nurtured in office do admirably well, as long as things go on

in their common order; but when the high roads are broken up, and the waters out,—when a new and troubled scene is opened, *and the file affords no precedent,—then* it is that a greater knowledge of mankind, and a far more extensive comprehension of things is requisite than ever office gave, or than office can ever give *."

It cannot be too frequently impressed upon those who, before embracing the legal profession, have laid the basis of extensive general knowledge, or rather, dropped the seeds of it into their minds, that it is infinitely easier to forget all, than difficult to retain, improve, and expand present knowledge. True it is, that

> " Quo semel est imbuta recens, servabit odorem
> Testa diu ; "

but that applies chiefly, if not exclusively, to the classical and mathematical studies with which they have been occupied from their earliest years; which are intrinsically of little other use than to adorn and strengthen the mind, and therefore valuable only as

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* Speech on American taxation.—" This is a lively picture of the insufficiency of mere experience," says Dugald Stewart, " to qualify a man for new and untried situations in the administration of government. The observations he (Mr. Burke) makes on this subject, are expressed with his usual beauty and felicity of language; and are of so general a nature, that, with some trifling alterations, they may be extended to all the practical pursuits of life."—*Philosophy of the Human Mind*, chap. iv. § 7.

means to an end, to those especially who enter the law. It is in vain to think of preserving an exact recollection of the minutiæ of scholarship—the exquisite niceties of grammatical construction, dialect, and prosody: but are all the traces, therefore, to fade away, of ancient poetry, criticism, history, biography, philosophy? The sublime strains of Homer, Eschylus, Sophocles, Euripides, to be so soon utterly forgotten? The *thought* is sufficiently shocking; but, nevertheless, the *result* inevitably is so, where a man is ingrate enough to be at no pains about the matter,—who will not set apart a little time—a few occasional hours—to refreshing converse with his early favourites*. He could not have loved truly, that can part so easily. If it be but once or twice in a month that our student can shut his door upon the hubbub of his profession, of the world, and enter into communion with the great ones of antiquity, the interview he thus secures will indeed be precious. It will be like touching the

* Adams's Roman Antiquities, by the way, is one of the very last books that a classical scholar should lay aside on entering the legal profession. He should make a point of reading portions of it at stated intervals, and thus preserve fresh in his mind that excellent writer's solutions of almost all the difficulties and obscurities that are to be met with in Latin literature,—those recondite allusions to habits, manners, and customs, which soon slip from the recollection, and yet are essential to the understanding and full appreciation of any Roman writer, either of prose or poetry. The chapters on "law," and "judicial proceedings," should be objects of special attention; as well as the corresponding portions of Potter's Grecian Antiquities.

harp that long ago had charmed him in a "distant paradise," reviving a thousand pure, tender, and ennobling recollections of those days,

> "When the freshness of thought and of feeling were his,
> As they never again can be."

And as for the sterner studies of algebra and geometry, these will be, in a manner, *functi officio;* they will have disciplined and strengthened his understanding: but is it nothing to part for ever with the only keys that can unlock the grand storehouses of physical science?—as will inevitably be the case, unless the "fundamentals of philosophy be *oft re-visited.*" Perhaps, however, it may be safely taken for granted, that those who have been happily thus early initiated into classical and philosophical pursuits, and possess, besides, minds naturally capacious, retentive, and inquisitive after truth, will never suffer themselves to be *enslaved* by any one pursuit, even though it be that in which are embarked all their hopes of future greatness.

But what shall be said to those, less favoured by opportunities than perhaps by nature, who bring to our profession minds comparatively undisciplined and uninformed? It is a difficult and delicate task to advise them; for "*some travellers,*" says Bishop Hall, "*have more shrunk at the map than at the way:* between both, how many sit still with their arms folded?" Nothing is easier than to draw up a

flourishing list of books, and style it a "course of reading;" nothing more disheartening than such an array, to those for whose eye it is designed. The most enterprising young reader's heart is apt to sicken at the sight of a "course of studies," however skilfully sketched out; there seems something hopeless in having to master so much,—in seeing the work of many years to come thus cut and dried, and parcelled out before him. But how must he have despaired at the fearful catalogue of "books to be read,"—traversing all parts of moral, intellectual, physical, and mixed science,—"before settling to the study of the law," which are to be found in not a few of those works which are styled elementary! What does the astounded *legal* student think of being told "to acquaint himself with chemistry, botany, anatomy, physiology, medical jurisprudence, logic, mathematics, history, geography, and moral philosophy!" Would the intellect of a Bacon, added to the age of a Methusaleh, be more than equal to such a task*?"

* As a curious specimen of such a catalogue, the author cannot resist giving the following extract from a work entitled "Suggestions for the Education of SOLICITORS and ATTORNEYS!" After giving lists of books on General history, English history, Belles Lettres and composition, our author proceeds thus:—"In the study of natural and experimental philosophy, Lobb's Contemplative Philosopher, Joyce's Letters on Natural Philosophy, Enfield's Institutes of Natural Philosophy, Gravesande's Mathematical Elements of Natural Philosophy; Hooper's Rational Recreations, and Desagulier's

The author, after making such observations as these, ventures only with the sincerest deference and hesitation, to lay before the reader a few plain suggestions for a useful and *practicable* course of general studies. Let him remind the eager student, that it is not to be hurried over in a few months, but must be the work of several years' attentive and systematic reading and *reflection*. "Nothing, in truth," says Dugald Stewart, "has such a tendency to weaken not only the powers of invention, but the intellectual powers in general, as a habit of extensive and various reading, *without reflection*. The activity and force of mind are gradually impaired, in consequence of disuse; and not unfrequently all our principles and opinions come to be lost in the infinite multiplicity and discordancy of our acquired ideas. It requires courage, indeed (as Helvetius has remarked), to remain ignorant of those useless subjects which are

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Experimental Philosophy, are of essential advantage; and in the pursuit of abstract and metaphysical philosophy,"—*six* great works are cited as "worthy of most attentive perusal." "In moral and political philosophy,"—*four* extensive works are mentioned; in "astronomy and mathematical learning,"—eight works; (among which is La Place's System of the World)—and so "in the arts," "in political economy," "in religion and morals,"—all which, we are told, "claim the attention of every person who wishes to gain respect and attention among the well educated classes of society." —*Williams's Study of the Law*, pp. 206-7.—"If these things be done in the green, what shall be done in the dry?" If "solicitors and attorneys" are to be thus "educated," what must be the magnificent system of education conceived by this author for a barrister!

generally valued; but it is a courage necessary to men who either love the truth, or who aspire to establish a permanent reputation *." Nor must general reading be suffered on any account to interfere with legal studies, but be kept in due subordination to them.—The spirit in which the student should commence his labours, must be that described by Lord Bacon, in words which the student should ever have present to his mind: "Read, not to contradict and confute, nor to believe and take for granted, nor to find talk and discourse, but to WEIGH AND CONSIDER †."

It cannot be supposed that any come into the profession destitute of the early advantages of a liberal education, especially as far as relates to the *rudiments* of geography and chronology, and history, ancient and modern,—matters which, as Mr. Dunning observed, it is not so much a credit to know, as a disgrace to be ignorant of. One conscious, however, of his deficiencies on this score, and of the little time left him for supplying them, must make a point of frequently exercising himself in these matters; and for this purpose should not disdain the assistance afforded by works of a very slight elementary character. Even Pinnock's Catechisms were spoken of by Lord Eldon as likely to be useful to "more than

* Elements of the Philosophy of the Human Mind, Part II, c. vi. § 5.

† Bacon's Essays—Of Studies.

mere children *,"—the form in which they are written being exceedingly well adapted for self-examination. A very little practice of this kind would suffice to keep the leading lineaments of many important branches of knowledge fresh and distinct. Above all things, let the student provide himself with a standard work on geography, to which he may constantly refer during his historical readings; and the author takes the opportunity of cordially recommending for this purpose Mr. Murray's "Encyclopædia of Geography," just published. It is certainly a huge, and somewhat expensive book; but it contains an enormous mass of valuable matter, most scientifically arranged. Sir Harris Nicolas's "Chronology of History," published in Dr. Lardner's Cabinet Cyclopædia, is indeed a worthy "hand-book of history," and contains, in a little compass, information of the greatest value, collected with the utmost care, from a variety of authentic sources, particularly "L'Art de verifier les Dates," and "De Vaine's Dictionnaire Raisonné sur Diplomatique," and arranged in the most succinct and convenient manner.

The author makes no apology for transcribing into the text an instructive paragraph from the preface of this excellent work.

"Though the value of chronology, as one of the

* "It appears to me that adults might be greatly benefited by the instruction these books contain, as well as the younger branches of society."—*Lord Eldon, Ch., 27th July*, 1819.

great land-marks of history, is generally admitted, the principal branch of that science—the reduction of the different eras, and other epochs by which time was formerly computed, to the present mode of calculation, has not received the attention in this country which its importance demands. Every event in history arose from, and depended in a great degree upon, *some preceding circumstance*, and became, in its turn, the parent of other events, of greater or less moment; hence, however trifling either of them may be in itself, or if viewed without relation to other circumstances, however immaterial the precise time of its occurrence, there are few which, as tributary streams to the great current of human affairs, had not some influence on the political state of the nation in which they took place, and not unfrequently also on those of neighbouring countries. To know that any event *did* occur, is of little use for the legitimate objects of history; the utility of which is, to trace transactions to their causes, and, when these are known, to discover their general consequences. Abstractedly, even the greatest events of modern or ancient history deserve little consideration. What would it matter, for example, to posterity, whether the battle of Waterloo was or was not fought, much less the precise day and year when it occurred, were it not that it is the first link of a long chain of events, the importance of which on Europe, and, indeed, on the whole civilised world, it will be the province of

future historians to describe? Here, then, arises the value of chronology; for a mistake in the date of that victory might induce an historian, some centuries hence, to confound cause with effect, by supposing that Napoleon's second abdication preceded, instead of being the result of that battle.—Chronology and geography have been justly called the 'eyes of history,' without the lights of which all is chaos and uncertainty *."

History must be one of the earliest objects of a young lawyer's attention †. Sir William Jones has some very valuable and beautiful observations on the necessity of such knowledge.

"There is no branch of learning from which a student of the law may receive a more rational pleasure, or which seems more likely to prevent his being disgusted with the dry elements of a very complicated science, than the history of the rules and ordinances by which nations eminent for wisdom and illustrious in arts, have regulated their civil polity: nor is this the only fruit that he may expect to reap from a general knowledge of foreign laws, both ancient and modern; for whilst he indulges the liberal

* Chronology of History, preface, v. vi.—See also Locke on Education, § 182.

† "The student of politics or public law," says Lord Woodhouselee, "is presumed to have that previous acquaintance with history which it is the object of a course of historical study to communicate; and without such acquaintance, his study of politics will be altogether idle and fruitless."—Elucid. Hist. Vol. I. p. 4.

curiosity of a scholar, in examining the customs and institutions of men whose works have yielded him the highest delight, and whose actions have raised his admiration, he will feel the satisfaction of a patriot, in observing the preference due, in most instances, to the laws of his own country, above those of all other states; or if his first prospects in life give him hopes of becoming a legislator, he may collect many useful hints for the improvement even of that fabric which his ancestors have erected, with infinite exertions of virtue and genius, but which, like all human systems, will ever advance nearer to perfection, and ever fall short of it. In the course of his inquiries he will constantly observe a striking uniformity among all nations, whatever seas and mountains may separate them, or how many ages soever may have elapsed between the periods of their existence, in those great and fundamental principles which, being closely deduced from natural reason, are equally diffused over all mankind, and are not subject to alteration, by any change of place or time; nor will he fail to mark as striking a diversity in those laws which, proceeding merely from positive institutions, are consequently as various as the wills and fancies of those who enact them *."

Ancient history lies scattered over a wide surface, and no one can pretend to do it justice that does not devote to it several years, and a mind already well

* Prefatory Disc. to the Speeches of Isæus.

stored with various learning. Lord Mansfield's 'short plan for reading Ancient History' is well known *. "In the wide field of ancient history," says his lordship, "I have skipped over the rugged places, because I mean to lead you on carpet ground; I have passed over the unprofitable, because I would not give you the trouble of one step which does not lead directly to useful knowledge." His plan may be stated shortly thus:—commence with Fleury, Du Choix de la Conduite des Etudes (§ 26, Histoire; § 31 Rhetorique);—Cicero de Oratore, (lib. ii. §§ 51—63); De Legibus (lib. i. §§ 1, 2); De Officiis (lib. i. c. xxii—xxiii); Dr. Priestley's Chart, and Playfair's Chronological Tables, for the duration and extent of the Assyrian, Persian, Grecian, and Roman empires, and the Goths and Vandals; various portions of Raleigh's History of the World; Xenophon; Thucydides; Tourreil's Hist. Pref. to Demosthenes, (bk. i. c. 1. §§ 2—8.) "Over and over, the speeches of Demosthenes," in the original, or a translation; Vertot's Roman Revolution (b. xi. xii. xiii. xiv. throughout); Sallust; Montesquieu De la Grand. et de la Decad. des Romains (c. c. ii. & xi.); Cicero's fourteen speeches against Mark Antony ['the second, which cost him his life, is the only speech of length.'] "When you have finished the above course, in the manner proposed, go over the whole a second time;

* First published in the European Magazine for 1791-1792.

which, if you make yourself master of it the first time, need not cost you many days. The next thing in order is, that you should have some notion of the history of the Roman Empire, from Julius Cæsar to the end of the fifth century. Read ch. xii. to xviii. of De la Grandeur des Rom. et de leur Decadence—'adding the chronology, and throwing on paper enlargements in particular parts, especially the grand epochas;' Bishop Meavie's Disc. on Univ. Hist. Lit. de l'Empire Romain, 'to the end.' "This," he concludes, "will give you a small map, sufficient at present. Reflect on the Roman Imperial Government; military and tyrannical, like the Turkish and Russian."

Such is the sketch of historical reading left by Lord Mansfield. Without presuming to offer any observation upon it, it may be suggested, that a work which has been only very recently given to the public in a *complete* form, and which, in its original shape, appeared shortly after Lord Mansfield's death, Lord Woodhouselee's "Universal History, from the Creation of the World to the beginning of the Eighteenth Century *," is the best possible foundation for a thorough, comprehensive, and practical course of historical study. The plan of this admirable work is thus shortly explained.

"When the world is viewed at any period, either

* Mr. Murray, by publishing this work in a cheap and elegant form, (6 vols., pocket 12mo), has rendered a very great service to the cause of historical literature and of education.

of ancient or of modern history, we generally observe one nation or empire predominant, to whom all the rest bear, as it were, an underpart, and to whose history, we find, in general, that the principal events in other nations may be referred from some natural connexion. This predominant nation I propose to exhibit to view as the principal object whose history, as being, in reality, the most important, is, therefore, to be more fully delineated; while the rest, as subordinate, are brought into view only where they come to have an obvious connexion with the principal. The antecedent history of such subordinate nations, will then be traced in a short retrospect of their own annals. Such collateral views, which figure only as episodes, I shall endeavour so to regulate, as that they shall have no hurtful effect in violating the unity of the principal piece." * * * "Thus Ancient History will admit of a perspicuous delineation by making our principal object of attention, the predominant states of Greece and Rome, and incidentally touching on the most remarkable parts of the history of the subordinate nations of antiquity, when connected with, or relative to, the principal object." * * * "In the delineation of MODERN History, a similar plan will be pursued: the leading objects will be more various, and will more frequently change their place; a nation, at one time the principal, may become for a while subordinate, and afterwards resume its rank as principal; but uniformity of design will still charac-

terise this moving picture; the attention will be always directed to the history of a predominant people; and other nations will be only incidentally noticed, when there is a natural connexion with the principal object *."

These objects are, as far as a tolerably close examination has enabled the present author to judge, constantly kept in view by the noble writer: who has disposed of his vast and intractable subject in a very masterly manner. The student is carried leisurely over the whole field of history; familiarised with all its divisions, outlines, and boundaries, and thus enabled to trace the connexion of the remotest historic events with one another. Let him, then, resolutely devote the leisure hours of his first year to a careful and methodical perusal of this work: can there be a more advantageous mode of carrying into effect the suggestions of Lord Mansfield?—"The best and most profitable manner," he observes, "of studying modern history, appears to me to be this: first, to take a succinct view of the whole, and get a general idea of the several states of Europe, with their rise, progress, principal revolutions, connections, and interests; and when you have once got this general knowledge, *then to descend to particulars*, and study the periods which most deserve closer examination. The best way of getting this general know-

* Vol. i. pp. 10-11, 16-17.

ledge is by reading the history of one or two of the principal states of Europe, and taking that of the smaller states occasionally as you go along, so far as it happens to be connected with the history of those leading powers which you will naturally make your principal objects, and consider the others only as accessories." The student's next step, then, should be, to acquaint himself more particularly with Roman and Grecian history; and he cannot do better than read Ferguson and Gillies, both of them very valuable and moderate-sized books. The latter is, as far as *our* student is concerned, much preferable to the voluminous work of Mitford; than which it enters less into critical and recondite details, though sufficiently accurate and comprehensive for all historical purposes, and is, in style of composition, decidedly superior to it*. Dr. Ferguson's History of 'the Progress and Termination of the Roman Republic,' is, perhaps, possessed of higher pretensions than the work of Dr. Gillies. Its style is nervous, its arrangement perspicuous, its matter full and accurate, and there are interspersed throughout many beautiful philosophical reflections. If the student have not time to read these works through, he should request some judicious and learned friend to point out those portions most important to be known *by him*. Gibbon, a great and glorious guide, will conduct him down in splendour

* It has been translated into the German and French languages. Both this and the next-named work are in four volumes octavo.

to the close of the sixteenth century. His dazzling swelling style, turgid though it may sometimes be, will serve to counteract the cramping effects of long-continued law-reading; it will exalt and expand his intellect, and store it with knowledge of the most precious kind. If, however, the student have not sufficient leisure *to do justice* to the whole of this vast work, he must again resort to the guidance of a competent adviser; who will select such chapters as are sufficient to show him the connexion between ancient and modern history *; or, perhaps, he will lay aside Gibbon altogether, for the present, and betake himself to Robertson's History of Charles the Fifth, which sets out at the year 1500: taking care thoroughly to master the preliminary "View of the Progress of Society in Europe, from the subversion of the Roman Empire, to the beginning of the Sixteenth century," [i. e. the period at which Gibbon *really* closes his labours,] a very choice and beautiful performance †. With Charles the Fifth commenced a new era in political history: when all the European states were, in a manner, *conglomerated;* so that, each holding a determinate station, the operations of one

* Mr. Hallam's "MIDDLE AGES," a masterly performance, should be in the possession of every person who pretends to a thorough knowledge of history. See post—"On the Study of English History."

† Dr. Gilbert Stuart, however, it should be mentioned, published an essay commenting very severely on Dr. Robertson's—pointing out some serious mistakes and misrepresentations.

are so felt by all, as to influence their councils, and regulate their measures *. The history of this reign is, unquestionably, Dr. Roberston's chef d'œuvre. The student will read over very frequently the concluding chapter, which is a luminous summary of the leading events narrated in the preceding pages of the work; and thus will he be brought, by a skilful guide, to the middle of the sixteenth century [1558]. We are at a loss how to point out adequate conductors through the vast complicated mazes of European history subsequent to this period.

"The quantity of important matter," observes the noble author already referred to, "which accumulates as we reach the more recent periods—the interest which attaches itself to innumerable events, less from their actual importance, than from their connection with the feelings and passions of the present day, conspire to render the materials of recent history of a magnitude so disproportioned to those which form the narrative of more distant periods, that no discrimination could suffice to condense them within the requisite compass. It is the lapse of time alone that settles the relative

* "It was during his reign, too," says Robertson—"that the different kingdoms of Europe, which in former times seemed frequently to act as if they had been single and disjointed, became so thoroughly acquainted and so intimately connected with each other, as to form one great political system, in which each took a station wherein it has remained since that time, with less variation than could have been expected, after the events of two active centuries."—*Charles V.* Works, vol. vii., p. 222, 223.

importance of such materials; that throws into the shade, or blots out from the canvass, those details, which, however interesting they may seem to the actors, are of no real value to posterity; and leaves the great picture of human affairs charged with such features only, as deserve a lasting memorial, and preserve their importance long after their immediate interest has ceased to enhance it *."—The interval between 1558 and 1835 remains a fine field for historic genius. Innumerable "histories," "memoirs," "sketches," &c., have, from time to time, been given of particular periods and kingdoms; but there is yet wanting a uniform and combined *History of Europe* during the interval—*hiatus valde deflendus*—alluded to. Perhaps the student cannot, at present, do better than proceed from Robertson's Charles the Fifth to Letter LXVI. of "Russell's Modern Europe," a very meagre work, it is true—taking care to substitute Hume, and even Smollet, for the corresponding portions of English History, as far down as 1789; at which period a very distinguished living author, Mr. Alison (of the Scottish bar) commences his admirable "History of Europe during the French Revolution, ending with the Peace of Presburg, in 1806." The two first volumes only are at present published; but the two concluding ones are announced to be in the

* Univ. Hist. vol. vi. pp. 303, 4.—This beautiful observation appears to have been suggested by the opening paragraph of Hume's chapter on the reign of Henry III.

press. This work will richly pay a perusal. To the most exemplary accuracy and impartiality in stating facts and arguments *, Mr. Alison adds a chaste philosophic eloquence that is equally fascinating and instructive.

By the time, however, that the student has advanced thus far, he will have become capable of selecting for himself proper works for perusal, as time and inclination may prompt him to prosecute historical studies. He will never lose sight, however, of the work with which he set out—Lord Woodhouselee's; but let him, while expanding the course of reading there indicated, preserve, by repeated reference and perusal, a due connection and dependence between the parts and the whole of *universal* history.

Surely there is nothing formidable in the course here suggested! The student, however, will do nothing without that fixedness of purpose before spoken of, which will enable him to go steadily through with it. If he is perpetually changing, dipping first into this, then into that, and the other books; sometimes long intermitting his historical readings, or hurrying over the pages as if against time, merely to make believe to others, or to himself, that he is going on, he will but have wasted his precious time; he will have made no substantial acquisitions of a knowledge which is pre-eminently

* There is not a fact stated throughout the history, for which Mr. Alison does not give his authority in the margin.

important to an aspiring lawyer, but got a confused smattering of history, which will but lead him into endless error and mortification.—It will be observed that little or no mention has yet been made of *English* history, except so far as it forms a part of the general course of historical studies: it is a subject of such capital importance, as to warrant a separate chapter *.

Having thus laid his foundations deep and sure in general history, the student's next object will probably be to acquaint himself with the leading principles of Political Economy: a science of very modern growth, and the elements of which are yet by no means well settled †. The student, however, will at once go to the fountain head, Adam Smith's "Wealth of Nations ‡," a wonderful work, the very *Principia* of political science. Unless, however, he determine upon *studying*, that is, reading in earnest—this Treatise, the student had better leave it alone altogether. Let him not attend to the sciolists, whom he may hear talking of Adam Smith's book as *obsolete*—radically defective; or plague himself by entering at once upon the clashing systems of the present day. The study of Adam

* See *post*—"On the Study of English History."

† The student will find, in the Appendix to Whately's Logic, that scarce any two writers on political economy affix the same meaning to the following "seven principal terms:" *Value*, *Wealth*, *Labour*, *Capital*, *Rent*, *Wages*, *Profits!*

‡ Mr. M'Culloch's edition will serve to apprise him of those portions of the original work which are generally allowed to be at variance with modern doctrines and discoveries.

Smith he will find a right profitable one; and without it, will never know what the "political economy" *is*, that he hears so much of—he will be confounded by the "din of all that smithery" carrying on by Ricardo, Malthus, M'Culloch, Mill, Storch, Say, Torrens, and fifty others!

Mr. M'Culloch's Commercial Dictionary will be found a vast store-house of authentic information on all points connected even in the remotest degree with arts, trade, commerce, and manufactures. To the political economist, such a work is, of course, indispensable; to the mere lawyer, even, it is very valuable. Knowledge of this kind *must* be early acquired by him who wishes to prepare himself for extensive practice. Suppose a brief put into the hands of a young lawyer, involving mechanical, scientific, or commercial topics: how painful his position, if unequal to the task, how splendid his chance of distinction if equal to it! Not long ago a fire-insurance cause was tried, involving the right to a very large sum of money, which ultimately turned on the true nature of *fixed and volatile oils:* all the chemists of any note were examined, cross-examined, and re-examined with exquisite skill by the counsel for both parties, the present Lord Chancellor Lyndhurst and Lord Chief Baron Abinger. The short-hand writer's printed report of this case (Severn *v.* King) is now lying before the author; and the extensive scientific knowledge displayed by these distinguished persons, as well as by

the other counsel, is really astonishing.—But is this mentioned as a case *per se?* By no means; go to Nisi Prius on any day you will, and judge for yourself. You will there see how useless, how eminently dangerous it is, to think of relying upon any sudden "cram" for such occasions as these, which is calculated only to confuse and bewilder you, if unluckily drawn but a hair's-breadth from what you had prepared beforehand. A very distressing instance of this kind occurred not long ago; the consequences were signally unfortunate *! The student will do well to purchase two or three of the treatises published in Dr. Lardner's Cyclopædia on the practical subjects which often furnish occasion for legal investigation; such as Silk Manufacture, Manufactures in Metal, Porcelain and Glass Manufacture; and the forthcoming ones on the Cotton Manufacture, by Dr. Ure, and the Preliminary Discourse on the Arts and Manufactures, by the Baron C. Dupin; which are likely, from the reputations of their writers, to be highly interesting

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* Mr. Chitty, in his last work, gives two or three instances of ignorance in these matters, which are scarcely credible.

"It is well known," he says," "that a *judge* was so entirely ignorant of insurance causes, that after having been occupied six hours in trying an action on a policy of insurance upon goods (*Russia duck*) from Russia, he, in his address to the jury, complained that no evidence had been given to show how Russia ducks (mistaking the *cloth* of that name for the *bird*) could be damaged by sea-water, and to what extent!!!"—*Chitt. Gen. Pr. of the Law*, vol. ii. p. 321, note c.

and useful. Mr. Babbage's "Economy of Machinery and Manufactures" will be found a delightful and most instructive little work; comprising in a small compass a vast deal of important and authentic information not to be found elsewhere. The style, too, is eminently chaste and philosophical. Works of this kind the student may advantageously have by him, for the purpose of reading or reference, as inclination and opportunity may allow.

It would seem a hopeless task to enter upon works on physical science generally: but *one* may be named, "The Elements of Physics" by Dr. Arnott, as one of the most extraordinary and valuable books of the age; one calculated to *entice* the student into the very recesses of natural philosophy, and well worthy of a very frequent perusal. It will supply the place of all other works on physical science, at least to the lawyer; it does not pre-suppose any acquaintance with the mathematics in its readers; nor does it deal in what may be called the *jargon* of scientific phraseology. He that runs may read. Such felicity of illustration—such graceful simplicity of style and method, perhaps never were before united with profound and accurate scientific knowledge. An acquaintance with the general principles of physics—of mechanical science, such as this work will so easily and elegantly supply, will be of incalculable service to the young counsel; as an ignorance of them is likely to be attended with the most mortifying consequences. Dr. Arnott, in the work just

mentioned, gives an amusing anecdote, which is worth quoting. "A young and not yet skilful Jehu, having run his phaeton against a heavy carriage on the road, foolishly and dishonestly excused his awkwardness, in a way which led to his father's prosecuting the old coachman for furious driving. The youth and his servant both deposed, that the shock of the carriage was so great as to throw them over their horses' heads; and thus they lost the cause, by unwittingly proving that the *faulty velocity was their own*!*" A still more ridiculous instance occurred not long ago, on the part of an eminent counsel.

The author cannot conclude this section, without conjuring his young reader to study the immortal works of Edmund Burke. Panegyric has exhausted itself upon them. Enchanting—dazzling in their eloquence, profound in their political sagacity, sublime in their philosophy—

"we ne'er may look upon their like again."

If the present writer were, in the prospect of banishment to a desert country, put to his election of some *one* English author's works, as his companions in exile, he has often thought that he should choose those of Burke. "Among the characteristics of Lord Erskine's eloquence," observes one of his recent biographers, "the perpetual illustrations derived from

* Elem. of Phys. vol. i. p. 48, 3rd ed.

the writings of Burke, is very remarkable. In every one of the great state trials in which he was engaged, he referred to the productions of that extraordinary person as to a text-book of political wisdom—expounding, enforcing, and justifying all the great and noble principles of freedom and of justice *." "When I look," says Lord Erskine himself, "into my own mind, and find its best lights and principles fed from that immense magazine of moral and political wisdom, which he has left as an inheritance to mankind for their instruction, I feel myself repelled, by an awful and grateful sensibility, from petulantly approaching him."

Such is the course which the author ventures to point out for the guidance of his younger readers; one which he hopes will be found at once comprehensive, appropriate, and practicable, with reference to the time and objects of the law student. He is aware that some may feel disappointed at the non-selection of *their* favourite authors; but they must remember that a choice *must* be made; and, in doing so, no one can please all. Many extensive branches of knowledge are above altogether passed over, such as ethical and intellectual philosophy; because the author must otherwise have fallen into the very error reprehended in the commencement of

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* Lives of English Lawyers, by H. Roscoe, p. 384.

this section *. These are left to the student's own care, as inclination, capacity, and opportunities may hereafter prompt, and enable him to extend the sphere of his general acquirements. He must, however, take care not to attempt too much—not to have "too many irons in the fire," or he will but distract and exhaust himself to no purpose. Let him especially attend to this, in the arduous period of his *first year's pupilage.*

In conclusion, the author respectfully whispers into the ears of the conceited and self-sufficient, if any such shall cast their eyes over these passages, a friendly caution :—

Multi ad sapientiam pervenissent, nisi se jam pervenisse putassent!

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* If the author were, however, desired by the student to point out for his perusal any one work on mental philosophy, he would certainly name "The Elements of the Philosophy of the Human Mind," by Dugald Stewart, as one full of *practical*, interesting, and valuable observations on the culture of the understanding.

CHAPTER V.

ON THE FORMATION OF A LEGAL CHARACTER.

PART III.—MENTAL DISCIPLINE.

"LEGAL studies," observes an able writer, "eminently invigorate and fortify the mind's noblest faculty—the power of attention: they discipline the understanding, excite discrimination, give activity and acuteness to the apprehension, and correct and mature the judgment*." Never, perhaps, did they receive a juster panegyric: but how long is it before these effects make their appearance in the great body of legal students? What a capacity for energetic and persevering application is presupposed; and how few possess it! The threshold of the law is, besides, as before intimated, thronged with numerous and peculiar obstacles; and the inexperienced, undisciplined, eager tyro, however great his natural parts, is apt to get quickly discou-

* Ritso's Introd. p. 7.

raged, and either abruptly give up, or indefinitely postpone, the effectual prosecution of his studies. On the contrary, a mind duly disciplined before entering the profession, will soon find the law a delightful pursuit—*labor ipse voluptas*—its difficulties vanishing before him, as children's bugbears before the morning sun. How few, however, stand "firm upon this 'vantage ground!" How few young men really *think;* how many affect it; how many are given credit for it; how easy to simulate it! How many choice intellects have been ruined, through early indolence, or a vicious education! How easy is it for the youthful mind to slip into slovenly habits of thought, which cannot be laid aside, and which utterly incapacitate for intellectual exertion *! It is one thing to store the mind early with information; and another to train its budding faculties for severe exertion. "The pains and application," says Roger North, "must be in the youth; and that gone, the opportunity is lost. A man has but one youth, and considering the consequence of employing that well, he has reason to think himself very rich; for that gone, all the wealth in the world will not purchase another. It would seem strange, if experience did not confirm it, that a man's age should be like the

* "In general," says Dugald Stewart, "wherever habits of inattention, and an incapacity for observation, are very remarkable, they will be found to have arisen from some defect in early education." —*El. Phil.* c. vi. § 7, p. 469, 6th ed.

seasons of the year: for if you sow in harvest, when are you to reap? The spring is the time to commit seeds to increase; and if a man gets not his skill when young, he is like never to have any at all; for the soil becomes arid as age advances, and whatsoever is scattered upon it, takes no thrift, but perishes and starves *."

In this section the author will endeavour to offer a few plain suggestions for the assistance of those who, conscious of a volatile and inconstant mind, are anxious to sober and settle it, before finally committing themselves to the actual business of the most laborious of professions. Let us set out, then, with the cheering assurance of the most illustrious of philosophers.

"*There is no stond, or impediment in the wit, but may be wrought out by fit studies: like as diseases of the body may have appropriate exercises;* bowling is good for the stone and reins, shooting for the lungs and breast, gentle walking for the stomach, riding for the head, and the like. So if a man's wit be wandering, let him study the mathematics; for in demonstrations, if his wit be called away never so little, he must begin again; if his wit be not apt to distinguish, or find differences, let him study the schoolmen, for they are 'Cymini sectores;' if he be not apt to beat over matters, and to call upon one thing to prove and illustrate another, let him study the lawyers' cases:

* Disc. Stu. Laws, pp. 5, 6.

so every defect of the mind may have a special receipt *."

That the mathematics are pre-eminently calculated to train the mind, to induce habits of close and accurate thought—and that without pursuing them to any considerable extent—is indisputable. "If a child be bird-witted," repeats Lord Bacon, elsewhere, "that is, hath not the faculty of attention, the mathematics giveth a remedy thereunto; for in them, if the wit be caught away but a moment, one is to begin a-new." How many, indeed, have been indebted to the introductory books of Euclid, for their first real insight into the art of reasoning; for the first efficient control ever obtained over their thoughts †! There are, however, many who have an unconquerable aversion to this science; who had rather take their mental physic in any other way.

He who desires to fit himself for a profession which consists almost altogether of *reasoning*, will, of course, be desirous of early acquainting himself with at least the general principles of logic. All our great law writers have more or less insisted on the necessity of such knowledge. The student will, however, bear in mind an observation of Seneca's:—*Prospicienda ista, sed prospicienda tantum, et a limine salu-*

* Essays—Of Studies.

† "Geometry," said Lord Ashburton, "will afford to the young lawyer the most apposite examples of close and pointed reasoning." —*Letter to a Young Gentleman, &c.*

tanda: hactenus utilia, animum si preparent, non detinent; tamdiu enim istis immorandum est, quam diu nihil animus agere majus potest. Rudimenta sunt nostra —non opera *. The work which we have selected as best calculated for the exercise of the student's reasoning powers, is, in the opinion of an eminent living logician (Dr. Copleston, Bishop of Llandaff), "not intelligible, even in a single page, to one who is ignorant of logic." Before, therefore, sitting down to the task which will be presently laid before him, he cannot do better than read with attention the concise and luminous Treatise on Logic, by Dr. Whately, the present Archbishop of Dublin. He has disentangled logic—whether viewed as an art or as a science—from the metaphysics with which it had, till his time, been blended and confounded; he has placed it upon its proper basis, and pointed out its true character and functions. The student may omit, for a while, the "Synthetical Compendium," the

* "Our student," says Old Phillips, "must not dwell too much upon logic, nor tamper therewith, striving to bring the law into a true logical method, which is impossible; or at least not without great difficulty: and when done, hardly worth the time lost thereby: witness Seneca, who told his Lucilius, '*Non vaco ad istas ineptias!*' Whereof, saith Master Fulbeck, some do spend a whole decade of years in doing nothing else than seeking out the proper genus and difference of one only thing; and when they have done, they are scarce so wise as they were before, but may say of themselves as *Gentilis* speaketh of them very fitly, *Confidentia astra petimus, ruimus in precipitia.*"—*Stu. Leg. Ra.* pp. 34, 5.

most difficult and technical portion of the work; but all the rest should be read with great care—especially that "Of Fallacies *." If, however, he have not leisure or inclination for this work, one may be mentioned, of far less scientific pretensions, perhaps, but well worthy of his attention—the "Elements of Thought," by Mr. Taylor, of Ongar, a spare duodecimo, but containing a simple, lucid, and able exposition of the leading principles of logic, as well as popular definitions and illustrations of terms that are oftener confidently used, than distinctly understood.

CHILLINGWORTH is the writer whose works are recommended for the exercitations of the student. Lord Mansfield, than whom there could not be a more competent authority, pronounced him to be a PERFECT MODEL OF ARGUMENTATION †." Archbishop Tillotson calls him "incomparable—the glory of his age and

* "The chemist," says Dr. Whately, "keeps by him his tests and his method of analysis, to be employed when any substance is offered to his notice, the composition of which has not been ascertained, or in which adulteration is suspected. Now a fallacy may aptly be compared to some adulterated compound; 'it consists of an ingenious mixture of truth and falsehood, so entangled, so intimately blended, that the falsehood is (in the chemical phrase) *held in solution*: one drop of sound logic is that test which immediately disunites them, makes the foreign substance visible, and precipitates it to the bottom.'"—*Whately's Elem. of Log.* [quoting from an Exam. of Ketts' Logic] p. 31, 3rd ed.

† Butler's Hor. Subsec.

nation *." Locke proposes, "for the attainment of right reasoning, the *constant reading* of Chillingworth; who, by his example," he adds, "will teach both perspicuity and the way of right reasoning, better than any book that I know; and therefore will deserve to be read upon that account, *over and over again;* not to say anything of his arguments †." Lord Clarendon, also, who was particularly intimate with him, thus celebrates his rare talents as a disputant, "Mr. Chillingworth was a man of so great subtilty of understanding, and so rare a temper in debate; that as it was impossible to provoke him into any passion, so it was very difficult to keep a man's self from being a little discomposed by his sharpness and quickness of argument, and instances, in which he had a rare facility, and a great advantage over all the men I ever knew. He had spent all his younger time in disputation; and had arrived at so great a mastery, as he was inferior to no man in these skirmishes ‡."

After reciting such splendid testimonials as these, the student, it is to be hoped, will feel eager to avail himself of the advantages to be derived from the great

* Sermon vi. on Heb. xi. 6.

† "Thoughts Concerning Reading and Study for a Gentleman."

‡ Life of Lord Clarendon. His Lordship adds, however, that Chillingworth, "with his notable perfection in this exercise, had contracted such an irresolution, and habit of doubting, that by degrees he grew confident of nothing, and a sceptic at least, in the greatest mysteries of faith."

work which called them forth, *i. e.*, "The religion of Protestants a safe way to salvation." It was written in answer to one Matthias Wilson, a jesuit; who (under the name of Edward Knott) had replied to Dr. Christopher Potter's Answer to him, in a work entitled "Mercy and Truth; or Charity maintained by Catholics;" and this brought down upon him a tremendous opponent—Chillingworth *. Both of them were consummate logicians, and, as may easily be believed, did all that the best wit of man could do, in defence of their respective churches. The poor Jesuit reserves no quarter from his stern but calm antagonist, who begins with the very Preface, and overturns *seriatim* every paragraph, down to the very end of the book. Perhaps there is no instance on record of a more formal logical contest than this. Chillingworth first gives entire the chapter in his adversary's book, in numbered paragraphs, and then his own answer: as if determined that both bane and antidote should be thus eternised—that all future readers should be able to judge which was the conqueror!

* Poor Knott, dismayed at hearing that Chillingworth was preparing to take the field against him, published a work before-hand, to prejudice the public against Chillingworth and his book, by charging him with *Socinianism*: and *after* Chillingworth's work had been published, endeavoured to destroy its great popularity by writing another, to accuse him of *infidelity!* One Francis Cheynell, a fanatical opponent of Chillingworth, attended at his funeral, and flung his famous book into the grave, wishing that it might "rot with the author!"

Let, then, the student who is in earnest about the discipline of his mind, procure this great work*, and thoroughly exercise himself in it. He need not be long about it, if he will but set upon his task heartily; but the consequences will be happy and permanent. As one of our judges said somewhat quaintly of Lord Coke—"the doses I took of Coke in early youth, operate even now:" so may say, in after life, the pupil of Chillingworth.

If the student do not choose to read the whole work—which even including the very copious citations from his opponent's book, does not occupy more than two octavo volumes—let him select some particular chapter—the second, for instance, "on the means whereby the revealed truths of God are conveyed to our understanding, and which must determine controversies in faith and religion"—perhaps the most elaborate and perfect of all. He must first read over the Jesuit's account of the *Rule of Faith*, and possess himself of the full scope and drift of its argument, before entering upon the answer of Chillingworth. Let him analyse it on paper, and keep it before him, to assist his memory. Go, then, to Chillingworth. Take, first, a bird's-eye view of the whole chapter (134 pages); and then apply yourself leisurely to the first half dozen pages. Pause after reading a few sentences; look off the book into your mind, and satisfy yourself that the *thought*, not the language, is

* The edition of Chillingworth's works, in three vols. 8vo, published by Priestley, in 1820, may be purchased for a mere trifle.

there, fully and distinctly. Proceed thus through the whole, carefully marking the stages of the argument, the connection of each thought with the other, and the general bearing of the whole. Set your author, as it were, at a little distance from you: watch how warily he approaches his opponent—with what calm precision and skill he parries and thrusts. Imagine yourself to be in the Jesuit's place: can you find an instant's opening? Is your opponent ever off his guard? Does he ever make a false thrust. Or fail of parrying the best of his antagonist?—Can you discover, in a word, a defect or a redundancy, either in thought or expression? Can you put your finger anywhere upon a fallacy? Try! Tax your ingenuity and acuteness to the uttermost!

Having thoroughly possessed yourself of the whole argument, put away your book and memoranda, and try to go over it in your mind. Endeavour to repeat it aloud, as if in oral controversy; thus testing not only the clearness and accuracy of your perceptions, but the strength of your memory—the readiness and fitness of your language. Let not a film of indistinctness remain in your recollection, but clear it away, *instanter*, by reference—if necessary—to your book. Not content even with this, make a point, the next day, of writing down the substance of your yesterday's reading, in as compendious and logical a form as possible,—and go on thus, step by step, through the whole argument. Having so looked minutely at

the means and the end—at the process and the result, at the whole and its parts—having completely mastered "this great argument" in all its bearings, you will be conscious of having received an invaluable lesson from one of the subtlest and most powerful disputants that perhaps the world ever saw. All the faculties of your mind, many of them heretofore dormant and torpid, will have been drawn out into full play—will have been set, as it were, upon the *qui vive*. You will see at once both your weak and your strong points, and guide your future efforts accordingly. All this may look, *on paper*, tiresome, discouraging, and unprofitable; it may seem so, at first, in practice. You may sit down somewhat sore and exhausted, possibly, as from your first DRILL; but persevere! You will soon perceive the salutary effects and beneficial tendency of these intellectual gymnastics! The soreness of your muscles will rapidly abate, as their activity and strength increase, not only sensibly but incredibly, with each succeeding lesson. You will thus have put yourself, as the pugilists have it, into thorough TRAINING! Say that two hours a day, for several months, are thus spent, is there any proportion between the pains, and the profit? The toil may seem severe, and for a while thankless; but it will be attended with permanently beneficial effects. Is it not worth a resolute trial? Young reader, we charge you to make it!—to search and see what stuff your mind is made of. If you break down under it,

if you are really unequal to it—if you cannot accustom yourself thus to patient and coherent thought, we beg of you to pause, before committing yourself to the legal profession. Do not, however, give up at the end of a week, fortnight, or even month; persevere for *several* months; as often as you fly off, come back again; whenever you stumble, rise again and run. Your breath may now and then fail you, your limbs may tremble under you, your heart may sink; but *persevere!*—At the same time that this drilling is going on, form the resolution '*whatever* your (mind) findeth to do, to do with your might.' Never on any pretence, on any occasion, suffer yourself to rest satisfied without a full and distinct understanding of what you are about. Never run away with a hasty half-formed impression—even of a paragraph in a newspaper. Remember it is the HABIT that you are concerned about forming. It is only in this way that you can ever get the complete controul over your thoughts—that you can set your mind into real working trim.

"There is no talent, I apprehend," says Dugald Stewart—and it is a most important observation—"so essential to a public speaker, as to be able to state clearly every different step of those trains of thought by which he himself was led to the conclusions he wishes to establish. Much may be here done by study and experience. Even in those cases in which the truth of a proposition seems to strike us instantaneously, although we may not be able, at first, to

discover the media of proof, we seldom fail in the discovery, by perseverance. *Nothing contributes so much to form this talent as the study of metaphysics*—not the absurd metaphysics of the schools, but that study which has the operations of the mind for its object. By habituating us to reflect on the subjects of our consciousness, it enables us to retard, in a considerable degree, the current of thought; to arrest many of those ideas which would otherwise escape our notice; and to render the arguments which we employ for the conviction of others, an exact transcript of those trains of inquiry and reasoning which originally led us to form our opinions *.

Chillingworth has been named, for the reasons above assigned, as eminently calculated to subserve the purposes of mental discipline, for the student. He need not, however, be the *only* one. The subtle and profound reasonings of Bishop Butler, the pellucid writings of Paley †, the simplicity, strength, and perspicuity of Tillotson, may all be advantageously resorted to by the student anxious about the cultivation of his reasoning faculties. Unless, however, he be one of those who entertain the invincible prejudice to mathematics before spoken of, we must insist upon it, that he will find his best interests furthered by a study of the FIRST SIX BOOKS OF EUCLID.

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* El. Phil. ch. ii. p. 124-5. (6th ed.)

† Dr. Whately speaks of the Horæ Paulinæ as "an incomparable specimen of reasoning."—*Rhetoric*, 94 *n.* (5th ed.)

They are better calculated than any thing in the world, to test the native strength of the intellect, to fix a wavering one, to invigorate a weak one. "As tennis," says Lord Bacon, "is a game of no use in itself, but of great use in respect it maketh a quick eye, and a body ready to put itself into all postures; so in the mathematics, *that use which is collateral and intervenient* is no less worthy than that which is principal and intended *." The exquisite, the transcendent, the faultless logic with which every demonstration is fraught, cannot fail of producing the happiest effects on an understanding even but a degree removed from the lowest. The student, by the help of a good memory, may get easily enough over a dozen or two propositions, and fancy that this is all that is expected from him. Let him, moreover, appeal to his reasoning faculty, and see whether he can USE what he has so easily acquired Set him down to a *deduction!* It may be so simple as to require the aid of only the two first propositions of the first book; and yet our baffled student shall be obliged to give up his task in despair, and confess, that while his *memory* has been called into active exertions, all his other faculties have lain dormant. A gentleman now at the Bar, and likely to rise soon into eminence, before going to college, had so "got up"—the first six books of Euclid as to be able to repeat them with rigorous accuracy; and

* Advancement of Learning, Works vol. ii. p. 145.

began, therefore, to look somewhat earnestly towards a senior wranglership. A friend playfully asked him to solve a very simple deduction: i. e. "*from a given point, to draw the shortest possible line to a straight line,*" which may be done by the aid of the 19th and 32nd theorems of the first book of Euclid. Our confident friend sate down, as to the task of a moment; but—it is a fact—after several hours' fruitless effort, tore up his papers and left the room in desperation! The thirty-second proposition was 'his favourite one!' He was *told* that two propositions of the first book would suffice to get him out of his difficulty—and he declared to the author that he had gone repeatedly over the whole four dozen, attempting, but in vain, to apply each to the case before him! So it may be with our student. Alas! perhaps, how difficult he finds it to THINK! and yet he is entering a profession whose very atmosphere is thought; where he will be called upon incessantly to acquire and *use* legal principles: to apply those most remote and abstract, to the most ordinary combinations of circumstances—and that with *promptitude* and accuracy. Let him not, however, be discouraged. The memory is not the only faculty that is improvable; the perception may be quickened, the judgment strengthened, to an indefinite extent, by appropriate, systematic, and persevering discipline. It is exactly with mental, as with bodily, exercise. If only one set of muscles be brought into action by gymnastic exercises, that set only will be developed and strengthened, at the expense of all the others:

and divers species of exercises, therefore, are contrived to bring fairly into play all the muscles of the body. When these are judiciously and perseveringly adopted, their advantages are great. The health and strength of the whole system are sensibly improved: and why not preserve this analogy between bodily and mental exercise? Why should the apprehension—the memory—the judgment—be exclusively, or all but exclusively, used and disciplined?

One who is really anxious about the discipline of his thoughts, may render even his *amusements* subservient to this purpose. Chess, whist, and cribbage, are all excellently calculated to chain a wandering mind to its task,—to induce those habits of patient and vigilant attention, cautious circumspection, accurate calculation, and forecasting of consequences, which are essential to the successful study and practice of the law. It has very frequently struck the author that these little games would be to many the first and best possible steps towards mental discipline, especially if played with reference to such an object. They will be found invaluable correctives of an erratic and volatile humour,—pleasant and most efficient auxiliaries. The student who resorts to them with this view, will, of course, take care to avoid their dissipating incidents and tendencies; prudently selecting those only for his antagonists who are not only expert players, but "like-minded with himself."

By means such as have been above suggested,

energetically adopted and persevered with, it is confidently predicted that an intellect of only moderate pretensions may be enabled to overcome all the difficulties that beset legal studies. His watchful and patient frame of mind will enable him to sit down calmly and unwind the most tangled skein that can be brought before him. He will go on in his course steadily and cheerily amidst numbers of his competitors, who are either drooping under the unexpected fatigues they have encountered, or *returning* with disgust, if not disgrace, from a campaign that ought never to have been undertaken. "Growing every day," to adopt the language of Burke, "more formed to affairs, and better knit in his limbs," he will be delighted and surprised at the rapidity with which the most formidable obstacles disappear from before him. Not only will he thus pleasantly proceed through the course of his studies, and be enabled, at an early period, to enter into practice with credit and advantage, but he will also be conscious of having gained a great accession of intellectual vigour. His mind no longer flits and flutters about butterfly-like, but settles upon every object with bee-like precision, industry, and success. The difficulties, intricacies, and obstacles, that dishearten and confound so many, are *his* congenial pursuits. His "amicable contests with difficulties," will, to adopt the beautiful expression of Burke, already quoted, "have strengthened his nerves and sharpened his skill,—will have obliged him only to an intimate acquaintance with his ob-

jects, and compelled him to consider them in all their relations. A knotty "case," complicated "pleadings," a ponderous "brief," will be the welcome signal to be "up and doing." with all his practised energies and acquirements, securing at once profit and distinction to himself, and success to his clients.

"But," murmurs, possibly, an impetuous, or sneering, or desponding reader, "what a fuss all this about a trifle! Is there one man out of twenty of those who have *succeeded* at the Bar, that ever went through such 'training' and 'drilling' as you are urging?" Perhaps they did *not* adopt the particular means here suggested. They were men, possibly, of great natural abilities,—some of whom had received the advantages of consummate academical discipline, while others had expended a vast amount of misdirected and excessive labour. Look, however, hesitating student, not at those who have succeeded, but at the throng of those who have FAILED! Who have failed—and yet, perhaps, would have splendidly succeeded, had but some experienced friend stood beside them at starting, whispering such directions as we have here humbly endeavoured to offer; and so, by imposing a little timely and judicious discipline, have saved years of misdirected and abortive toil—a thousand pangs of despair!

The author considers that he cannot better conclude this chapter than with the pointed and valuable observations of Dugald Stewart.

"In what consists practical or experimental skill, it is not easy to explain completely; but among other things, it obviously implies a talent for minute, and comprehensive, and rapid observation; a memory at once retentive and ready; in order to present to us accurately, and without reflection, our theoretical knowledge: a presence of mind, not to be disconcerted by unexpected occurrences; and, in some cases, an uncommon degree of perfection in the external senses, and in the mechanical capacities of the body. All these elements of practical skill, it is obvious, are to be acquired only by habits of active exertion, and by a familiar acquaintance with real occurrences; for, as all the practical principles of our nature, both intellectual and animal, have a reference to particulars, and not to generals, so it is in the active scenes of life alone, and amidst the details of business, that they can be cultivated and improved. The remarks which have been already made are sufficient to illustrate the impossibility of acquiring a talent for business, or for any of the practical arts of life, without *actual experience* *."

*** The student will find much valuable practical matter in Dr. Abercrombie's "*Inquiries concerning the Intellectual Powers*,"—especially in the Fifth Part of that work—"A View of the Qualities and Acquirements which constitute a well regulated Mind."

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* Elements of the Philosophy of the Human Mind, chap. iv. § 7, pp. 228—230.

CHAPTER VI.

ON THE STUDY OF ENGLISH HISTORY.

ALL lawyers readily admit the pre-eminent importance of an accurate and extensive acquaintance with English history; and a great number, very confidently, but very unwarrantably, give themselves credit for it. Few have not, perhaps, at one time or another, read the whole, or considerable portions of Hume—but how? with what *object?* Was it hastily galloped over as a mere school-boy's course of holiday reading—as a mere task—as a painful preliminary stage of legal study? Was it read only that it might be *said* to have been read? Was it the constant object, in the language of Montesquieu, "to illustrate law by history, and history by law?" Was there any persevering effort made to *retain* what was read, to REFLECT upon it, and apply it to practical purposes? Has it, in short, been read in the spirit of Lord

Bolingbroke's beautiful observation, that history is *philosophy teaching by examples* * ?

Let him who is inclined to answer these questions petulantly or boldly, submit himself to one quarter of an hour's friendly examination by any competent person, who will require him to give an extempore account of one or two only of the most prominent events in our history—to state their relative connections and dependencies—their causes and effects † !

How can that lawyer arrogate to himself the character of a worthy member of a *liberal* profession, who

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* Perhaps, however, this can scarcely be said to be Bolingbroke's. The passage in his writings, alluded to, is, " What then is the true use of history ? * * I will answer you by quoting what I have read somewhere or other in Dionysius Halicarnassensis, I think, that *History is Philosophy teaching by Examples.*—*Works*, vol. iii. p. 323.

† This inquiry was suggested by the following circumstance :—About two years ago, the author and some friends were conversing together on this subject ; and one of the most confident, at the author's suggestion, offered to undergo an " unsparing examination " on the spot. A gentleman present took him at his word, and suddenly required him to state the question of the *Exclusion Bill*—the exact period when it was mooted—its reception and fate in the two Houses of Parliament, &c. Our friend, nothing daunted, began ; got on fairly enough for a few sentences, then hesitated, and shortly came to a stand-still, colouring with vexation. He soon, however, recovered his good humour, saying with a smile, that he had never dreamed of aught so " rotten in the state of Denmark." He has since become not a little distinguished for his historical knowledge ; and refers with great satisfaction to the evening when he was first given to understand the imperfection and indistinctness of his recollection even of so prominent a matter as the Bill of Exclusion.

is ignorant of the history of his country? What reasonable chance has such an one of distinguishing himself in public life, of aspiring to political eminence? He is chained down to his daily drudgery like the galley-slave to his oar; he cares about nothing but to get through his day's work; is destitute of everything but a pitiful pettifogging familiarity with forms of practice, and can never get beyond that wretched apology of legal hacks and dunces—*ita lex scripta!* Take him out of the beat of his books of precedents and practice, and a child may pose him. Expect not from *him* any explanation or vindication of the *reason* of the law, its general principles and policy. He comes day after day out of his chambers or the court, like the blacksmith begrimed from his smithy after a hard day's work, content at having got through what he was engaged upon, neither knowing, however, nor caring to inquire into the noble *uses* of the article he has been forging. Thus the mere mechanical draftsman, your hum-drum pleader or conveyancer, may have got through the task assigned him, may have drawn the instrument, and advised on the cases submitted to him, with due dexterity; and that is the extent of his care or ambition. He is conversant, possibly, with the practical working of the provisions of feudalism—of the Statute of Entails, and against subinfeudations *—of the delicate and com-

* *Quia Emptores.*

plicated machinery of Uses and Trusts, of Fines and Recoveries—but knows little or nothing of the interesting period of, and the circumstances attending their introduction—what led to their adoption—what reasons of state policy were concerned—whether they answered the desired end, and are fitted to the political exigencies, of the present times. Truly he "*ignorantly* worships" the law!

Surely the intelligent practitioner must contemplate the structure and working of the law with deeper interest, who has accustomed himself to the comparison of past with actual and possible exigencies and emergencies; observing the altered circumstances in which society is placed with reference to particular laws—the vastly different purposes to which the lapse of time has appropriated them, from those to which they were originally dedicated. *He* is using, for most ordinary and peaceful purposes, the machinery which was originally intended to aim a mortal blow at the aristocracy, at the clergy, at the liberties of the people, or at the prerogatives of the crown—calling forth at one time the tempestuous spirit of lay rebellion, at another, the profound subtlety of ecclesiastical machination: and which, having answered its great purposes, having, in process of time, effected a silent revolution, at length discharges the sole, the comparatively humble but useful functions, of securing and transmitting property from individual to individual. The little instrument by which the modern

conveyancer secures 20*l.* a year to Mary Higgins and her children, is, in truth, the lever by which a king might have been prized from his throne; which was applied, with consummate craft, to the destruction of the banded power of the aristocracy—of the huge and gloomy fabric of ecclesiastical domination. Thus the water which might at first have been seen forming part of the magnificent confluence of Niagara, and then precipitated, amid clouds of mist and foam, down its tremendous falls, after passing over great tracts of country, through innumerable channels and rivulets, serves, at length, quietly to turn the peasant's mill.

Apart, however, from this more interesting view of the subject, there is one much more practically important to be taken by the student: that without this contemporaneous pursuit of historical and legal knowledge, very considerable and important portions of the latter cannot be appreciated and understood, and no pretensions exist to the character of a *constitutional* lawyer. Can it be requisite to specify and insist upon the advantages—the necessity of a sound and familiar knowledge of those portions of our history which are peculiarly connected with the administration of the law? Do they not "come home to the business and bosom" of all? How many important decisions and statutes are there, that would be more easily understood, more thoroughly appreciated, more permanently retained, more readily applied to practical purposes, when illustrated by an accurate knowledge

of the circumstances under which they were made or enacted! Is not the assistance obvious, that is derived from the mere principle of *association*?—"Law then only becomes a rational study," says Lord Kames, "when it is traced historically from its first rudiments, through its successive changes. With respect to the political institutions of Great Britain, how imperfect must the knowledge be of that man who confines his reading to the present times? If he follows the same method in studying its laws, have we reason to hope that his knowledge of them will be more perfect? A statute, or any regulation, if we confine ourselves to the words, is seldom so perspicuous, as to prevent errors, perhaps gross ones. In order to form a just notion of any statute, and to discern its spirit and intendment, we ought to be well informed how the law stood at the time, what defect was meant to be supplied, or what improvement made. These particulars require historical knowledge; and, therefore, with respect to statute law, at least, such knowledge appears indispensable *."

"Institutions," observes an able writer on law studies, "which originated in the necessities of our ancestors, must be necessarily traced back to the same ancient source for their construction. The only sure guide that can be had in the investigation of the theory of their principles, is the knowledge of the

* Hist. Law Tracts, Pref. iii.

circumstances to which they were accommodated, of the occasional or local demand for them, of the original mischief to be provided against, or the particular inconvenience that was intended to be prevented by them. * * It demands the exercise of our riper judgment to apprehend through what vicissitudes the prosperity of a state is made to depend upon the wisdom of its legislature; to examine the boundary of those restrictions upon natural liberty which are necessary to be imposed for the common good; to appreciate the causes of the improved condition of the people, in the progressive improvement of their municipal institutions and civil usages, and to trace the reverses that lead to anarchy and the dissolution of empire—to the dereliction of those fundamental maxims of *common equity* and *common right* which give to society the basis of its political constitution, and disposes it to lasting harmony. This inseparable affinity between the sources of historical and legal learning, may be said to constitute one of the brightest images in the theory of professional education; for, as on the one hand, our history throws light upon our laws, so, in proportion to the erudition we acquire as lawyers, we equally ensure our proficiency as historians. They are *sister sciences*, which go hand in hand together, and mutually elucidate and assist each other. 'Il faut eclaircir l'histoire par les lois,' says Montesquieu—'et les lois par l'histoire *.' It is not

* Esp. de Lois, l. xxxi, c. 2.—Ritso.

meant to be asserted that the generality of students are not, at one time or another, acquainted—and perhaps well acquainted—with this connexion between historical and legal knowledge; but that, it is to be feared, they do not make sufficient efforts to keep it up, with a view to its practical application. The impressions produced by their more youthful readings are faint, indeed, and quickly effaced by other pursuits, especially by the absorbing cares of business. Perpetual procrastinations serve to render the matter at length hopeless. History gets to be looked at, alas! not as an experienced guide and interpreter of things otherwise unintelligible, but as, at most, a pleasant occasional visiter; it is resorted to, not as a matter of serious business, but mere recreation – a supernumerary accomplishment *. Hence the perilous position in which such a person is liable to be placed, when he finds himself suddenly—and perhaps publicly—called upon, either in court or parliament, to explain the *reasons* of the law, to vindicate his own statements when impugned, or assail and expose those of his adversaries. He has then no landmarks to guide him, no rallying points of historical recollection, in short, and no precise and distinct ideas on

* "History," says Roger North, "particularly that of England, is to be accounted, however pleasant to read, an appendix or incident necessary to the study of the law: for it often lays open the reasons and occasions that have been for changes that have befallen the Common Law, either by authority of parliament, or of the judges in Westminster Hall."—Disc. Stu. Law, p. 8.

the subject, and must either retreat in ridiculous confusion from his own hastily-assumed positions, or submit to misrepresentations, which, however he may suspect, he cannot *prove* to be such *. The common maxim *cessante ratione cessat quoque lex*, must, to such an one as we have been describing, be ever an alarming and hateful one!

"In an appeal to sober sense and to experience," observes a judicious writer, "the advantages that arise, in this respect, to the advocate, from the study of history, will presently be found of great value; they form a forcible contrast with the disadvantages that frequently result from an ignorance of that science. How often would it have proved a tedious and almost insupportable task to those whose office it is to hear and determine upon the arguments of counsel, had they who have filled the character of an advocate at the English Bar, been generally unversed in the events recorded in history: how confined would have been the legal notions of our courts; how spiritless, and perhaps unjust, their interpretations of

* "An Irish barrister, referring to two great events, *viz.* the obtaining of Magna Charta, and the Bill of Rights, confounded the sovereigns from whom they were exacted; and a celebrated English barrister, having occasion to quote a statute, and being required to mention the period at which it passed, very gravely replied, that it was 'in the reign of one of the Henrys, or one of the Edwards—but he could not exactly tell which!'"—Will. Stu. and Pr. of the Law, p. 31.—Would it be difficult to swell the catalogue of such instances?

the law, had they who preside in those tribunals, derived their principles of truth in the administration of civil and criminal justice, from the letter of the law alone. On the other hand, what grand and striking displays of the reasoning powers—what extensiveness of remark—acumen of comparison—and power of combination, mark the argument of the advocate whose mind has been illumined by a contemplation of the hidden causes from which, as we have already remarked, laws in particular, amongst all other human subjects, derive their true character and complete force."

Let the student but cast his eye over the pages of any of our professional biographies—the reports of any of our great trials—and he cannot fail to note the frequent occasions on which our advocates have splendidly distinguished themselves by the accuracy, extent, and promptitude of their knowledge of constitutional history. To go no further back than to Lord Mansfield, Ashburton, Erskine, Eldon, Lyndhurst, Brougham, and Sir Charles Wetherell—who can have read their judgments and speeches, either in court or parliament, without high admiration, on the score above mentioned *! How, indeed, is it possible for him to speak with the requisite air of *confidence*—to convince the obstinate, decide the

* The Lord Keeper North "revered Lord Hale for his great learning in the history, law, and records of the English constitution."—Life of Lord Guildford, p. 118.

doubting, enlighten the ignorant, and confound the crafty, who is not fully master of his materials—"strong in his points!" A sudden turn of the discussion, an unexpected question, a subtle suggestion, a daring assertion, will suffice to dislodge the pretender from his pedestal, and expose his shallow incompetence to derision! Innumerable occasions will arise, during the course both of the pupilage and practice of the ambitious lawyer, for regret on account of his ignorance, or satisfaction on account of his sound knowledge, of English history. The incessant allusions to its topics, in friendly conversation and discussion, either at chambers, in general society, in court, or even at the debating clubs, to which most young men attach themselves, will soon convince the student of the dangers of superficiality. Not an elementary writer on legal studies, ancient or modern, has failed to insist most strenuously on the necessity of the young lawyer's early acquaintance with the history of his country!—The author would be, however, almost ashamed to have said so much on the subject, but that he is aware how compatible is the fullest acknowledgment of its importance on the part of students, *with a practical neglect of it.*

Let the student who meditates entering, or has already entered, the legal profession, address himself at once to Hume's History of England, devoting to it—say, two or three hours in the day, twice a week. He must begin with the very beginning. Many pass

over the period anterior to the conquest, as being of no practical importance: whereas the brief and masterly sketches contained in the second and third chapters, together with the appendix, would not only conduce to a clear understanding of the position of affairs in 1066, but afford a clue to very many important customs and laws subsequently abrogated, modified, or restored *. The student, then, will read easily, but attentively, through the whole of this inimitable History; not troubling himself with the references, or wandering into collateral researches; but taking care, at each reading, to review the previous one, so as to keep up in his memory a due order and connexion between events. He will not be long in thus getting through Hume. Having once done so, and taken thus a bird's-eye view of the whole, he may with advantage prepare himself for a second and more systematic perusal, by directing his best attention to the FEUDAL SYSTEM—that wonderful hot-bed from which have sprung so many institutions that retain, even to this day, their peculiar uses and characteristics. The student will find this knowledge not only essential to a thorough appreciation of the numerous and very subtle rules of real-property law, but also affording a key to general European History. "The feudal

* Sir F. Palgrave's "History of the Anglo-Saxons," in Murray's Family Library,—a compact little duodecimo—may be consulted with great advantage by the student desirous of accurate information on a very obscure but interesting and important subject.

system," says Lord Mansfield, "is so interwoven with almost every constitution in Europe, that, without some knowledge of it, it is impossible to understand modern history." Without this, in short, it will be in vain to hope for an accurate knowledge of either law or history. A very beautiful sketch of the Feudal System will be found in the second appendix to Hume. Perhaps, however, the most scientific view of it is that contained in Mr. Hallam's Middle Ages (chapter ii., parts 1 and 2). Dalrymple on Feuds, is a very brief and luminous work; and see Mr. Butler's elaborate note to Coke upon Littleton, 191, *a*; the introductory chapters of the fourth book of Blackstone's Commentaries; and the third to the eighth, inclusive, of Sullivan's Lectures. Any one of these will suffice to give the student a clear insight into the leading characteristics of that wondrous system—"that prodigious fabric," to adopt the language of Hume, "which for several centuries preserved such a mixture of liberty and oppression, order and anarchy, stability and revolution, as was never experienced in any other age or any other part of the world!"

Thus prepared, our student will re-commence Hume, devoting his first attentions to the reign of William the Conqueror, who introduced, it is believed, the feudal system into England *. The mailed hand

* Whether feudal tenures were known in England before the conquest, "was a famous question," and is still a moot point; which

with which that great warrior grasped and shook our institutions, has, so to speak, left its impress upon them to the present day. It is, however, interesting to observe the decay of feudalism, waning as it did before the waxing influence of what has been termed the spirit of *commercialism*, which totally altered the general character and policy of our institutions, moulding our laws and usages into new forms, more adapted to modern exigencies *. To proceed, however. The reigns of Alfred, William the Conqueror,

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the young reader may see discussed at pp. 408—418, vol. ii. of Hallam's Middle Ages. See also the very learned works of Sir F. Palgrave and Mr. Allen.

* "The occasion of the difficulty, if any, which occurs in the foregoing propositions, arises from a want of due knowledge in ourselves, of the extent to which the principles of the feudal polity have been engrafted into our established system of remedial jurisprudence, and the consequent distinction which the common law has taken between *feudal* and *commercial*, with respect to the descent or alienation of real or landed property. From the period of the establishment of the feudal polity in England, in the reign of William the Norman, there seems to have been kept up a sort of constant struggle between the spirit of commercialism on the one hand, and that of feudality on the other; and the consequent operation of these two grand principles is to be traced in every part of our law of landed property. The construction of testamentary alienation, for instance, was originally adopted upon a purely commercial principle, and in relaxation of the rigour of the feudal system, which had a direct tendency to take lands out of commerce, and to render them inalienable."—*Ritso's Introduction*, pp. 20, 21.

The idea hinted in the text will be found excellently followed out in Mr. Butler's luminous note to Co. Litt. 292, *b*, especially in Part V. of that note, containing "a succinct statement of THE GRADUAL PROGRESS OF SETTLEMENTS."

Edward I. (the English Justinian), Edward III. *, Henry VI, Henry VII, Henry VIII, James I, Charles I, Charles II, James II, and William III, (in Smollett's continuation) are those most worthy of being dwelt upon by the student, and thoroughly mastered in all their particulars: they are, so to speak, the climacterics in the history of our constitution. Having thus completed his second perusal of Hume, the student will do well to read carefully the last chapter of Blackstone's Commentaries,—a luminous and comprehensive summary of the great epochs in constitutional history; Dr. Gilbert Stuart's admirable "Discourse on the Laws and Government of England," prefixed to his edition of Sullivan's Lectures; and the chapter "on the British Constitution," in Paley's Moral Philosophy. These three brief *epitomes* will suffice to keep in his mind the leading events of our legal history, in their due order, prominence, and proportion; to indicate distinctly the various stages of growth and change in the constitution; the struggles between,—the alternate elevation and depression, and, ultimately, harmonious adjustment and equipoise,—of monarchical, aristocratical, ecclesiastical, and demo-

* "There is not a reign during those of the ancient English Monarchs," says Mr. Hume, "which deserves more to be studied than that of Edward III.; nor one where the domestic transactions will better discover the true genius of that kind of mixed government which was then established in England."—*History of England*, vol. 2. p. 513.

cratical power. The student will then be fitted to enter upon Mr. Hallam's Constitutional History,—a work it were idle to attempt to eulogise, or even characterise, otherwise than by stating that it has become, and well deserves to be, a standard text-book. The Constitutional History of England commences, in fact, in his "Middle Ages," (chap. viii. parts 1, 2, 3), which are devoted respectively to the Anglo-Saxon constitution, the Anglo-Norman constitution, and the period from Edward I. to the end of Henry VI. The "Constitutional History of England," subsequently published in three volumes, 8vo, continues the history, commencing with the reign of Henry VII, and terminating with that of George II. This work is admirably calculated to complete the student's course of English historical reading,—to gather up its *results*,—to place all the really important events of our history in their true bearings, their lights and shadows, distinctly before him. Happy will be that student who shall do this distinguished writer the justice of thoroughly studying his works—of reading them over and over again. On each successive perusal he will be the better pleased with the pains he has taken. Long, indeed, may it be before we

"Look upon his like again,"

—upon so rare a combination of candour, sagacity, and learning, as is to be found in Mr. Hallam. Reeve's

History of the English Law, though by no means an inviting, is nevertheless a very important and valuable work; one which, if not read consecutively through, yet should be frequently referred to by him who wishes to obtain an intimate knowledge of the framework of our ancient laws. Since, however, the wholesale alterations which have been recently effected in every department of the law, many portions of that work may be passed over as obsolete,—at least as far as practical purposes are concerned. Mr. Hallam speaks of it very highly, as "a work, especially in the latter volumes, of great research and judgment: a continuation of which, in the same spirit, would be a valuable accession, not only to the lawyer's but philosopher's library *."

This, then, is what the author ventures to propose as a plain and practicable course of English history; one perfectly compatible with the pressing calls upon the young law-student's attention, and calculated, if but done moderate justice to, to give him very great advantages over many of his competitors. Some of *them* may, perhaps, smile at the simplicity of the scheme here proposed, and talk largely of greater works than are above-mentioned—of folios

"Of grim black-lettered lore."

Our student, however, will show his good sense by disregarding such vapourings. Let no swaggering

* Constitutional History, vol. 1, p. 17, Note (2d Ed.)

airs of superiority assumed by his companions, divert *him* from his determination, thoroughly to master Hume and Hallam; when *this* is done, then—*and not till then*—it will be time enough to think of deepening and extending his researches into the history of his country. He is assured that many *talk*, and even write, flippantly and confidently about these subjects, who are, in reality, most shallow pretenders.

One further suggestion is offered to the student; and that is, that he should strive to acquire an accurate knowledge of the DATES of each monarch's accession and death, of the houses to which each belonged, and their immediate descent, as well as the leading events of each reign. "Dates," observes Sir Harris Nicolas, "are to history what the latitude and longitude are to navigation,—fixing the exact position of, and serving as unerring guides to, the object to which they are applied*." Let him make

* Chron. of Hist. pref. vi.—It is a remarkable and discreditable fact that, "*every table of the regnal Tables of our Sovereigns before printed is erroneous*,—not in one or two reigns only, but in every reign from the time of William the Conqueror to that of Edward IV. These errors have caused every document dated, and every event which took place, on any day in the regnal year included in the period in which these errors occur, to be assigned to *one year* of our Lord *earlier* than that to which they actually belong. That errors so destructive to truth, whence history, like philosophy, derives all its usefulness and importance, should have been so long allowed to pass without correction, must surprise those labouring in the exact sciences, whose tables include the smallest fractions of time, and wherein an error of a few seconds would be fatal to the calculations of the astronomer and mathematician."—*Ibid.* p. xiv.

a list of these, carry it about with him, and exercise himself frequently in repeating it, so that, at length he may be able to answer questions concerning them with prompt precision, without waiting for books, which may not at all times be at hand to corroborate his statements, or contradict those of his opponents. There is a large plate published by the late Messrs. Bowles and Carver, entitled "Engravings for teaching the Elements of English History and Chronology, after the manner of dissected maps for teaching geography," which may now be had for a mere trifle, and would be found very useful, if hung up in the student's room, and frequently referred to. The author has been thanked by several who have profited by even this simple suggestion.

Thus the student will not only have stored his mind, easily and early, with very valuable historical knowledge, but facilitated the acquisition and retention of law; at the same time that it has generated—where it did not already exist—a keen relish for historical investigation. He will be enabled to form such a ready and enlightened opinion upon the character, effects, and tendency of the innumerable political measures that may be discussed in his presence, as will speedily attract the attention of those whose interest it will be to promote him. Historical studies will have operated as a pleasant and powerful stimulus to the exertion of memory, observation, and reflection. To such an one our statute-book can

never become "a dead letter;" the parliamentary debates must be an unfailing source of interest and instruction.

"I might instance," says Lord Bolingbroke, "in other professions, the obligations men lie under of applying themselves to certain parts of history; and I can hardly forbear doing it in that of the law: in its nature the noblest and most beneficial to mankind,—in its abuse and debasement the most sordid and pernicious. A lawyer *, now, is nothing more —I speak of ninety-nine in a hundred at least,—to use Tully's words, "*Nisi leguleius quidem cautus, et acutus præco actionum, cautor formularum, auceps syllabarum.*"—[De Orat. 55.—Pro Murœna, § 11]. But there have been lawyers who were orators, philosophers, historians; there have been Bacons and Clarendons. There will be none such any more, till in some better age true ambition or the love of fame prevails over avarice, and till men find leisure

* "I must laugh with you," says Bishop Warburton, in a letter to Hurd, "as I have done with our friend Balguy, for one circumstance. His Lordship (Lord Bolingbroke) has abused the lawyers as heartily as he has done the clergy, only with this difference: he is angry with us *for using* metaphysics, and with them for *not* using it. I know why. He has lost many a cause in a court of justice, because the lawyer would not interpret his *no facts* into *metaphysical* ones; and been defeated in many an argument in conversation, because divines would not allow that true metaphysics ended in *naturalism*. I myself, who am but in my elements, a mere *ens rationis*, simply distilled, have dismounted him ere now."—*Warburton's Letters to Hurd—Lett.* XLI.

and encouragement to prepare themselves for the exercise of their profession, by climbing up to the *'vantage ground*, as my Lord Bacon calls it, of science, instead of grovelling all their lives below in a mean but gainful application to all the little arts of chicane. Till this happens, the profession of the law will scarce deserve to be ranked among the learned professions; and whenever it happens, one of the 'vantage grounds to which men must climb, is metaphysical, and the other historical knowledge; they must pry into the secret recesses of the human heart, and become well acquainted with the whole moral world, that they may discern the whole abstract reason of all laws; and they must trace the laws of particular states, *especially of their own*, from the first rough sketches to the more perfect draughts; from the first causes or occasions that produced them, through all the effects, good and bad, that they produced *."

*** The author has not thought it necessary to introduce into the foregoing pages any allusion to the errors and misrepresentations alleged against Hume: that to such a charge he is occasionally liable, cannot be doubted; but they scarcely warrant one in disturbing the opinions of younger readers, who, if they will but master all that is accurate, in this admirable historian, can easily find opportunities of correcting what is erroneous. Professor Millar, M. Laing, Bishop Hurd, Dr. Birch, Dr. Towers, and Mr. Brodie, have all addressed themselves to the task of 'correcting Mr. Hume;' and a tolerably fair estimate of the last-mentioned writer's work will be found in the Edinburgh Review, No. 71, pages 92, 146—March, 1824.

* Study of History, p. 353, quarto edit.

CHAPTER VII.

DIFFERENT DEPARTMENTS OF THE PROFESSION— EQUITY, CONVEYANCING, AND COMMON-LAW.

LET us suppose the reader, then, upon due deliberation, to have determined on adopting the legal profession. There yet remains a most important inquiry, namely, *which of the three leading departments* —Conveyancing, Equity, or Common Law, should be selected. Much observation and inquiry, as well as individual experience, have satisfied the author that this is a matter on which practical information has been long felt to be a desideratum. It will therefore be attempted, in this Chapter, to sketch out briefly, but faithfully, these three *phases* of the profession. They are perfectly distinct from one another; requiring each very different degrees of fitness and preparation *.

* It is amusing to see how confused a notion of the different branches of the possession is professed by even those who have affected an intimate knowledge of them. No less popular a writer,

Strange to say, there have been those who earnestly deprecated applying the principle of the *division of labour* to the legal profession, as tending only "to narrow and contract the mind in its researches, impede the exercise of its noblest faculties, reduce it to abstract and confined views of things, and render it incapable of attaining a masterly and comprehensive reach of intellect *." This sub-division of the profession has long, however, been too well settled, for its propriety to be now practically called in question, even did there exist just grounds for dissatisfaction with it. Were it not diverging too far from the object which should be constantly kept in view in such a work as the present, a very interesting account might, perhaps, be given of the causes which have rendered the adoption of this principle absolutely

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for instance, than Miss Edgeworth, in her interesting novel, "Patronage," having evidently bestowed great pains on the delineation of the character and pursuits of Mr. Alfred Percy, a young barrister — vindicating in the preface, her frequent adoption of professional technicalities—appears to be completely in the dark as to the proper province of a barrister—of the walk of life in which she has placed her hero. She has accordingly made him a very mongrel character; now, an attorney, sent into the country to inquire into the management of an estate, &c.; then, a conveyancer, drawing marriage settlements; and finally, a pleading barrister, at one time eloquently haranguing judge and jury, at another drawing pleadings; in which latter capacity, he is represented as drawing, for the *same* party, in the same suit, both "Replication" and "Rejoinder"—*i. e.*, making his own client both plaintiff and defendant!

* Williams' Study of the Law, p. 105. And see Mr. Starkie's Introductory Lecture at the Inner Temple, Legal Examiner, vol. 2, p. 449.

indispensable in modern times, even admitting it to have been, a century or two ago, otherwise *. Mr. Chitty has well observed "that in the original formation of all independent states, redress for every kind of crime or injury, has, in general, been first afforded *in one general court*, and without much regard to precise form; but as population, and the intricacy of transactions increased, it was found, that by a *division* into *several* different courts, and appropriating particular descriptions of business to each, the judges and practitioners, having more time to attend to their particular departments, necessarily became better acquainted with them, and not only decided more correctly upon the substantial questions, but also framed more appropriate rules and forms of proceedings, and, in the result, more efficiently administered justice, according to the varying nature of each case †."—Can there be a greater distinction between the Conveyancer, and the Special Pleader or Equity Draftsman, than exists in the medical profession, between the Surgeon and Physician, or Accoucheur?

The true idea of our profession, with reference to this its tri-partite division, is that of a great stream

* See a very interesting Chapter (xix.) in Mr. Babbage's Economy of Machinery and Manufactures, on the Division of MENTAL Labour, as illustrated by the celebrated Tables of M. Prony; and also the just and striking observations of Dr. Copleston, on the principle in question, in his celebrated Reply to the Edinburgh Reviewers, pp. 107—112.

† Gen. Pr. Law, vol. ii. p. 304.

running off into three channels, each of which answers a distinct purpose. There are grand fundamental principles common to all the three branches of the law, and, consequently, essential to be understood before practising successfully in any of them. A man cannot be a good Special Pleader, for instance, without being well grounded in, at least, the elements of conveyancing learning; nor a good Conveyancer, without a knowledge of the rules of evidence, and construction of legal language; nor a good Equity Draftsman, without a competent knowledge of the principles, and no little even of the practice, of the common law. One of the latest and ablest works of Mr. Chitty, contains a very striking illustration of the truth of this observation.

"Recently a *common-law* barrister, very eminent for his legal attainments, sound opinions, and great practice, advised, that there was *no remedy whatever* against a married woman who, having a considerable separate estate, had joined with her husband in a promissory note for 2,500*l.* for a debt of her husband; because he was of opinion that the contract of a married woman is absolutely void, and referred to a decision to that effect *, not knowing, or forgetting, that, *in Equity*, under such circumstances, payment might have been enforced out of the separate estate †.

* Marshall *v.* Rutton, 8 T. R. 545.

† Bullpen *v.* Clarke, 17 Ves. jun. 366; Hulme *v.* Tenant, 1 Bro.

And afterwards, a very eminent *Equity* counsel, equally erroneously advised, in the same case, that the remedy was only in equity: although it appeared, upon the face of the case, as then stated, that after the death of her husband, the wife had promised to pay, in consideration of forbearance, and, upon which promise, she might have been *arrested* and sued at law *. If, now, the common-law counsel had properly advised proceedings in equity, or if the equity counsel had advised proceedings by arrest, at law, upon the promise made after the husband's death, the whole of this large debt would have been paid. But, upon this latter opinion, a bill in Chancery was filed: and so much time elapsed before decree, that a great part of the property was dissipated, the wife escaped with the residue into France, and the creditor thus wholly lost his debt, which would have been recovered if the proper proceedings had been adopted in the first or even second instance!—This is one of the *very numerous* cases almost daily occurring, illustrative of the consequences of the want of at least a general knowledge of *every* branch of law †."

Part. Cas. 16; Stewart *v.* Lord Kirkwall, 3 Madd. Rep. 387; Bingham *v.* Jones, at Rolls, 1832—Chitty on Bills (8th ed.), 791; Field *v.* Sowle, 4 Russ. Rep. 112.

* Lee *v.* Moggeridge, 5 Taunt. Rep. 36; Littlefield *v.* Shee, 2 Barn. & Adolph. 811.

† Chitt. Gen. Pr. of the Law, vol. i. pref. viii. note (*a*), 2nd ed. Did not Mr. Chitty's respectable name guarantee the truth of this statement, one should have felt a difficulty in believing it. For the

It certainly does not follow, then, that the exclusive prosecution of any particular branch of the profession requires, or can even allow of, an ignorance of the general principles on which law is administered. Whoever can bring himself to think otherwise, may rely upon it, that he is dwindling fast into a mere pettifogger, and amenable to the censure and contempt above instanced.

Between the Special Pleader and Equity Draftsman there is a very close analogy. Properly speaking, both are "special" Pleaders; *i. e.*, both draw up written statements of fact, for the court, in complaint and answer—but in a *manner* different as are their respective modes of proof and decision. "The rules of property, evidence, interpretation, in both courts, are, or should be, exactly the same," says Blackstone; "both ought to adopt the best, or must cease to be courts of justice. * * Wherein, then, does the essential difference consist? In the different modes of administering justice in each—the mode of proof, trial, relief*." "The doctrines of this court," said that illustrious judge, Lord Eldon, "ought to be as well settled, and made as uniform almost as those of the common law; laying down fixed principles, *but taking care that they are to be applied according to the*

credit of the profession it is hoped that instances of such glaring ignorance, and that too in "eminent" counsel, must be of very rare occurrence.

* 3 Blackst. Com. 434—6.

circumstances of each case. I cannot agree that the doctrines of this court are to be changed with every succeeding judge. Nothing would inflict on me greater pain, in quitting this place, than the recollection that I had done anything to justify the reproach, that the equity of this court varies like the chancellor's foot *."

These practitioners might correctly be called respectively "Common Law Pleaders" and "Chancery Pleaders." Both have their particular systems of pleading, both their "demurrers" for *erroneous* pleading. Both may, and frequently do, manage in court, the causes they have been privately conducting to issue: the one opens his case, and adduces *viva voce* evidence in support of it, before judge and jury; the other merely states his case before the judge, *reads* the evidence, previously taken on oath, and argues on its effect. Now the Conveyancer's is a province totally distinct from both the preceding. He is little, if at all, concerned with litigation; being occupied almost solely in the peaceful employment of creating and transferring rights to property, real and personal †. He it is that calmly frames the instrument, the construction and effect of which are sub-

* Gee *v.* Pritchard, 2 Swanst. 414. His Lordship's last words allude to a well known and somewhat flippant passage occurring in a work which passes by the name of "Selden's Table Talk." Perhaps, however, it ought not to be attributed to that great man.

† "Conveyancing," says Mr. Martin, "is the science and the art of alienation."

sequently discussed so keenly in the equity and common law courts; *his* functions must have been long before exercised in a very great proportion of the most important business transacted by the other two branches of the profession. In short,

——"His are the arts of peace,
As theirs of war."

These three branches of the law, though thus distinct from each other, are not always so strictly distinguished, in practice, by their professors; as far, at least, as *two* of them are concerned. It is not uncommon to see the same individual, in defiance of the division-of-labour principle, combining conveyancing and equity drafting: but the Special Pleader never interferes with either *. Let us proceed, however, to examine these three great branches of the legal profession a little more in detail.

I. CONVEYANCING.—No "horrid alarum of war" disturbs "this silent but important branch of the profession†," where, however, are framed the weapons and originated the chief occasions of litigation; because here are created those rights and liabilities, which come subsequently to be respectively enforced and disputed. If a man wishes, either temporarily or permanently, to acquire or part with, any kind of property,—either to

* Each of these chamber practitioners is, or may, at any time, become a barrister; and then he is usually styled a *chamber counsel.*

† Raithby's Letters, p. 399.

purchase, sell. mortgage, or devise—to enter, in short, into any species of contract, as of marriage, partnership, &c. &c.—for the instrument by which any of these intentions is effectuated, he must call in the assistance of a *conveyancer*, on whose skill and learning depends his all—it may be—and that of his children's children *. The great object of a conveyancer is not only to define with precision *present* rights and liabilities, but to anticipate and provide for the remotest *contingencies*. He receives, for instance, "instructions" to draw a will. The intended testator is, perhaps,

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* It is said that the late eminent conveyancer, Mr. Butler, in early life committed a blunder, in framing a will, which deprived the party whom he was expressly and anxiously instructed to benefit, of about 14,000*l.* a-year! It was the omission of *a single word*—"Gloucester," that was attended with these disastrous consequences. See per Tindal, C. J. in Miller *v.* Travers, 8 Bing. p. 254—5.

Length and verbosity have been from time immemorial charged upon the conveyancer, as well as pleaders and equity draftsmen. One of our legal antiquarians (Somner) in a kind of funeral eulogium on the Saxon simplicity, observed, that even in his time, "*an acre of land could not pass without almost an acre of parchment.*" So, in Donne's second satire—

> "In parchment, then, large as the fields, he draws
> Assurances."

Shakspeare makes Hamlet remark, "that the very conveyances of a man's lands would hardly lie in his coffin!"—And again—

Hamlet.—Is not parchment made of sheepskins?

Horatio.—Aye, my Lord, and of calf-skins, too.

Hamlet.—They are sheep and calves that seek out assurance in that!

"Somner might have observed at this day," says Wynne, "that a flock of sheep is often converted into a settlement."—See *Eunomius*, p. 207.

possessed of large property, real and personal, and wishful to provide for a numerous family; in doing which he seeks to gratify, as far as the law will permit, certain feelings of vanity, ambition, or caprice, as to the destination of his fortune. It is to be split into, perhaps, twenty different portions, and parcelled out among fifty or sixty different persons, who are to take it, however, only in a certain order, and on the happening of particular events. *This* person is to have it only provided—so and so; *that* person is to succeed only in the event of, &c.; *the other*, if—&c. &c. If his grand-niece, Jemima Diggory, shall marry a New Zealander, then her share is to go over to her cousin Deborah for life, remainder to—&c. If *she*, however, shall marry an Irishman, or settle in America, or die under twenty-one, or leave no male issue by her present husband, then it shall go over to the testator's natural son, John Blarney, and his heirs, provided, before the death of one J. H., he shall take the name of Wiggins; but if—&c. &c. &c.:—providing thus, in short, for all imaginable contingencies, and securing to the testator the gratification of his proudest wishes, that there shall be persons flourishing upon the earth, under the august name of Wiggins, in the year of our Lord which will be 1990!—A will was drawn, not long ago, by a well-known conveyancer, and settled by several, providing, with anxious vigilance and ingenuity, for no fewer than *eighteen* different contingencies. The testator soon afterwards died; and

actually, an unforeseen, but by no means improbable event, happened within three months of his death, which upset all the complicated arrangements of his will, and plunged an extensive family into destructive litigation in Chancery, in the meshes of which they are at this moment almost inextricably entangled!

Scarce any problem in the mathematics can be more difficult of solution, than is the task imposed, in such cases as these, upon the conveyancer. The doctrines of uses, contingent remainders, conditional limitations, and executory devises, are often as abtruse and difficult of application in practice, as the more recondite processes of algebra; and without an exact and ready knowledge of them, and all the subtle and multifarious distinctions and exceptions attached to them, as well as very many other difficult branches of real property law, it would be perilous to attempt practising as a conveyancer. Take a specimen of the most ordinary business he is called upon to do. Have you conceived a penchant for a neighbouring cottage, or the little slip of land between it and a grotto of your own, and determined on purchasing it? Your attorney will instruct a conveyancer to look over all the title-deeds relating to the property, to ascertain whether you can purchase it safely; and, if so, to draw the instrument, or instruments, by which it is conveyed to you. These are the two leading functions of a conveyancer,—to "advise on an abstract of title," and "draw the conveyance." Possibly, in discharging the first of these

duties, in the case above supposed, he will have to scrutinise narrowly each step in the devolution of this property during twenty, forty, or sixty years; to pore over complicated settlements, wills, assignments, mortgages, till, at length—εὕρηκα—he puts his finger upon a crack—a flaw: a subtle rule of law has been violated. David Duggins took an estate for life only, and not an estate tail, under his great-grandmother's will; his son, the vendor, has, consequently, about as much real right to dispose of the property, as the Shah of Persia! His "abstract," therefore, is returned to him, with an intimation that it is unsatisfactory; and there is an end of the matter. You little dream, however, what has been done for you by this quiet conveyancer,—what profound and extensive learning, what masterly analysis, what rigorous accuracy of research, he has brought to bear upon his task! Almost all the great and varied science of real property has been, in one way or another, rendered contributory to it. His tables and chairs are strewed with "grim black-letter,"—with abridgments, entries, reports, digests, and treatises of all kinds. Through all of these he has patiently picked his way to the points he wished; and the practical result is, that his brief but able exposition of the unsatisfactoriness of the title disclosed, has saved his client from perhaps grievous disappointment, expense, and litigation. Had he signified his *approval* of the title, his next task—often a laborious, always a most responsible

one—would have been to draw the conveyance; consisting either of a skilful adaptation of precedents, or the construction of an original draft, almost every line of which is, as it were, laden with learning—with a meaning and reason hid to all but those possessing a sound knowledge of real-property law, and the mode of its application to practice. Of this complicated character, in short, and charged with the same serious responsibility, is almost everything which a conveyancer is called upon to do; whether it be a trust-deed, a composition-deed, a partnership-deed, an apprenticeship-deed, a deed of assignment, lease and re-lease, bargain and sale, mortgage, marriage settlement, will, agreement, &c. &c.: all of them requiring a ready, accurate, and extensive acquaintance with principles and forms. There is, however, one special difference between the consequences of a conveyancer's errors, and those of his brother practitioners. Those of the former are, from their nature, rarely *discoverable*, possibly for years, when their perpetrator is far removed from their ill effects; whereas those of the latter are at once detected, and often under very annoying and serious consequences. "Who drew this settlement?" inquires a great solicitor, from his head clerk, pointing to one in which a fatal fault has just been detected, after the lapse of perhaps a dozen years. "Mr. A——," is the reply; and *he* has in the meanwhile become a conveyancer of established reputation and business, too strong to be

shaken by this little *faux pas*. "Mr. A——! oh, well, he draws very differently *now*. He was young then, and we must all have a beginning!" "Pray, did Mr. B—— draw this declaration—this cross-bill?" inquires another client, of his clerk, pointing to one which has, alas! been just demurred to successfully, for some gross fault in pleading. He is answered in the affirmative; and Mr. B—— proves to be a young pleader, or equity-draftsman, of some one or two years standing only. "Oh, well, this really won't do, you know! This is positively the second time it has happened! He either can't know his business, or won't attend to it. Ask him, civilly, for his bill, and send our papers, for the future, to Mr. C——"; and forthwith poor B——'s connexion with the "great house" of X. Y. and Z. is for ever at an end!

Conveyancing will be a delightful walk of the profession to him who, frail in health, or too diffident for the keen warfare of public life, is of a patient, thoughtful, contemplative cast of mind. If one may so speak, without offence to our friends in this department, a conveyancer may be compared to a spider, who, retiring to the most silent sequestered corner of the legal building, there spins his delicate and intricate tissues uninterruptedly from morning to night!—To those, however, of a vivacious and volatile temperament, the life of a conveyancer will be one of intolerable monotony and labour; the same dull story from morning to night—advising on abstracts and drawing

conveyances from one year's end to the other! The student, in selecting it, must dismiss at once all high-flown notions of fame and popularity, all yearnings after display, and descend to plain matter-of-fact. He is well paid for his labours, to be sure, from the very first; but those labours he must not intermit, to the end even of his career, unless, as is sometimes the case, he determines upon going into Court, and pleading before the Lord Chancellor, Vice-Chancellor, or Master of the Rolls. Sir Edward Sugden, the present Lord Chancellor of Ireland, is a very splendid instance of the success with which such a step *may* be taken.

On entering with a conveyancer, the student is generally set down at once to "heavy reading," as it is called, in order to prepare himself, as soon as possible, for taking his share of the current business of chambers. "The black-letter of the law must be called to his aid, during his attendance on the course of practice which passes through this office. Coke upon Littleton must be turned over; the more abstruse learning of titles must be explored; the feudal system must be understood, together with the different modifications and changes it underwent; the rights of the copyholder and the lord; the rules of descent; the origin of uses; the doctrine of executory devises *." He will find no difficulty, however, in selecting an

* Ruggles' "Barrister," p. 80.

affable, accessible, and skilful tutor; who, if the student or his friends be wise, will invariably be selected, in the first instance, from the numerous class of JUNIOR practitioners. It is a perfect farce, a gross waste of time and money, for the pupil to *commence* his conveyancing career at chambers where a great business is carried on, amid the bustle of a crowded pupil-room, —to expect any efficient assistance from the scanty attentions which such a tutor can afford to bestow upon him. This is really, to adopt a homely comparison, *putting the cart before the horse.* An eminent conveyancer should not be thought of by the pupil, till at least one year has been spent, and *well* spent, in the chambers of a junior practitioner. It is extraordinary that students should be so carried away with a great name—should overlook the necessity that exists for *commencing* an abstruse study leisurely, for fixing leading principles firmly in their minds, often reflecting upon them, and exercising themselves in preliminaries, instead of hurrying helter-skelter into the perplexities of actual business *. Is this one whit more absurd than it would be to send a raw recruit to be *drilled* on the field of battle? How many has the author heard bitterly expressing their regret at having, in the absence of proper advice, pursued the course which is

* It need hardly be said that the bulk of an established conveyancer's business is of the most *difficult* character, and therefore necessarily beyond the reach of a *tyro*, however industrious.

here so earnestly deprecated!—of this, however, more hereafter. In order that the young reader may obtain a tolerably accurate idea of the species of study that awaits him as a conveyancer, he cannot do better than peruse attentively the elegant and very able epitome of real-property law contained in the second volume of Blackstone's Commentaries *, bearing in mind, however, the fact that it has recently undergone sweeping alterations. It is now in a very unsettled state. Sir Edward Sugden thus speaks of the probable effects of the statute for abolishing "Fines and Recoveries" (3 & 4 Will. 4, c. 106):—

"The sweeping away of fines and recoveries is a solid improvement in the law; and the act of parliament by which it is effected is a masterly performance, reflecting great credit on the learned conveyancer by whom it was framed. But the policy of the provisions in the act may be doubted. All men's titles must for many years depend upon the law of fines and recoveries; and few will be found, in a short time, competent to judge of their validity. The substitute for the old law is one of vast complication,—introducing a "protector" into every settlement, to check the alienation by tenant in tail in remainder. Whilst we brush away our old books, no one can doubt that the new system, from its complication, will lay the foundation for new ones, and that

* See also Mr. Martin's well-written Introduction to his "Recital Book" (1834).

the construction of the act in every given case, will not be settled, but after a long run of litigation—although, no doubt, at first, every thing will proceed smoothly *."

II.—EQUITY. "The practice of Courts of Equity, and that of the Courts of 'Common Law," observes Mr. Raithby, "may be considered in the light of two separate and distinct professions. The difference between them is as clear and essential as that which marks any one business or profession from another. Not only is the introductory learning of the one and the other of a distinct character, but the very constitutions and habits of these courts require, in the persons who practise in them, different descriptions of temperament and ability †." It would be out of place here to enter into a dissertation upon the jurisdiction and general business of the courts of equity, particularly as Mr. Chitty, in one of his recent works ‡, has written on the subject very copiously, and with his usual clearness and ability—following, however, in the steps of Mr. Maddox; from whom we learn that the *principal* business of these courts may be ranged under six heads: 1. Accident and Mistake; 2. Account; 3. Fraud; 4. Infants; 5. Specific Performance of Agreements; 6. Trusts.—The *practice* of this branch of the profession, especially in its

* Sugden's Vendors and Purch, p. 387 (9th ed.)

† Letters, &c. pp. 400, 401, (2nd ed.)

‡ Gen. Pract. of the Law, vol. ii. p. 403—454.

chamber department, is extremely laborious, from the prodigious voluminousness of the pleadings. As a court of equity insists upon having the whole of the most complicated transactions—be they between never so many different parties, and spread over never so great a space of time, thoroughly ransacked, "in order to raise from them ingredients of equity;" will follow fraud through all its tortuosities, and error through all its mazes of confusion and obscurity—it may be easily conceived that the business of the equity draftsman, whose duty it is to inform the conscience of the court *fully* on all these subjects, cannot be otherwise than very arduous and responsible. "To state and arrange all these facts in such a clear and perspicuous manner as to convince the judgment of their truth, agreement, and consistency with each other—which is the great characteristic of a complete draftsman—is a work worthy the attention of the ablest men *." A patient, perspicacious, discriminating intellect, will here find full play for its well-trained energies—and will not fly with terror from the formidable phalanx of bills, cross-bills, supplemental bills, bills of revivor, interpleader, answers, exceptions, pleas, demurrers, interrogatories, reports, depositions—each of which,

"Like a wounded snake, drags its slow length along"

the equity draftsman's chambers.

* Simps. Reflect., p. 42.

"If the verbosity of the special pleader," says a lively writer, "excites our surprise, well may the incredible multitude of words in which pleadings in equity are enveloped—

> 'Thick as autumnal leaves that strew the brooks
> In Vallombrosa.'

They overwhelm us with confusion and astonishment: and, what is worse, amongst this huge mass of rubbish, there is but little intermixed for thought; yet these vain and insignificant expressions—this language of nothings," &c. &c. "must be submitted to; a draftsman must draw technically and scientifically—must heap pleonasm upon pleonasm, until he has spun out a complaint which, together with the prayer for redress, might be made intelligible in ten lines, into a bill of sixty or eighty sheets; and spread a defence, which would lie in a nut-shell, over a hundred folios.*" This, though undoubtedly somewhat over-highly coloured, is, perhaps, upon the whole, not an unfair representation of the monotonous drudgery of equity-drafting. It has, however, its compensating qualities and incidents, being very lucrative, and leading quickly to the most responsible court-practice; and a little steady perseverance will soon confer the *knack* of throwing the most complicated statements into the proper forms of drafting. The principles of equity pleading are few,

* "The Barrister," 2nd vol. p. 77.

and, comparatively speaking, of easy acquisition; being far less scientific, or embarrassed with technical rules and subtle exceptions, than special pleading. The young draftsman has, in fact, only to throw the subject matter of his instructions into a succinct logical form of statement. Take an ordinary case. A trustee under a will has, through his culpable negligence, enabled a co-trustee who, perhaps, has since left the country, to misapply the trust fund; by which means the testator's property has been squandered. His widow and children—the sole objects of his bounty—thus deprived of almost all their property, are driven for redress to a court of equity; as a court of *law* cannot interfere between a *cestui que trust* and his trustee, however great the misconduct of the latter. It could not do so, without utterly defeating the objects of the parties, who are anxious, by creating trustees, to secure their protection and superintendence on behalf of women and children, &c *. Their first step—after issuing process—is to file a bill against the remaining trustee; and this bill consists of a formal and methodical statement of the parties to the suit—who the testator was—what property he died possessed

* Courts of Equity exercise a very searching and formidable power over trustees; who are *there* liable for any breach of trust, although the deed appointing them contain the usual indemnity clause: ex. gr.—If there be two trustees, and both suffer a debt due from one of them, to remain long outstanding, and a loss arise.—See Mucklow, *v.* Fuller, 1 Jac. 198; 3 Swanst. 78, and Ed. Chitt. Eq. Ind. p. 1310.

of—his will—the acceptance of the trust by both the trustees named therein—and then the various facts of the case, as they occurred, demonstrating the negligence of one trustee, the dishonesty of the other, and the ruinous consequences to the parties interested under the will. Various "interrogatories," skilfully framed, so as to elicit all the information possible, are then put to the trustee, and the Bill concludes with a "prayer" for redress. This the opposite party must, within a particular time, answer *on his oath;* and he will, probably, file a cross-bill against the plaintiffs, to elicit information, in his turn, inculpatory of them, and exculpatory of himself:—as, for instance, to prove that the widow was privy to the misconduct of the absconded trustee—that she shared the fruits of his misappropriation of the trust-fund, and admitted, in some letters, that the solvent trustee had been guilty of no negligence or connivance, &c. &c.; all which matters must be answered by the plaintiff, on her oath; and thus the cause goes on, unless its course is impeded by demurrer or exceptions, till the hearing in court. Analogous to these proceedings are those which are occasioned by disputes between partners, assignees and creditors of bankrupts, &c. &c.;—by applications for INJUNCTIONS of innumerable kinds *;—to enforce SPECIFIC

* Ex gra. Against partners, to prevent ruinous conduct affecting the joint trade—against agents or attorneys to prevent the disclosure

PERFORMANCE of Agreements,—"one of the most peculiar and important branches of equitable jurisdiction," said Lord Hardwicke, "and which has been justly considered the most useful *;"—and to assist persons litigating in courts of law, by compelling a DISCOVERY of material facts, which the parties complaining might not otherwise be able to prove.

This sketch, slight and imperfect as it may appear, will enable the reader to form a pretty definite notion of the very peculiar character and functions of courts of equity, as well as the species of knowledge and habits required in its practitioners. Patience and sagacity, rather than ingenuity, activity, energy, or brilliance, should be the leading characteristics of one who intends to adopt this laborious, lucrative, and responsible department. It gives little or no opportunity for excitement or display, and can easily dispense with eloquence, fancy, and promiscuous acquirements. Conveyancing learning, and that sound and

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of confidential communications—to prevent the negociation of bills, notes, &c.—to compel the delivery and cancellation of deeds, &c.—to prevent the divulging of trade secrets—preference, misapplication, or devastavit by executors—the sailing of ships by the minority of the owners—the infringement of copyrights, patent rights, inventions, or other imitations. See Chitty's Gen. Pr. vol. 1, pp. 695—736 (2nd ed.)

* Penn *v.* Lord Baltimore, 1 Ves. 446.—For whilst, *at law*, (except in the case of Detinue and Ejectment) *damages* only, and not the thing itself can be recovered [Alley *v.* Deschans, 13 Ves. 222.]; yet by Bill in Equity a decree may be obtained that the complainant shall have, from his opponent, the precise performance of his agreement in certain cases, as well as, generally, the costs of the suit.

extensive, is absolutely indispensable; and if the reader has a predilection for this branch of the profession, his first step ought, by all means, to be that of entering immediately into a conveyancer's chambers, and spending there, at the very least, a twelvemonth. The student is referred, for fuller information as to the jurisdiction and methods of procedure in these courts, to Book III. chap. 27 of Blackstone's Commentaries; Fonblanque's Treatise on Equity, *passim;* and those portions of Mr. Chitty's General Practice of the Law already referred to *.

III.—Common Law.—Its private department is equally varied and difficult, its public department brilliant and imposing. As, however, the former will be specially, and at length, considered hereafter †, it may be dismissed, for the present, from further notice, and only a few observations will be here offered on the general character of the public practice of common law.

The term "Common Law," like that of "the Constitution," is often used without any distinct meaning. It has received, indeed, very different definitions from its professors, accordingly as it has been treated as an abstract or relative term. "In its proper or technical sense," says Mr. Ritso, "it signifies, the laws of this realm, as they have been immemorially received

* *Ante*, p. 205 (*n*).

† See *post*—"Special Pleading," &c. &c.

and holden for such, without the intervention of any particular statute to enforce them."—"Another sense, in which we sometimes speak of the common law, is, in contradistinction to the canon, or civil law."—"Sometimes, again, we intend to signify the jurisdiction of the king's courts, in contradistinction to the base or customary courts of courts baron, county courts," &c. &c.—"But, in the larger and more general acceptation, it implies both the written statutes of the realm, and the unwritten received customs and usages together—*lex scripta, et non scripta*. It is, therefore, indifferently called common law, or common right—*lex communis*, or *jus commune*—being 'common' to every man, without any particular act or reservation of his own, Co. Litt. 142 *a* *." The meaning of the term itself being thus ambiguous, still greater uncertainty exists as to the *origin* of this "common law."

"Our English lawyers," says Mr. Hallam, "prone to magnify the antiquity, like the other merits of their system, are apt to carry up the date of the common law, till, like the pedigree of an illustrious family, it loses itself in the obscurity of ancient time. Even Sir Matthew Hale does not hesitate to say, that its origin is as undiscoverable as that of the Nile †!"

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* Ritso's Introd. p. 14, n. (3); and see 1 Bla. Co. p. 63, 70.

† Middle Ages, vol. 2, p. 465 (3rd ed.), where will be found a very interesting account of the origin of the Common Law.

Lord Chief Justice Wilmot has a fanciful saying, that "the Common Law *is nothing else but statutes worn out by time.* All our law began by consent of the legislature; and whether it is now law by usage or writing is the same thing: * * and statute law and common law both originally flowed from the same fountain *."

Mr. Hume is of opinion, that "the body of laws framed by Alfred, though now lost, served long as the basis of English Jurisprudence, and is generally deemed the origin of what is denominated the COMMON LAW †." "The original of the appellation," remarks, however, Professor Woodeson, after taking a view of the Common Law, similar to that already quoted from Mr. Ritso, "seems to be a translation of the *jus commune*, or folcright, mentioned in the laws of king Edward the Elder, expressing the same equal right, law, or justice, due to persons of all degrees. It was afterwards given to the laws contained in the code of King Edward the Confessor, which were *common* or general to the whole realm, and in that respect distinguished from the Northumbrian, and other laws and usages of less extensive territorial authority ‡." Sir James Mackintosh, with his usual

* 2 Wils. Rep. 348—350. Lord Hale also declares (Hist. of the Common Law, pp. 3, 4) that "many of these things which we now take for Common Law, were undoubtedly Acts of Parliament, though not now to be found of record."

† Hist. of England, vol. i. p. 85.

‡ Woodes. Elements of Jurisp. lxxxi.

point and discrimination, observes, that "the consuetudinary, or Common Law, consisted of certain maxims of simple justice, which we are taught by nature to observe and enforce, blended with certain ancient usages, often, in themselves, convenient and equitable, but chiefly recommended by the necessity of adhering to long and well-known rules of conduct*." Perhaps, however, there cannot be a more just and accurate description of the true nature of the Common Law than the following:—

* Hist. of England, p. 274.—The remainder of the passage is so valuable as well as characteristic of the philosophical strain in which Sir James Mackintosh discussed every subject he engaged upon, that it has been thought fit to give it here entire:—

"The progress of our Common Law, till the reign of Edward I, bears a strong resemblance to that of Rome. The primitive maxims and customs were applied to all new cases, which, appearing similar to them, it was natural and convenient to subject to like rules. Courts in England, private lawyers, juridical writers, and absolute monarchs at Rome, in delivering opinions concerning specific cases, extended the analogy from age to age, until an immense fabric of jurisprudence was at length built upon somewhat rude foundations. The legislature itself occasionally interposed to amend customs, to widen or narrow principles; but these occasional interpositions were no more than petty repairs in a vast building. From the reign of Edward I, we possess the year-books,—annual notes of the cases adjudged by our courts, who exclusively possessed the power of authoritative interpretation, scarcely to be distinguished from the legislation which the tribunals of Rome shared with the imperial ministers, and with noted advocates. [*Edicta Prætoris, Rescripta Principum, Responsa Prudentum.*] In a century after him, elementary treatises, methodical digests, and works on special subjects, were extracted from these materials, by Lyttleton, Fortescue, and Brooke. So conspicuous a station at the head of the

"The true idea of the Common Law seems to be that of an organised system, having its principle of growth within itself, and of which its officers are themselves a part. No new law can ever proceed from them, but the *old* is, by their means, in a continual process of further development. Their business, in the most doubtful and unforeseen cases, is still to consider the law as already fixed,—to discover and assert it*." Without, however, pur-

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authentic history of our uninterrupted jurisprudence, has contributed, more than his legislative acts, to procure for Edward the ambitious name of the English Justinian. The science of law, *which struggles to combine inflexible rules with transactions and relations perpetually changing*, can obtain no part of its object, without the exercise of more ingenuity, and the use of distinctions more subtle, than might be deemed suitable to the regulation of practice. In time, the lawyers, who were commonly ecclesiastics, were still further warped by the excessive refinements of the scholastic philosophy, which had reached its zenith under Aquinas, and seemed to have over-shot it in the hands of his disciple and antagonist, Duns Scotus. A proneness to uninstructive acuteness, and to distinctions purely verbal, tainted it from the cradle. It is difficult not to admire the logical art with which fact is separated from law, and the whole subject of litigation reduced to one, or a few points on which the decision must hinge. It has been the ancient and unremitted complaint of the most learned lawyers, that it has been overloaded with vain and unprofitable subtleties, which, in the eager pursuit of an ostentatious precision, has plunged it into darkness and confusion. We are now labouring to systematize what the experience of our ancestors has collected, and to unite it with more simplicity and clearness."—*Ib.* p. 274-5.

* Burton's Compendium of Real Property, p. 3.(l.n.) And see Co. Litt. 115, b.—*Jus dicere et non jus dare*, is a favourite doctrine

suing further these inquiries concerning the origin and nature of the Common Law—the former of them surely a matter of more curiosity than utility—and having pointed out the chief sources of information concerning them, we may proceed at once to consider the subject in its more practical aspect and

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of the common lawyers. [See per Lord Kenyon, 7 T. R. 696.] It is rather, however, speculatively than practically correct. "A Court," says Mr. Ram, in his valuable treatise on Legal Judgments, "when it constructs a judgment, forms it of certain materials, which are law; those materials the Court does not make, and so far the judgment is not creative of law. But the judgment, or body into which the materials are wrought, is law; and is law, though the materials are ill chosen, or improperly applied. (1 Taunt. 292; 14 Ves. 175.) In some degree, therefore, it would seem that a judgment is creative of law. This opinion is upheld by the known truth, that so long as a judgment, which a Court of Westminster Hall has delivered, stands unreversed, *the case is law*, although a 'shocking decision' (1 Taunt. 292), an 'extraordinary' case (14 Ves. 175; 4 Taunt. 736), or one that has 'produced considerable mischief,' and 'ought not to have been decided as it was' (19 Ves. 479; 1 Meriv. 9; 2 Rose, 329), or even has the effect partly of repealing an act of Parliament (so—Stat. de Donis, see 5 T. R. 179; 7 T. R. 415; of Frauds, 1 Bro. C. C. 269, cited 9 Ves. 117; Bequest of Stock, 7 Ves. 440; 15 Ves. 577-8; 1 Russ. 689, 97-8). And although, while newly in existence, that judgment may be disregarded, or set aside (3 Russ. 436; 3 B. & Adol. 189), yet, from a variety of reasons, especially that of *fixed and certain* law (14 Ves. 425), it may in time become so fast settled, that the Courts may not be able to overturn or shake it, and, on the contrary, be bound to follow and establish it (4 Taunt. 736, and 14 Ves. 175); and the force of an act of Parliament may be required to root it out of the law of the land (*ex. gr.* 1 Will. 4, c. 40, and 1 W. 4, c. 46.)"—*Abridged from Ram's Science of Legal Judgment*, pp. 2, 3.

bearing—in its immediate connexion with the young reader.—There can be no doubt that the Common Law branch of the profession requires far greater and more versatile abilities, to ensure success to one undertaking it, than perhaps the other two put together. To excel, or even acquit oneself respectably at Nisi Prius, requires talents and accomplishments which are scarce even dreamed of by the Conveyancer and Equity Practitioner. To their accurate and comprehensive acquaintance with law, and logical habits of investigation, must be superadded great general knowledge and powers of eloquence. RHETORIC is, in the one, inadmissible, in the other, indispensable. Can there, again, be any where exhibited higher reasoning powers—more ready and profound learning—than are necessary to enable a man to distinguish himself at an argument in Banco? Attend there, reader, for a few days, and judge for yourself.

It is difficult for a non-professional person duly to comprehend or appreciate the character and pretensions of a successful Common Law counsel. Consider, for a moment, the various TRIBUNALS before which he has to appear, "armed at all points:" a single judge at chambers; a judge and jury at Nisi Prius; the full court in Banco in the King's Bench, Common Pleas, and Exchequer; in the criminal courts; before parliamentary committees, the Privy Council, and the House of Lords. Then the SUB-

JECTS he has to deal with on such occasions; all the varieties of human character and incident,—all the pursuits of life, whether of business or pleasure; the subtlest questions of real property, the most complicated of commercial law; Scotch law, civil law, international law, foreign law, criminal law, equity, parliamentary and constitutional law. Consider, again, HOW all these must be known! The brief and hurried intervals afforded for preparation in the most responsible engagements; the publicity of his appearance,—before a vigilant, acute, and learned Bar, and in scarce a case which is not reported in the newspapers, and so circulated throughout the country; —the great, and not unfrequently immense, magnitude of the interests intrusted to his keeping!

As if, however, all this were insufficient to occupy his time and attention, the *aspiring* lawyer super-adds to them the anxieties and responsibilities of office, professional and political; and is thenceforth expected to be *au fait* on all questions of constitutional law, conscious that every slip he may make, will be instantly detected and exposed by his eager opponents, "magnified and made *dis*-honourable" all over the country! After buffeting about for a few years on this "sea of troubles," however, a sudden wave, as it were, at length lifts him out of it all,—he is placed upon the Bench, and ends his life in the dignified serenity of judicial repose. Whoever may look at this picture, and fancy it exaggerated and over-

charged, knows nothing of our profession. And is it set before the student that he may fix upon it the eye of despair?—that he may turn hopelessly from the task of such multifarious acquisition, and with a sigh acknowledge his incompetence for such splendid scenes of contest and distinction?—or, on the other hand, to inflate him with conceit, to delude him with vain and visionary prospects? Surely not; but to show him in vivid colours, the reward that will attend well-directed and persevering exertion.

From the foregoing hasty sketch of the life and duties of a successful common lawyer—one which, more or less, holds good of every barrister that has any pretensions to regular professional employment—it cannot fail to occur to the reader, that one faculty will be pre-eminently requisite in him who thinks of undertaking such varied and arduous labours: that of instant concentration of the mind upon whatever subjects are proposed to it,—of rapid transition from one engagement to another, of the most dissimilar nature *. It is true, that habit and practice may conduce greatly to the development of such a power; but the mind must be *intrinsically* capacious, energetic, and active. The Common Law counsel will be engaged from nine o'clock till one, probably, in a heavy commercial case at Nisi Prius; during the course of which he will seize a few moments' interval to answer

* Ante, p. 54.

one out of several pressing "cases," which have been sent down to him from chambers. He then hastens into one of the other courts, where he is retained in a heavy *ejectment* case, involving several difficult points of real-property learning. Here, again, he takes the opportunity of answering another "case" or two, and contrives, besides, to slip into the Court of King's Bench, where he is retained in an important cause, on behalf of one of the public companies, and where a harassing objection has been suddenly started by his opponents. While anxiously watching the interests of *these* clients, others are worrying him to repair to a Committee of the House of Commons, where he is leading in an election case! Having swallowed a hasty dinner, he returns perhaps to chambers, to settle some heavy pleadings,—or attend, possibly, one, two, or even three, consultations upon cases coming on in the morning! Is not an income thus earned, of several thousands a year, very *hardly* earned?

Let not, however, the student, in looking forward eagerly to such scenes as these, grow disgusted and disheartened with the business of elementary preparation. Did he ever observe the ground which is preparing for the erection of a great edifice? The excavations, the unsightly heaps of rubbish, the measurings, the plannings, the protracted deliberations, which betoken a skilful architect's anxiety to lay a *good foundation?* How, this done, the scene alters—obstructions are cleared away, and the building rapidly

arises out of the ground, all beauty, proportion, and grandeur? Thus must it ever be with the foundation and superstructure of a great legal character. Its aspirant must labour long and patiently in the arduous task of mental discipline, and the acquisition of legal knowledge. He must not only purchase tools—so to speak—but learn how to use them: he may *then* turn them to a hundred different purposes!

To conclude, however. It will henceforth be taken for granted, that the student has determined upon selecting the COMMON LAW department of the profession.—He may, after waiting the requisite time, practise either as a special pleader, or be called at once to the Bar. Special pleading is a matter of such paramount difficulty and importance, as to require a separate chapter for its explanation; and as the author cannot imagine any one absurdly allowing himself to go to the Bar, with a view to getting business, without having at least *studied* pleading, if not for a short time *practised* it, the next chapter will, he hopes, be read with due attention.

Thus has it been attempted to delineate with all fairness and distinctness, in some of their leading lights and shadows,—their respective practical difficulties and advantages—the outlines of the three great departments of Equity, Conveyancing, and Common Law, and to point out the corresponding qualities required in the student. The author hopes, therefore, that

in the language of one of his predecessors, the young reader "by these means will stand a good chance of escaping that secret rock whereon so many are wrecked in the outset of their life—AN INDISCRIMINATE CHOICE OF PROFESSION *."

* Raithby's Letters, p. 400.

CHAPTER VIII.

HOW THE COMMON LAW PUPIL SHOULD COMMENCE HIS STUDIES.

How he who has determined on devoting himself with energy to the Common Law branch of the profession should *commence* his studies, is a question which has received very different answers; and if Bonaparte's celebrated axiom, before quoted, *c'est le premier pas qui coute*, be really applicable to the legal campaign, such a contrariety of opinion on this subject as the inquirer is fated to encounter, must certainly not a little embarrass and disconcert him. Solitary reading—but *of what books* no two can agree—is the advice of some; others urge the propriety of a six or twelve months' attendance in an attorney's office; a few suggest a course of law lectures; others insist on a six months' study of conveyancing; while many strenuously recommend the student's entering, in the first instance, the chambers of a special pleader. Very numerous inquiries and anxious reflection have emboldened the author to

express a confident opinion in favour of the last of these methods; and he will proceed at once to state the reasons on which this opinion is founded.

By the solitary study of appropriate elementary works, if vigorously and systematically pursued—and how rarely is this the case!—some glimmering may certainly be obtained of the theory of the law,—of its general scope and principles; and by an assiduous attendance for a few months in an attorney's office, a smattering of practice may be obtained; but, in the name of common sense, why not blend theory and practice together? and that, too, in the most efficient manner possible, by a diligent attendance on a competent teacher? If the third volume of Blackstone's Commentaries is to be read, why not read it under the eye of an able and experienced practitioner of the branch of law there so beautifully delineated?—of one who may infuse life and interest into the dull "dead letter" of the law, correct erroneous impressions as they are formed—more frequently, however, preventing their formation—and point out the various changes which the law has since then undergone, all the while illustrating doctrine by actual practice, and accommodating his instruction to the capacity and progress of his pupil? "There is a monotony," truly enough observes Mr. Ritso, "attending retired study, by which the attention is apt to be fatigued, and the spirits exhausted; while, on the contrary, the effect of oral communication is to keep the mind on the

alert, and to render the understanding more active. Besides, if any doubt presents itself, it may be instantly cleared up, every mistake corrected, and every difficulty removed *." The most attentive perusal of the very best elementary works, will leave only an indistinct and imperfect impression upon the mind, even after a year or two's devotion to such a task; and *then*,—this space of time thus unsatisfactorily spent, it is thought time enough, forsooth, to apply to a teacher, who may lead the learner again over the ground already traversed,—retrace the faded, correct the erroneous impressions †, and point out his future progress! Take it at the best: let it be granted that the student comes into a pleader's chambers never so well possessed of general views on legal subjects,

* Introduction, &c., p. 146.

† One of the very ablest lawyers amongst the author's acquaintance, on hearing this paragraph read, observed, that he himself had been an illustration of its truth; that, on quitting college, he set himself down to a year's solitary "hard reading," devoting especial pains to the second volume of Blackstone's Commentaries, and the corresponding portions of Coke upon Littleton. Conceiving it to be of the utmost importance to become accurately acquainted with the old tenures, he almost committed to memory all those portions of the two works which related to that subject; perpetually putting cases to himself upon the law of knights service, homage, fealty, escuage, wardship, escheat, &c.; and, as may be supposed, was mortified beyond measure, on subsequently discovering how his labour had been lost. He had devoted a fortnight's intense study to another branch of law, immediately previous to engaging himself with a pleader; who assured him, and it turned out to be so, that the subject in question was one to which his attention would probably be called not above once or twice in ten years!

that something is known of the various species of rights, wrongs, and remedies, and of the machinery of courts of justice in dealing with them. And what then? He finds himself—especially if he fall into the prevalent error of going in the first instance to an *eminent* pleader—turned into a pupil's room, where he is set down to draw pleadings, and advise on cases for which he fancies himself by no means unqualified,—matters involving the accurate and incessant application, not only of his previously-acquired and often ill-assorted knowledge, but of a vast variety of *new* knowledge; so that, if the former be not utterly driven away, it is wofully deranged, the whole framework dislocated, and himself hurried, fretted, and disheartened, by the consciousness of having so long postponed, if not impeded, the real practical commencement of his professional studies.

By watching the current of business that runs through a pleader's chambers, carefully noting the manner in which it is despatched, an attentive student will soon perceive what portions of law demand his earliest and best attentions; which of them ought to be known thoroughly and minutely, and which it may, for the present, suffice to know generally, and by way of reference only: in other words, he will see how to direct and apportion his application—will see law, not as it was, or may be, but *as it is*,—as he must learn, and presently practise it. No doubt, a man of powerful and disciplined intellect may reap

considerable advantage from such a course of preliminary reading as *he* might adopt, and would subsequently come better prepared to the practical study of the law in chambers; but, even in his case, no valid reason can be assigned why, circumstances permitting, he should not avail himself, in the first instance, of a pleader's instruction and business. But how many are unequal to such a course of consecutive reading in private, without falling, at length—through incessant difficulties only half mastered, or passed over altogether—into a slovenly superficial habit, which may not be so easily cast aside! "The ordering of exercises," says Lord Bacon, "is matter of great consequence to hurt or help: for, as is well observed by Cicero, men, in exercising their faculties, *if they be not well advised*, do exercise their FAULTS, and get ill habits as well as good: so there is a great judgment to be had in the continuance and intermission of exercises *." Let it be borne in mind, also, that the *age* at which the legal profession is generally adopted, is one that, in the majority of instances, renders it important that *no time be lost* in preparing for actual practice. For this purpose, at least three years' sedulous attendance on chambers is necessary †; and—without supposing

* Advancement of Learning, vol. ii. p. 217.

† "It has become the practice," says Mr. Chitty, "almost without any previous study, to continue a pupil in a pleader or conveyancer's chambers for a very short time (perhaps scarcely a year), as if merely

that any one will think of *substituting*, for one of the three, a year of solitary reading—why *add* to them such an one? "But," says the student, "I cannot be called to the Bar for *five* years." Then, by all means, spend the first three years as we are recommending, and devote the two remaining, if you will, to reading—the most laborious, and successful. Or, why not pursue a middle course—one which may, in particular instances, be on many accounts the most desirable: spend the *first* year in a pleader's chambers, devoting the *second* to a course of careful private reading, grounded on the knowledge obtained in chambers, and then return to them, with redoubled energy and ability? Or, spend one year with a pleader, another with a barrister, and devote the next to careful and systematic solitary study? The truth is, that law is so much a matter of detail,—"consisting," as Lord Coke says, "upon so many, and almost infinite particulars," general principles,—fettered as they are by innumerable exceptions and restrictions, are so unsafe, either in their use or acquisition, that the utmost industry and energy of

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to obtain the reputation of having been there; when at least *two*, if not *three* years' close attention to the practice in the preceptor's chambers, is essential. It is really scarcely *honourable* to endanger the interests of clients, by assuming to practice upon such very slender information as of late has been customary. If this practice be attributable to the amiable desires of *sons* to relieve their parents from expense, the *latter* should take care to prevent the baneful influence of any such sentiments."—*Gen. Prac.* vol. ii. p. 41 (*k*).

the pupil, unassisted by a judicious and experienced tutor, will but conduct him into error and confusion. "Begin with general principles; get a store of *these*," says one class of advisers*. Nothing, however, can be at once more plausible, erroneous, and unphilosophical.

"In order to proceed with safety in the use of general principles," says Dugald Stewart, "much caution and address are necessary, both in establishing their truth, and in applying them to practice. Without a proper attention to the circumstances by which their application to particular cases must be modified, they will be a perpetual source of mistake and of disappointment, in the conduct of affairs, however rigidly just they may be in themselves, and however accurately we may reason from them. If our general principles happen to be false, they will involve us in errors, not only of conduct but of speculation; and our errors will be the more numerous, the more comprehensive the principles are on which we proceed. It is evidently impossible to establish solid general principles, without the previous study of particulars: in other words, it is necessary to *begin with the examination of individual objects and individual events.* It is in this way only that we can expect to arrive at general principles, which may he safely relied on, as guides to the knowledge of particular truths; and unless our principles admit of such a practical application, however beautiful they

* See Watkins on Conveyancing, Introduction.

may appear to be in theory, they are of far less value than the limited acquisitions of the vulgar *." These observations it is of importance that the legal student should bear in mind, especially at the outset of his career; and they will greatly assist him in the formation of just views of his profession—of the mode of practically initiating himself into its studies.—His constant aim should be to acquire, as soon as possible, a *legal habit of viewing facts*, their connexions, and consequences: and there is no other mode of doing this, than under the strict surveillance of an intelligent and conscientious teacher. Principles should be the results, not the precursors of practice.

This brings us to a subject which has been already alluded to, towards the close of the "Introduction †," to what may be called, with sufficient accuracy for our present purpose, the author's preference of the *analytic* over the *synthetic* method of learning law; in other words, of pupilage over private and solitary reading. An attentive consideration of the passage there quoted from Dr. Whately's Logic, will, in the author's opinion, set the matter at rest. An appeal may, however, be here made, briefly and confidently, to experience. Look, for a moment, to the various other professions—even the trades, to which youths are apprenticed. How does the tyro, as soon as ever

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* Elements of the Philosophy of the Human Mind, vol. i. ch. iv. § 6.

† Ante, pp. 35—37.

his articles are executed, commence his study,—for instance, of the medical profession? Is he forthwith ordered off to a private chamber, with a treatise on chemistry, to master its elementary principles before he is allowed to enter the surgery and compound medicines? Is he sent down to the hospitals to attend lectures on that science?—on the principles of physiology—on medicine, surgery, and anatomy? Surely never; but is plunged at once *in medias res;* under the eye of his master, or a senior pupil, he is set immediately upon the ordinary business that is going forward; he pounds pills, spreads plasters, mixes ointments, draughts, &c. &c.—he even administers this medicine on ordinary occasions, and performs the little practical operations of surgery, his tutor occasionally explaining the mode of doing them, their uses and objects. Having acquired this manual, this technical dexterity, he begins to feel interested in the reasons and principles of the sciences he is practising; and the latter years of his apprenticeship are devoted to vigorous study,—to walking the hospital, as it is called, where he devotes all his energies to the acquisition of a theoretical a *systematised* knowledge of those general principles which regulate the practice with which he has been so long familiar. Thus also is it with the young attorney—with, in short, the learner of any "art or mystery" whatever: and why should it be otherwise with the embryo pleader or barrister? Why should the maxim, that "practice

makes perfect" be inapplicable only in the case of the higher walks of the law?

The system of legal education suggested by the author may be considered, perhaps, as blending the analytic and synthetic methods of study; the latter being carried into effect by daily reading with the preceptor for an hour every morning, the pupil being carefully interrogated each day on the preceding day's prelections; and the former, by copious explanations of the current business of chambers. The one will convey an accurate and comprehensive view of the legal *system*, carefully combined, as the pupil advances, with practice; which latter will fix and strengthen his knowledge of principles, begetting a constant habit of reflection, and reference to authorities—augmenting thus, with sensible rapidity, both his knowledge and his power of using it.

Let us now suppose a student in his solitary and diligent perusal of the second volume of Blackstone's Commentaries, to have arrived at that part of the thirtieth chapter which relates to the very important and extensive subject of "Title to things personal—*by Contract.*" He will find the law thus laid down, concerning the sale of goods:—

"If a man agrees with another for goods at a certain price, he may not carry them away before he hath paid for them; for it is no sale without payment, unless the contrary be expressly agreed: and, therefore, if the vendor says—the price of a beast

is four pounds, and the vendee says he will give four pounds, the bargain is struck; and they neither of them are at liberty to be off, provided immediate possession be tendered by the other side. But if neither the money be paid, nor the goods delivered, nor tender made, nor any subsequent agreement be entered into, it is no contract, and the owner may dispose of the goods as he pleases. But if any part of the price is paid down, if it be but a penny, or any portion of the goods delivered by way of *earnest* (which the civil law calls *arrha*, and interprets to be '*emptionis venditionis contractæ argumentum*'), the property of the goods is absolutely bound by it; and the vendee may recover the goods by action, as well as the vendor may the price of them. And such regard does the law pay to *earnest*, as an evidence of a contract, that, by the statute 29 Car. II., c. 3, § 17 *, no contract for the sale of goods to the value of 10*l.* or more, shall be valid, unless the buyer actually receives part of the goods sold, by way of earnest on

* This celebrated statute, which is, by many, supposed to have been framed by Sir Matthew Hale, is one of prodigious practical importance, regulating, as it does, all manner of sales and purchases of real and personal property. It has even been said, "that every line of it deserved a subsidy." Mr. Barrington stated, nearly fifty years ago, that it was a common notion of Westminster Hall, that this statute had not been explained at a less expense than 100,000*l.*! Numerous decisions cluster about even particular *words*;—its sections, when coupled with the cases, resemble the little branches of a fruitful vine, each overburthened, as it were, with grapes.

his part, or unless he gives part of the price to the vendor by way of earnest to bind the bargain, or in part of payment; or unless some note in writing be made and signed by the party or his agent, who is to be charged with the contract. And with regard to goods *under* the value of 10*l.*, no contract or agreement for the sale of them shall be valid, unless the goods are to be delivered within one year; or unless the contract be made in writing, and signed by the party or his agent, who is to be charged therewith. * * As soon as the bargain is struck, the property of the goods is transferred to the vendee, and that of the price to the vendor; but the vendee cannot take the goods until he tenders the price agreed on. But if he tenders the money to the vendor, and he refuses it, the vendee may seize the goods, or have an action against the vendor for detaining them. And by a regular sale without delivery, the property is so absolutely vested in the vendee, that if A sells a horse to B for 10*l.*, and B pays him earnest, or signs a note in writing of the bargain; and afterwards, before the delivery of the horse, or money paid, the horse dies in the vendor's custody, still he is entitled to the money; because by the contract, the property was in the vendee. Thus may property in goods be transferred by sale, where the vendee hath such property in himself *."

* 2 Bla. Comm. 447-9.

Now almost every sentence in the above paragraph contains the enunciation of a *principle* so important and difficult in its application, as to have called forth several dozens of reported decisions; and if only one of each of them were proposed to the ablest and most laborious reader, fresh from his perusal of Blackstone, —before his recollection of it had been at all impaired or confused,—he would find, that the foregoing sentences would be about as serviceable in conducting him to a correct conclusion, as a chorus out of Sophocles. Reading them is really—so to speak—*feeding upon essences.* If they were even to be learnt off by heart —frequently repeated—and imaginary cases framed upon them, the student, when asked the simplest practical questions by commercial men, would find himself as much puzzled as if he had never seen or heard of the paragraph in question; and yet, perhaps, imagine himself fully possessed of the materials for forming a judgment upon them. But he passes on to the next subject, and the one after, to the end of the volume: and what sort of a serviceable recollection can he be supposed to retain of the multitude of principles which have thus fallen consecutively under his notice? "There is another observation to be made on the subject of the Commentaries," says Mr. Starkie, "which is this,—that where the student extracts general rules and principles from decided cases, by the aid of his own talents and industry, he is not only possessed of the general rule or principles, but he has also learnt its

practical operation, and therefore the confines and limits to which it extends, the boundaries, the *fines*, *Quos utra citraque nequit consistere rectum*. But, in the Commentaries, where the principle is *already extracted for him*, he learns the principle, with less trouble, it is true,—but then, this is a dispensation with labour which is one of the most useful exercises to the mind of a lawyer; and which leaves the mere idea of an abstract rule, without any knowledge of its practical application, or of the legal limits which the principle serves to define."—"With respect to the application of the general principles of justice, they are usually obvious; opinions do not generally differ about them; it is in the searching out the proper principles in confused and complicated cases of fact, to which the almost infinitely-varied combinations and transactions of life constantly give rise, and in the skilful use of the discovered or acknowledged principle, for the defining the boundary line between right and wrong, that its practical excellency consists*."—When the student at length thinks fit to betake himself to a pleader's chambers, he will be in a twinkling convinced of the truth of these observations —hurried as he will find himself, probably, from case to

* Mr. Starkie proceeds to select the passage in Blackstone (vol. iii. p. 123), where are laid down the principles regulating the civil remedy for slander; and to put five cases upon, or *deductions* from it, after the manner adopted in the text. See Legal Exam. pp. 451—518, Lect. 1, 2.

case, from pleading to pleading, in such a manner as to confuse all his recollections of past reading.

Let us suppose, on the contrary, a man taking the course which is here recommended—of entering at once on the scene of actual business, under the eye of one who makes a point of such daily prelections with his pupils as will be hereafter described; his mind being a complete '*rasa tabula*'—as far as law learning is concerned. Some two or three hours after his morning's 'reading,' the following statement of facts * is laid before him by his pleader, who requests him to read it over alone, and then come and confer with him upon it:—

"Mr. —— is requested to advise whether, under the following facts, this action can be maintained; and if so, to draw the declaration.

"A, a gentleman farmer, having a cow which was near calving, was asked by B, one of his neighbours, what sum he would take for her. The cow was then in a field belonging to A; who—one of his servants being present—mentioned 13*l.* as the lowest price. After a good deal of bargaining, B agreed to give that sum (but nothing passed as to the *time* of payment), and paid A half-a-crown to bind the bargain. A said, "When will you take her away?—you may, if you choose, at this moment."—"You had better let her remain in your field till this day week," replied

* At this moment in chambers.

B. "Very well—but remember the cow is yours—and if anything happens to her, I will not be answerable." "I understand," said B, and they parted. Three days afterwards, A sent his servant to tell B that the cow seemed ailing, and he had better take her immediately away:—but B said, "I don't care—I'll have nothing to do with her; I don't want her, now. I'm content to lose the half-crown." The cow got worse, and A sent twice to inform B of the fact, who returned similar answers. After the expiration of the week above-mentioned, the cow died in calving. A sent immediately to tell B of the fact, but he had gone to a distant part of the country: on hearing which, A *sold the carcass* for four pounds, and kept the proceeds. Can he, under these circumstances, recover the balance of 8*l.* 17*s.* 6*d.* due to him on the bargain? If so, Mr. —— will please," &c. &c.

Can there be a simpler state of facts than this? inquires the pupil. 'The cow was clearly *sold*,' replies the tutor, but was she *delivered* to B? for that is a circumstance most materially influencing the form of action which must be adopted to recover the sum demanded by A, *i. e.* whether it should be a *special* count for not accepting the cow—a common count for goods *baryained* * and sold, or one for goods

* If the first of these remedies were to be adopted, A would recover only the amount of damage *actually* sustained by him; if the second, he would recover the whole price.—Smith's Comp. p. 310, n. (*y*.)

sold and delivered. If the first of these, assumpsit will be the proper form of action; if either of the two latter, it may be indifferently either assumpsit or debt. Under the *old* system * we should have had no difficulty; we should have stated our case in all three ways, and so *must* have recovered under one or other of the counts. Recollect, however, that we are now restricted to the use of *one!*' The student is possibly apprised of the distinctions between these three modes of 'declaring,' and is requested by his tutor to state the facts of the case *memoriter*, to show that he is in full possession of them. This he can do, but owns he is quite at sea about the *law* of the case. "And well you may be," replies his tutor, "for this, which is so common, and seems so easy a case, really involves a knowledge of one of the most extensive and difficult branches of law. There are here nearly a dozen important questions to be considered. Observe that this was only a *verbal* contract; that no time was mentioned for paying the money; that earnest was given; that immediate possession of the cow was tendered, but dispensed with, and the vendor requested, for the vendee's convenience, to keep it for a week; that the vendor assented to this—expressly telling the vendee that the cow remained at his (the latter's) risk. He is subsequently informed of the dangerous state of the cow; and then, unexpectedly, repudiates the whole

* Ante, p. 19 (n).

transaction. The cow dies ; and what is the effect of the vendor's selling the carcass? Had he a right to do so? If not, what course ought he to have pursued? Was the carcass to lie rotting on the field? Who, at the time of the cow's death, was its *owner?* If the vendee, did the vendor's sale of the carcass operate as, on his part, a recision of the contract? What should he do with the half-crown received as earnest-money? Can he treat the contract as still subsisting, and therefore sue the vendee for the price? If he can do this, then, was the cow constructively *delivered* by the payment of earnest, and *offer* of immediate possession? No time for paying the remainder of the price having been named, was it incumbent on the vendee to tender it, before he could have taken the cow? In other words, did the vendor, notwithstanding all that had passed, retain a *lien* on the cow for its price? If so, could the cow be considered, in any sense of the word, as *delivered?* You see now," continues the tutor, " the multitude of questions that may arise on so simple a transaction as the present, and the vast importance of having the mutual rights and liabilities of the parties well settled and defined, which cannot possibly be done, in case of a dispute, without resorting to the subtlest distinctions. When it comes to so nice a point as this, cannot you see the obvious danger of the eager parties perjuring themselves, if, in the absence of any *written* terms of contract, there should be occasion to supply defective

evidence? Now, look at the present case. What reason has been *assigned* by the vendee, for breaking his engagement, does not appear. What will he assign *at the trial?* Are we now, were we ever, in a state to sue him? Have we acted according to law? Have we neglected to observe any statutory regulations?—those, for instance, of the Statute of Frauds? Can you imagine any defence that he may be relying upon? Perhaps you will take this book into the pupil's room—(probably Chitty on Contracts, or Smith's Mercantile Law *), and having carefully perused the sections on the 'Sale of Goods,' try to apply them to our present case." He goes and reads what is entirely new to him—but, nevertheless, if *carefully* read, by no means unintelligible. Having gained a general notion of the law bearing on this subject, he finds that his case falls within the § 17th of the Statute of Frauds, unless the payment of earnest and the tender of the cow, coupled with the subsequent conversation, exempt it. He reads the *cases* which have been decided on that subject, as well as on others connected with it—and having come to the conclusion that the *property* in this cow was clearly vested in B, he finds himself somewhat puzzled

* Both valuable works, as will be shown hereafter. The parts referred to are, pp. 308-314 (Chitty, 2nd ed.) pp. 292-305, Smith's Compendium. In this latter work will be found some useful observations on a point similar to the one arising out of the case put in the text. See p. 299, note (b).

to adjust the legal consequences of A.'s subsequent acts, particularly his sale of the carcass: and returns to his tutor, who briefly discusses the subject with him. "The cow, on payment of the earnest-money, became the property of B, whether A did or did not retain a lien upon it for the payment of the remainder of the purchase-money. If A *had* a right to detain the cow on the ground of lien, it cannot have parted from his possession, and been *delivered* to B; since neither an actual nor constructive delivery could have taken place, till A had divested himself of all claim, on any pretence, to the further *possession* of the cow. The contract of *bargain* and sale remains, therefore, in full force; and B is liable to an action for 'goods bargained and sold' at the suit of A, whose re-sale of the article, or rather disposal of the carcass, would not, under the circumstances, interfere with his remedy, as it clearly could not have the effect of annulling the contract *."

Having at length come to a determination on the case, our pupil betakes himself again to his room, draws the appropriate 'declaration,' and writes down the result of his inquiries in the shape of an *opinion;* which, when it has been, perhaps, remodelled, and adopted by his tutor, he copies into a book, and devotes the remainder of the day to the subject of discussion—the sale and delivery of

* Maclean v. Dunn, 4 Bing. 722.

goods—the mutual rights and liabilities of vendor and vendee.

It is obvious that he has by this means gained a practical insight into a very important and difficult head of law, sufficient to guide his researches when he shall have leisure to pursue them into the ultimate grounds and reasons of the rules he has become acquainted with, and thus pleasantly applied to practice. He knows where to look, on any future occasion, for all the law of *earnest*—what constitutes acceptance, and delivery,—with reference to the Statute of Frauds; and his copy of the "opinion," in the case above mentioned, serves to connect and arrange his materials for a future occasion. Probably within a day or two, his attention is again called to this subject, by a case involving another application of the law he has collected on the subject of the *delivery* of goods—one tending equally with the former to fix in his mind the principles which regulate such transactions. With what interest and intelligence will the student enter upon the examination of such a case, for instance, as the following:—

A gentleman went into a tobacconist's shop and ordered 25*l.* worth of cigars, on terms of ready money, desiring them to be packed and sent to "The Tun," in Jermyn Street. Having sent *his own boxes* to the tobacconist's shop, for this purpose, he followed them, superintended the packing of the cigars, and *taking some of them up*, countermanded his first

direction (*i. e.*, that the goods should be sent to "The Tun"), and requested the tobacconist to keep them for a day or two, when he would call, pay for, and take them away in his gig. This, however, he failed to do; and the seller brought an action against him for the price of the cigars. Now, had there been a *delivery* of them? The tobacconist thought that there had; and accordingly brought his action for "goods sold and delivered." His counsel contended that the delivery to the defendant was completed by the seller's filling the boxes furnished to him by the *buyer*, "which then became *the buyer's warehouse* for that purpose, so as to entitle the seller to payment of the ready-money price agreed upon, and to preclude him from any right to unpack them." This may be considered a striking way of putting the case—but hear the ready and decisive answer of the judge (Bayley).

"I do not assent to the proposition that the buyer's boxes are to be considered as his warehouse—and think that the seller might consider his goods as being still in his own possession. Goodall *v.* Skelton* is directly in point against the seller's right to recover in this action. There, the plaintiff agreed to sell wool to the defendant, who paid earnest. The goods were packed *in cloths furnished by the defendant*, and were

* 2 Hen. Blackst. Reports, p. 316. This happy citation of a case in point, not even glanced at in the argument of counsel, is only one out of innumerable instances of the prompt and accurate knowledge displayed by the admirable judge above mentioned.

deposited in a building belonging *to the plaintiff*, till the defendant should send for them—the plaintiff declaring that the wool should not go off his premises till he had had the money for it; and the court held that no action for goods sold and delivered would lie, for want of delivery *."

Such are specimens, selected at random, of the current business passing under the pupil's eye, in his pleader's chambers: and, supposing him to feel an interest in his profession, and exhibit but moderate industry, can anything be conceived more calculated to excite his attention—to lead him easily and at once into the "art and mystery" of law—to work his own way both *into* and *out of* its greatest difficulties, to deduce accurately the principles by which its details are regulated, and fix them deeply in his mind †? "Who so valueth, or eateth with so keen a relish," says an ancient worthy, "the fruit he buyeth of the stall-woman in a market, as that which his own hand hath gathered, after great pains, and, it may be peril, encountered in the search?" Our cow-case literally

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* Boulter v. Arnott, 3 Tyrrwh. 267, S. C. 1 C. & M. 333.

† How beautiful is the following!—"In the sciences, every one has so much as he really knows and comprehends; what he believes only, and takes upon trust, are but shreds; which, however well in the whole piece, make no considerable addition to his stock who gathers them. Such borrowed wealth, like fairy money, though it were gold in the hand from which he received it, will be but leaves and dust when it comes to use."—*Locke on the Understanding*, Book I. ch. 4, § 23.

bristles with points of law—law that is involved in three-fourths of the most ordinary business of life, in every shade of variety and degree of complication. Facts, such as those in the two cases above narrated, are comprehended and retained without difficulty, and serve to *suggest* the principles by which their legal consequences are ascertained and adjusted: and if a little perseverance in frequently referring to them, be but exhibited, and a spirit of further investigation cherished, the student will, it may be safely asserted, reap more solid instruction from a month of such labour, than from years of solitary reading, or attendance on the most learned lectures that can be delivered. The daily recurrence of such instances cannot fail to put him into *working* trim, to stimulate his energies and accelerate the rapidity of his progress. Scenes such as these are calculated to enlist, in a certain degree, his *feelings*—his self-love—as a motive and stimulus to exertion. He is anxious to acquit himself well in the sight of his tutor and fellow pupils. Emulation sets an edge upon his attention, and, as it were, *glues* him to his task. He feels conscious, besides, that he has entered at once upon the species of employment that will occupy him throughout life, that he is every hour qualifying himself for the fit discharge of it. He learns law by using it,—*vires acquirit eundo*. Theory thus illuminates practice, and practice, in return, developes, illustrates, and supports theory: they act and react upon each other. This

judicious intermixture of speculative and practical pursuits, will infallibly be found the quickest and surest method of access to a thorough and masterly knowledge of legal science.

"I may venture to assert," says Mr. Starkie, "that there is nothing which more effectually facilitates the study of the law, than the constant habit, on the part of the student, of attempting to trace and reduce what he learns by reading or by practice, to its appropriate *principle*. Cases apparently remote, by this means are made to illustrate and explain each other. Every additional acquisition adds strength to the principle which it supports and illustrates; and *thus* the student becomes armed with principles and conclusions of important and constant use in forensic warfare, and possesses a power, from the united support of a principle, fortified by a number of dependent cases and illustrations; whilst the desultory, non-digesting reader—the man of indexes and abridgments, is unable to bear in his mind a multiplicity of, to him, unconnected cases; and could he recollect them, would be unable to make use of them, if he failed to find one exactly suited to his purpose. The good fortune to meet with a case *fully* in point, is not very frequent —not without the voluminous digests of the still more voluminous reports, which, having increased to an enormous extent, are still further increasing in a fearful ratio. A case *seemingly* in point, is not to be relied on without danger, when it is considered, how

frequently nice distinctions are resorted to, as an expedient for attaining justice; and that, sometimes, by a bolder course, the precedent is condemned, and overruled as untenable *."

No one can have devoted himself to the perusal of our early legal writers—our Cokes and Plowdens—without discovering an amazing accuracy, extent, and profundity of knowledge which may be in vain looked for in modern days. How was it obtained? Where were then the elementary treatises upon—the synthetical compendia of law, with which our times are so prolific, and on which now so much reliance is placed? Where then a Blackstone, a Woodeson, a Sullivan, a Fearne, a Watkins, a Sugden, a Preston, a Selwyn, a Starkie, a Phillips, a Burton, a Wynne, a Chitty? Littleton may be said to have been "alone in his glory!" It was the incessant and systematic study of *individual* cases alone, both oral and written—constant attendance on the courts, and perusal of the reports—that then conduced to the formation of legal greatness. Our "fathers in the law" acted entirely in the spirit of the philosopher whose sentiments have been already quoted in this Chapter—*they* felt that it was "impossible to establish solid general principles, without *the previous study of particulars*," that it was "necessary to BEGIN with the examination of individual

* Introd. Lect. at the Inner Temple. The whole of this interesting and able lecture is well worthy of the student's perusal.

objects and individual events *:" which is precisely the point for which we are now so anxiously contending. But do we wish presumptuously to undervalue the numerous admirable elementary works—the treatises, abridgments, and digests produced by modern learning—by those who are now so successfully "labouring to systematise what the experience of our ancestors has collected, and to unite it with more simplicity and clearness†?" By no means; we wish rather to enhance the value of such works a thousand fold—to secure their thorough appreciation—to enable their readers to do them far ampler justice that they now receive. Prepared as they will be by such a mode of procedure as is here recommended, Blackstone's Commentaries,—Coke upon Littleton, will seem "a NEW book;" every page, every line even, will be luminous with a meaning which before was hidden from their eyes. The fact cannot be too frequently adverted to, it cannot be too anxiously borne in mind by the student, that but a *short interval* elapses between his acquisition and USE of legal knowledge; that if he chooses to devote—say a year or two, to the formal and systematic study of abstract

* *Ante*, page 229.

† Sir James Mackintosh—The author has been informed that Mr. Justice Bayley, however, *clarum et venerabile nomen*—in advising a student as to his course of procedure, earnestly deprecated the perusal of *treatises* of any kind, however able. "Read the *cases* for yourself," said he, "and attend to the application of them in practice."

principles,—however well he may succeed in his labours, he must necessarily retard his acquisition of those *habits* of mental exercise, of that species of *practical* knowledge, which alone can warrant him in undertaking, on his own account, and unaided responsibility, the active duties of the profession. Let him also bear in mind that it is pre-supposed he will engage with a tutor, who, pursues *a daily course of consecutive reading*, commenting as he goes on, and by all means in his power connecting its topics with the actual business of his chamber: a system, this, which is rapidly gaining ground. The author does not hesitate to avow his opinion, that *that* student is blind indeed to his own interests, who would enter, in the first instance, at any pleader's chambers, where such prelections are dispensed with.

Surely, however, no more need be said to convince the reader of the great advantages attending the adoption of the mode here pointed out for commencing his legal career. Does he wish to *read* connectedly, and with effect? His experienced tutor is reading *with* him. Does he wish to pursue his researches into obscure subjects? A library is at hand—in the very room in which he is sitting—by the aid of which, and the occasional assistance of his tutor, all doubts may be satisfactorily cleared up. His learning is continually stirred and freshened by conversation with his preceptor, and discussions with his fellow-pupils. "The very practice," says Mr. Ritso, "of discussing

verbally has its peculiar advantages; the information which is to be had from any written commentary, however explicit or circumstantial, is by no means to be so speedily acquired, nor is it so likely to be retained in the memory, as that which is communicated by word of mouth, and made the subject of discussion between man and man *."

Hear, also, the words of a consummate teacher—Lord Coke: "In truth, hearing, reading, conference, meditation, and recordation are necessary, I confess, to the knowledge of the common law; because it consisteth upon so many and almost infinite particulars: but an orderly observation in writing is most requisite of them all; for reading without hearing, is dark and irksome; and hearing without reading, is slippery and uncertain: neither of them, truly, yields seasonable fruit, without conference, nor both of them, with conference, without meditation and recordation: nor any of them together without due and orderly observation. *Scribe sapientiam tempore vacuitatis tuæ*, saith Solomon †."

"But," may whisper some, "is not this a very unphilosophical mode of applying to the study of the law—thus to perplex, embarrass, and discourage the tyro with the *use* of forms and the hasty application of principles of which he is entirely ignorant—is it not a most precarious and unsatisfactory method of pick-

* Introd. p. 146. † Pref. to 1 Rep.

ing up points of law?" No such thing—as every practical lawyer, however eminent, will testify. The author hopes he is as fully aware as any one can be, of the necessity of a thorough and comprehensive knowledge of the elements of a science. He has well considered the sentiments of Lord Chancellor Fortescue.

"Whoever desires to get a competent understanding in any faculty or science, must, by all means, be well instructed in the principles; for by reasoning from the principles which are universally acknowledged and uncontested, we arrive, at length, at the final causes of things: so that whoever is ignorant of these three—the principles, causes, and elements of any science—must needs be fatally ignorant of the science itself. On the other hand, when these are known, the science itself is known too—at least, in general, and in the main, though not distinctly and completely *."

And the opinion of the learned Mr. Watkins—

"A general outline the mind can easily embrace, and the general principles of law it can easily remember. When acquainted with a whole, we may discern the symmetry of the parts; but an insulated position will appear arbitrary, and its connexion will not be seen. As difficulties arise, or new matter presents itself, a general principle will afford us a

* De Laud. Leg. Ang. c. 8.

rallying point, and we shall find ourselves possessed of premises from which we may argue *."

"There is, I am persuaded," says, again, Mr. Starkie, "no doctrine which can be more beneficially, and consequently, which ought to be more frequently and zealously inculcated, than the necessity *of a constant reference to principle;* whether the object be the acquisition of legal knowledge, the successful application of that knowledge in practice, either to the explanation and illustration of the existing law; or to the improvement of the law, by the removing of anomalies, or repairing the ravages which time, that *maximus innovator*, never fails to make, even in the most perfect of human institutions †." To these sentiments the author most implicitly subscribes; and ventures to assert that the method of procedure above suggested, will be found the most rational, speedy, and effectual, for attaining the desired object—a thorough, practical, and systematic knowledge of legal science. By all means, student, get this intimate acquaintance with "principles, causes, and elements"—this "general outline"—these "general principles:" but, if you wish to get them early, long to hold them fast, and turn them to good account —seek them as above directed; "deduce them" in Lord Coke's language, "from an infinite variety of

* Principles of Conveyancing.—Introd.

† Introd. Lect. Inner Temple. Leg. Ex. vol. ii. p. 438.

particulars;" for, to recur once more to Dugald Stewart, "*it is in this way only* that we can expect to arrive at general principles which may be safely relied on, as guides to the knowledge of particular truths: and unless our principles admit of such a practical application, however beautiful they may appear in theory, they are of far less value than the limited acquisitions of the vulgar."

With respect to attendance on a course of lectures, the author has but little in this place to add, further than to refer the reader back to pages 8 & 9, where will be found some observations on the subject, corroborated by quotations from Dr. Johnson, Dr. Copleston, and Dr. Parr. He cannot help expressing his opinion, with all due deference to that of other and abler persons, that it is a mere loss of time to *commence* legal studies by attending a course of lectures, however masterly—however useful as an auxiliary source of instruction; that these are of but little practical utility at *any* stage of his studies, to a pupil who has the opportunity of attending at a pleader's or barrister's chambers, with such daily prelections as we have been speaking of, and access to a good library. He has known several who, however sanguine at the first, have regretted the time and labour bestowed upon lectures. There are so many excellent treatises on every leading head of law—they are, in general, so accurately digested and arranged, as to supersede altogether the necessarily hasty summaries of the most able

lecturers *. It is in the introductory lecture alone, generally speaking, that any allusion is made to the *manner* in which the student should apply himself to the study of the law; and all the remainder of the course is devoted to the epitomising of various heads of law—subjects so abstruse often and complicated as to render it utterly impossible for any but an expert short-hand writer, and one familiar, too, with technical terms, to follow the lecturer with anything like competent accuracy. But in the great majority of instances, how liable are the hearers to catch at wrong notions —wholly to misunderstand the drift and tendency of what is uttered! Only think of the following fearful summary of the topics discussed in a single lecture of Mr. Amos! It is extracted from the authorised published copy.

"Corporeal, Incorporeal, and Derelict Property; Blackstone's Classification; Property why called Incorporeal; Corporeal Profits and Incorporeal Property; Modes of transferring Property; Livery of Seisin; Statute of Frauds; Uses; Effect of Stat. Hen. VIII.; Springing and Shifting Uses; Transfer by Deed; Effect of Delivery; Statutes requiring Signature contrasted with the Common Law; Authorities respecting Execution of Deeds collected; Escrows; Antiquities of Deeds; Maddox's Formulare; Spelman's Posthuma; Hicke's Dissertation; Fortescue De Laudibus; Antiquities respecting Witnesses to Deeds; Saxon Deeds; Things in Livery and in Grant; Easements and Interests in Land; Opera Tickets; Fisheries; Drains; Seizure in Demesne; Derelict Pro-

* Far, very far, be from the author any desire, or attempt, to undervalue the labours of the distinguished gentlemen who have been, and are at present engaged in the delivery of law lectures—a Starkie, Austin, and Amos, or any similarly employed—whose

perty,; Occupancy; Running Water; Public Property; Right to Fish, and Shells in Sea; In Arms of Sea; On Shore of Sea; Hale De Jure Maris; Free Fishery, Several Fishery, Common of Fishery; Right of Towing; Of Gleaning; Of Bathing; Treasure-trove; Waif; Anecdote respecting Treasure-trove; Foreign Codes respecting Public Rights; Royal Rights in Unclaimed Property; Wreck; Royal Fish; Game; Free Warren; Chace; Swans; Pepysian Library; Bastards' Effects; Maritime Accretions; Town of Hastings; Lincolnshire Coast; Manuscript Treatise, temp. Elizab."

Another lecture is headed thus:—

"Real and Personal Property; Terms for Years; Derivation of the term 'Chattel;' Diversity of Situations between Tenant for Years and Tenant for Life or in Fee; Causes of this Difference; Changes effected by 21 Hen. VIII. c. 15; History of the Action of Ejectment; Limitations by way of Executory Devise; Doctrine of Uses; Duke of Norfolk's Case; Mr. Butler's Note on that Case; Fearne's Essay on Executory Devises; Leasehold Qualification to kill Game; to become Jurors; Repeal of the Declaration of Rights, by Mr. Peel's Jury Act; Wife's Right of Survivorship to Chattels Real; Writ of Elegit; Effect of this Writ upon Trust Estates; Liability of Real Property to satisfy Debts; Lands of Bankrupts; Estates by Statute Merchant, Statute Staple and Elegit; Devises for Payment of Debts; Presentations of Advowsons; Ancient Principles upon which Distinctions between Real and Personal Estates are founded; Feudal System; Different Senses of the word Freehold."

It is not *impossible* that the lecture may be a mere *rifacciamento* of a section in—for instance—Bacon's Abridgment*, which its deliverer, often a man in

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learning and reputation confer honour on the institutions where they exhibit the valuable fruits of their research and experience—fruits, which will be best appreciated, however, by those who are not *beginning*, but considerably *advanced* in their legal career.

* One of Mr. Amos's is manifestly such.

considerable practice, may not have had time to accommodate to the varied capabilities and acquirement of learners, or scientifically interweave into it the alterations subsequently effected by statutes and decisions. Supposing, however, the lecture to be unexceptionable, how few are the pupils who give due attention to it—who attempt, or are *able* to follow the lecturer—to connect each lecture with the preceding—to take copious and accurate notes, *and work them out in private reading!* How great are the temptations to idleness and irregularity, arising out of a promiscuous intercourse with numerous fellow-pupils! What a disparity between their tastes, talents, acquirements, pursuits, and objects! Mr. Amos has himself drawn a lively picture of the difficulties to be encountered by one undertaking this office.

"The person undertaking to lecture law students, stands under circumstances which lecturers on other subjects have rarely to encounter. Each student is interested almost exclusively in that circumscribed range of legal knowledge, which he is likely to have occasion for, when he practises for himself. And thence it happens that what will keep the eyes of one student broadest awake, will set the eyes of another student fast asleep. Again, there is found every shade of disparity in the acquirements of pupils, to say nothing of their abilities. Some have yet to learn the veriest elements of law, others want only

some finishing touches to their education. In this difference, they may be compared to vessels in a fleet, where the swiftest sailers are always on the point of upbraiding the delay of their commodore; and the slower are always apprehensive of being left behind. Again, the law student has, most probably, been engaged during the day in some kind of legal pursuit or another; he comes with a full stomach of law, and is, therefore, not a little dainty about his food. He comes, also, of an *evening*, when not very unfrequently, from very natural causes, his spirits invite him rather more to occupations of an *allegro* than of a *penseroso* kind *."

The author begs to add that he has spared no pains to gather the sentiments on this subject of those whose learning, rank, and experience, enhance the value of their opinions—and has found them almost uniformly in accordance with those which he has ventured to advance in the foregoing pages. He has also made a point of attending several law-lectures— all of them intrinsically excellent,—with a view to the correction or corroboration of his views on the subject; and conversed with several students who have assured him that they were much disappointed with the system.

Nor is the author partial to the practice occasionally resorted to, of visiting an attorney's office for six

* Introd. Law. Lect.; Leg. Exam. vol. ii. p. 221, 222.

months or a year, *before commencing* with a pleader. That information of the most valuable kind—the practical working of the law in all its departments—may be obtained in these quarters, is indisputable. The short period, however, usually allotted to such a visit necessarily precludes the possibility of materially benefiting a student, entering in total ignorance of the business there transacted. Considerable advantage would undoubtedly result from a six months' attendance in the office of an attorney in respectable business, *after* a year or two's study in a pleader's chambers; as he would by that time be enabled to comprehend quickly the drift of all that was passing before him, and direct his attention to those points which he had found elsewhere most difficult to be thoroughly understood. He would then *see* the practice, of which he had before only read and heard: and *seeing* would be, understanding. He would not easily forget the time and mode of conducting the different stages of a suit, with all its formal preliminaries, incidents, and consequences, who had himself been engaged in conducting them; who had witnessed the serious effects of negligence and erroneous practice. A day's insight into the actual management of an action—of filing or delivering, declarations, pleas, replications, &c.; of compelling, or obtaining time for, pleading; of preparing for trial, signing judgment, and issuing execution; of arresting judgment, writs of error, &c.; of the various practice of summonses, orders, rules,

&c.—will convey a far more distinct and lively notion of these matters, than could be obtained by mere cursory reference, however frequent, to the *books* of practice. An intelligent common-law clerk will be an excellent instructor in all these matters; more especially at the present time, when such incessant alterations are taking place, as render the acquisition of the knowledge of practice almost impossible, except to one who is actually engaged in it from morning to night.

It is, lastly, a question frequently asked, whether the common-law pupil should *commence* his legal education by a six or twelvemonth's sojourn in the chambers of a Conveyancer. The author is of opinion decidedly in the negative. Such a period is too short for any one, especially if wholly ignorant of legal subjects, and unversed in legal thinkings, to make any sensible, available progress in the study of real-property law. The scanty knowledge to be acquired under such circumstances in six or even twelve months, is likely to be soon forgotten in the hurry and anxiety of special pleading—of the varied and minute technical learning to which he must then apply himself, which will not bring into play his conveyancing acquirements, for at least twelve months. What occasional need he may have of such knowledge in actions of ejectment, replevin, trespass to realty, and for rent, &c. can be easily supplied, for the present, by the perusal, under his tutor's superin-

tendence, of the second volume of Blackstone's Commentary, Watkins on Conveyancing, and the various articles on "Landlord and Tenant," to be found in the ordinary text-books. He will soon perceive the necessity, the very great advantages, of a sound knowledge of the law of real property; and cannot take a more prudent step than to spend six months in a conveyancer's chambers *after* completing his course of pleading. He will *then* bring to the task a well-disciplined mind; experience will have taught him which are to *him* the subjects of greatest practical importance; and he will, in short, be better able to avail himself of a conveyancer's instructions. He will, for instance, pay particular attention to the construction and elucidation of those instruments which oftenest become the subjects of litigation; so that when hereafter they come under his notice, he may not be confused or misled by their multifarious and intricate contents. It is a step, however, not very frequently taken by the young pleader—who, if duly attentive to what is passing about him, generally contrives to pick up sufficient conveyancing for *his* purpose, from the exigencies of practice, and a perusal of the standard works on that branch of law to which his attention is perpetually called.

There is a very striking and important observation to be found in Dugald Stewart's "Philosophy," which tends to illustrate and confirm the general view contained in this chapter:—

"I have heard it observed, that those who have risen to the greatest eminence in the profession of law, have been, in general, *such as had at first an aversion to the study* *. The reason probably is, that to a mind fond of general principles, every study must be at first disgusting, which presents to it a chaos of facts apparently unconnected with each other. But this love of arrangement, if united with persevering industry, will at last conquer every difficulty,—will introduce order into what seemed, on a superficial view, a mass of confusion, and reduce the dry and uninteresting detail of positive statutes into a system comparatively luminous and beautiful †."

The author repeats, in conclusion, his conviction, that when a man has determined upon commencing the study of the Common Law, especially with a view to practising under the Bar, the sooner he gets,

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* "The same remark occurs in a letter from Mr. Gray to his friend Mr. West. 'In the study of law the labour is long, and the elements dry and uninteresting; nor was ever any body (*especially those that afterwards made a figure in it*) amused, or even not disgusted at the beginning.'

"'The famous antiquary, Spelman (says Mr. Burke), though no man was better formed for the most laborious pursuits, in the beginning deserted the study of the laws in despair—though he returned to it again, when a more confirmed age, and a strong desire of knowledge, enabled him to wrestle with every difficulty.'—Fragment on the History of the Laws of England, Burke's Works, vol. x. p. 553 (8vo. Ed.)"—*Addenda to vol. 1st of Stewart's Philosophy of the Human Mind*, p. 475 (6th Ed.).

† Philosophy, vol. i. p. 475 (6th Ed.).

so to speak, *into harness*—the sooner he enters upon the practical details of business—the earlier he begins to habituate himself to the rigorous exercise of his faculties, the better. If his industry be steady and well-directed, he will quickly gain that confidence in his own resources, that familiarity with the doctrines and practice of the law, which will ensure his safe and rapid progress. Supposing him, then, to have arrived at such a decision, it is hoped that the brief outline of the system of special pleading contained in the ensuing chapter, will distinctly apprise him of the nature of the arduous and responsible department to which he has devoted himself.

CHAPTER IX.

SPECIAL PLEADING—ITS HISTORY, CHARACTER, AND EXCELLENCE EXAMINED AND ILLUSTRATED.

THE term "Special Pleading" to non-professional persons imports, in the strict sense of the words, an "art and *mystery*;" and nothing can be more amusing than their efforts to interpret it. All barristers are "pleaders," it is said—*i. e.*, they "*plead*" their clients' causes: but some causes are so *specially* difficult and important, as to require the employment of men of a higher stamp and rarer quality, and are, consequently, intrusted only to "*special* pleaders." Thus, in such a view of the case, the leading special pleaders of the present day, are the Attorney and Solicitor-General, (Pollock and Follett,) Mr. Serjeant Wilde, and Sir John Campbell. A notion of this kind it was that—literally and truly—brought the author of this work to London, under the written advice * of some friends, with the intention of commencing the study of special pleading in the chambers

* Now lying before the author.

of the celebrated MR. BROUGHAM! *Dulcius enim est*, thought he, *petere fontes, quam sectari rivulos.* On informing a respectable solicitor, to whom the author was the same day introduced, of the grievous disappointment he had that morning experienced in finding that Mr. Brougham did not take pupils, he laughed heartily. He was requested to say, if there really existed such a thing as special pleading—where was it to be learned—*who* taught it? He mentioned Mr. A——, Mr. B——, Mr. C——, and several others, as all "excellent men,"—persons, however, whose names the author had never heard of—a fact he took care to communicate to his adviser.

"And yet," he replied, "all these are men of great, several of them of profound, professional learning—in large practice, and whose chambers are crowded with pupils. These are the men whom we solicitors consult in all our difficulties; who direct the whole management of the most important causes, till they are brought before a jury; and who are suddenly seen occupying distinguished stations in open court—filling eminent offices—and shortly afterwards seated upon the Bench. The *law* of a case has all been exhausted, or, at least, keenly scrutinised and contested, in these men's chambers, long before the causes come into court, for trial—whether matters of fact, for the decision of the jury, or of law for the judges:"—and, in short, sufficient was said to send the author, the next morning, by ten o'clock, to the

chambers of a gentleman in considerable practice, as a pleader; where, having duly deposited the *honorarium*, he determined upon abstracting as much information as his wits, and his pleader's instruction and practice, would allow of within a twelvemonth.

But what *is* this 'special pleading,' inquires the reader?—A few words will suffice to give a general notion of this great section of English jurisprudence.

Whoever undertakes to administer *justice* between disputing parties, must, of course, listen fairly to both, in order that he may be enabled so to acquaint himself with the merits of the case,—the real points of the controversy. But now comes the great question—how ought the litigants to state their case? Verbally, or in writing?—Ought they to be allowed the utmost possible latitude, to be at liberty incessantly to interrupt one another, to introduce into their respective statements whatever topics whim, passion, or self-interest may suggest—perpetually to vary the grounds of the contest? What must be the state of the society, and what the character of the courts of judicature, that could tolerate such interminable and unseemly wrangling?—Yet are there, even in the present day, both in this country and elsewhere, persons who would contend for such a method of litigation! Suppose, however, we advance a step towards a more reasonable state of things, by making each party state his case alternately, and uninterruptedly: to say nothing of the *time* that must be wasted—are the great bulk

of litigants really capable of performing such a task—of doing justice to *themselves?*

"Many individuals," says Mr. Chitty, in his excellent little tract lately published, "as regards pleading, will be found, who insist that prescribed rules are wholly unnecessary, and that if parties were unshackled, they would naturally more intelligibly state their causes of complaint or grounds of defence, than in what is indiscriminately termed the present 'jargon of pleading.' But would it be so? Experience has established that, in all countries, though a few educated persons might be able to make a lucid statement, yet with the great mass of litigants, it would be far otherwise. Even in ordinary conversation, how few persons are clear and concise in their narratives, how many are found to intermingle facts with arguments, and to rely on immaterial points, so as to render their statements almost unintelligible? Some will be much too prolix and diffuse, whilst others will proceed as if their hearers were already in full possession of the facts, and will omit the communication of perhaps the most important circumstances. And few, indeed, will observe any logical order in their statements, even of simple facts: and if in such narratives perspicuity be not evinced, how great would be the confusion, if there were no rules affecting the description of complicated legal rights to personal and real property, the varieties of which, in the progress of society, have become almost innume-

rable*?" Suppose, then, each party permitted thus to undertake, in his own way, the statement of his own case: what if it should turn out that their multifarious assertions and denials were directed to *different matters*—that one, or, perhaps, both of them, altogether mistook the real questions at issue? What is to be done in such a case as this? Can the court pretend to proceed, under such circumstances, to a decision? What is to be decided? Would either party abide by such a decision?—where would be the end of all this?

Three methods of obviating these difficulties have been adopted by different systems of judicature. One requires each party privately to review the conflicting statements, and select from them the points for decision, in order to ascertain and provide the requisite *evidence*—imposing, at the same time, upon the judge, the corresponding duty of examining, for his own information, the various allegations, and seeing how they are borne out by the evidence "as a matter of private discretion—neither the court, nor the parties, having any public exposition of the point in controversy to guide them—judging of it upon retrospective

* Concise View of Pl. pp. 8-9. "Even in the interior of our immense territory in India, they have long found it essential to have their regular pleaders, there called '*Vakeels*.'"—Ib. p. 9;—and see the very interesting and learned note of Mr. Serjeant Stephen, tracing "the use of professional pleaders or advocates, among some of the continental nations, to a period extremely remote."—Plead. App. note (8), 2d. ed.

examination of the pleadings *." The Scottish system of judicature adopts another course. The litigants having completed their respective statements, the court itself, alone, undertakes the task of retrospective examination, in order to collect and adjust the true points in dispute, which are then publicly and officially promulgated, previous to the trial. "Under these rival plans of procedure," observes Mr. Stephen "by which the statements are allowed to be made *at large*, it becomes necessary, when the pleading is over, to analyse the whole mass of allegation, and to effect, *for the first time*, the separation of the undisputed and immaterial matter, in order to arrive at the essential question. This operation will be attended with more or less difficulty, according to the degree of vagueness or prolixity in which the pleaders have been allowed to indulge. It will always, therefore, be in some measure doubtful, or a point for consideration, to what extent, and in what exact sense, the allegations on one side are disputed on the other—and also to what extent the law relied upon by one of the parties, is controverted by his adversary. And this difficulty, while thus inherent in the mode of proceeding, will be often aggravated, and present itself in a more serious form from the natural tendency of judicial statements, when made at large, to the faults of vagueness and prolixity. For where the

* Steph. on Pl. p. 498.

pleaders state their cases, in order to present the materials from which the mind of the judge is afterwards to inform itself of the point in controversy, they will, of course, be led to indulge in such amplification on either side, as may put the case of the particular party in the fullest and most advantageous light, and to propound the facts in such form as may be thought most impressive or convenient, though at the expense of clearness or precision *."

Now, in our English system, a very different course is pursued. Its great object is to compel *the parties themselves* to come to an issue: *i. e.*, "so to plead, as to develop some question (or issue) *by the effect of their own allegations*, and *to agree* upon this question as the *point for decision* in the cause;—thus rendering unnecessary any retrospective operation on the pleadings, for the purpose of ascertaining the matter in controversy †." By this means, "the undisputed or immaterial matter, which every controversy more or less involves, *is cleared away by the effect of the pleading itself;* and, therefore, when the allegations are finished, the essential matter for decision necessarily appears ‡." In other words, our courts decline, as it were, to hunt for a needle in a bushel of hay, throwing that task upon those who dispute the right to the needle when found.

"I consider the system of special pleading, which

* Steph. on Pl. pp. 500-501. † *Ib.* p. 159. ‡ *Ib.* p. 500.

prevails in the laws of England," said, on a recent occasion, that great judge, Lord Tenterden, "to be founded upon, and to be adapted to, the peculiar mode of trial established in this country—the TRIAL BY JURY: and that its object is to bring the case, before trial, to a *simple*, and—as far as practicable—*single* question of fact; whereby, not only the duties of the jury may be more easily and conveniently discharged, but the expense to be incurred by the suitors, may be rendered as small as possible. And experience has abundantly proved that both these objects are better attained where the issues and matters of fact to be tried are narrowed and brought to a point by the previous proceedings and pleadings on the record, than where the matter is left at large to be established by proof, either by the plaintiff in maintenance of his action, or by the defendant in resisting the claim made upon him *."

The origin of this peculiar and admirable system must be referred, in all probability, to the practice of ORAL pleading †; which, as it was universally in use among the early judicatures ‡, prevailed in this country in the reign of Henry III., and was not finally abandoned till about the middle of the reign of Edward III. The contending parties appeared actually in court, either personally or by their attorneys; and their case

* Per Tenterden, C. J., Selby *v.* Bardons, 3 B. & Adol. p. 16.

† See a curious specimen from the Year Books, of *vivâ voce* pleading in the Appendix.

‡ Steph. on Pl., p. 31, App. note 7 (2nd ed.).

was stated *vivâ voce* in the presence and under the superintendence of the judges, who compelled the parties "so to manage their alternate allegations, as at length to arrive at *some specific point* or matter affirmed on the one side and denied on the other *." This specific point was called "THE ISSUE" (*exitus*—because the parties were at THE END of their pleading †), and was of two kinds—an issue *in law*, or an issue *in fact* ‡: being referred for decision, in the former case to the judge, in the latter to the jury. This system of oral pleading was, as already intimated, probably discontinued in the reign of Edward III. What may be termed a *paper war* was introduced in its stead; *i. e.*, the complaining party, through the medium of his attorney and pleader, in the first instance *writes* the statement of his case, and

* Steph. on Pl., p. 32.

† An *issue* is, when both the parties join upon somewhat that they refer to a trial, to make AN END of the plea (*i. e.* suit). —Finch's Law, p. 396.

"This phrase of *issue* occurs at the very commencement of the Year-books, (*i. e.* 1 Edward II.)—but the author has not traced it to an earlier period. In some instances, the expression '*isser d'empler*' occurs; which may be translated '*to get out of*,' or '*finish the pleading*,'—and clearly marks the meaning and derivation of the term *issue*. In the reign of Edward IV., we find the Latin term thus regularly defined: *exitus idem est quod finis, sive determinatio placitandi*.—Year-book, 21 Edw. IV. 35. It is observable that the parallel word *fin* appears to have been used, in the same sense, in Normandy. See Comm. de Terr., lib. ix. c. 27."—Steph. App. Note (10).

‡ "The terms '*issue in ley*,' and '*issue en fet*,' occur as early as the third year of Edw. II. See the Year-book, 3 Ed. II. 59." —Steph. App. Note (10).

sends it for a written answer, to the attorney and pleader of his opponent. Such, in a word, was, and is now, the "art and mystery" of "Special Pleading;" such are the proper functions of "Special Pleaders *."

It will not require much reasoning to show, that the simplicity was far outweighed by the inconveniences, of our earlier method of conducting litigation; and that the infinitely more numerous and complicated questions arising in modern times, rendered imperative the adoption of a much more deliberate and accurate adjustment of the matters in dispute. Settled forms of statement were gradually introduced †; rules calculated to ensure precision,

* The term itself has occasioned no little misunderstanding. "*Pleé*, in French—in English, *plea*—were anciently used to signify *suit*, or *action*. While used in this sense, they gave rise, respectively, to the words *pléder* and *to plead;* of which the primary meaning was, accordingly, to *litigate*, but which, in the later English law, have been taken in the more limited sense of MAKING ALLEGATION IN A CAUSE. Hence the name of that science of 'Pleading,' to which this work relates. This variable word," continues Mr. Stephen, "has, indeed, still another and more popular use, importing the forensic *argument* in a cause; but it is not so employed by the profession."—Steph. on Pl., App. note (1), 2nd ed.

† "*Policrates.* * * Why, if your position is true, cannot a plain just narrative of the circumstances of fact be sufficient of itself; and the bare state of the case be its own form? *Eunomus.*—This might do very well for the few who are endowed with uncommon good sense; but it is not the easiest and most direct way for the generality of people, who would never be able to tell their own story on record, in a small compass. *Forms*, of some sort, are the consequence of any thing becoming an art. What do we mean by "an art," but a collection of certain rules for doing any thing in a set

perspicuity, and other important objects, were from time to time prescribed by the judges *, who required a rigid adherence to them: and thus, by the experience of centuries, special pleading was moulded into a science—a great and admirable science—to the development of which have been devoted the anxious attentions of some of the subtlest intellects, of the most learned men that any country has produced. Consider the extraordinary difficulties through which such a system must have laboured: the pleader of each party straining every nerve,—resorting to the profoundest stratagems—to secure his client the advantage,—often misleading and bewildering all parties concerned;—the scope afforded, for this purpose, by the prodigious variety and complexity of legal rights, wrongs, and remedies! The wonder is, surely, under such circumstances—not that such a system should have many and glaring faults—that it should not unfrequently have afforded an opportunity of defeating the ends of justice, but that, struggling through so many obstacles, it should ever have been capable of reduction to a science, such as it unquestionably is,—a science, too, so eminently calculated to answer the ends of distributive justice, as every day's practice demonstrates it to be. It certainly is

form?—I will add, too, that these forms are more concise and convenient in themselves, than any one general form can be.—Wynne's Eun. pp. 198-199.

* See Steph. on Pl. Appendix, Note (38). The judges are now expressly empowered to frame such rules. See 3 & 4 Will. iv. c. 42, § 1.

not, nor ever was, and probably never will be, a *popular* system. None has ever been so unsparingly, so violently abused. Its subtlety—its complexity—its fictions—its delays—have been a thousand times execrated, in the bitterest terms: but, chiefly, by whom? By those of the public who fancy themselves to have been its *victims;* and also by indolent and superficial students. It is, undoubtedly, a system very difficult to be understood and appreciated: and so, surely, are logic, metaphysics, mathematics. The technical terms 'colour,' 'continuance,' 'negative-pregnant,' 'certainty to a common intent,' 'absque hoc's,' 'departure,' 'duplicity,' 'common bar,' &c. &c., used by the pleader, ought surely to be no more exclaimed against than the 'sub-contraries,' 'sub-alterns,' 'differentia,' 'non-distribution,' 'enthymeme,' 'sorites,' 'ostensive reduction,' &c. &c. of the logician, or the technicalities of the algebraist or metaphysician*. The true reason why *one* science is so exclaimed against on grounds really applicable to them all, is, that the mysteries of special pleading *are*

* "My academical readers will excuse me for suggesting," says Blackstone, "that the terms of the law are not more numerous, more uncouth, or more difficult to be explained by a teacher, than those of logic, physics, and the whole circle of Aristotle's philosophy; nay, even of the politer arts of architecture, and its kindred studies, or the science of rhetoric itself. The law, therefore, with regard to its technical phrases, stands upon the same footing with other studies, and requests only the same indulgence."—3 Bla. Com. 321, 322.

brought to bear directly upon the actual business of life; they affect the dearest interests of men,—their property, life, and character—"coming home to their very businesses and bosoms."—"As few individuals relish physic, although it may restore them to health, so I will not anticipate," says Mr. Chitty, "that any one will be enamoured with the supposed beauties of special pleading, or indeed any other part of the machinery of a cause antecedent to the trial of their rights. But all sensible individuals will admit, that as physic may be essential for the cure of diseases so are legal forms essential in the due administration of justice; and we ought to be satisfied, provided the most salubrious remedy be adopted in the one case and the other *." Special pleading is, in short, a peculiarly practical, as most others are merely speculative sciences. Every science will be railed against by the mass of mankind, in proportion as it is hostilely brought home to them—especially if, as in the case of special pleading, they are compelled to resort to it on all occasions, from matters the most minute to those the most momentous; interfering, as it does, with their most selfish interests, calling forth every feeling, every passion, that can excite and agitate the human breast. If algebra and geometry were but placed in the situation of special pleading, they would, no doubt, be quite as vehemently exclaimed against;

* Conc. View of Pl. p. 7.

geese would be found to cackle against them, as now against special pleading—an algebraist, geometrician, and pleader would be equally disliked and ridiculed*." That, in the lapse of ages, abuses crept into the science of pleading, that its primitive simplicity of structure and true objects were frequently lost sight of—that some of its learned, ingenious, but short-sighted professors invested it in a needless subtlety and obscurity †, and occasionally expanded it into a most preposterous prolixity, cannot be denied. These errors and defects, however, have been grossly exaggerated, by those, chiefly, whose impetuosity and violence would overleap all the barriers imposed by the rules and orders of civilised society, between them and the gratification of their caprice and vindictiveness. God forbid, however, that law should ever become so cheap and ready of access, as that every foolish and violent applicant may have instant re-

* "Do you, Sir," said Dr. Johnson, sternly, to a simpleton who was abusing the study of the law—"do you, Sir, find fault with that study which is the last effort of human intelligence, acting upon human experience?"

† "Here," says a whimsical, splenetic, but learned annotator upon Lutwyche's Reports, "here the common lawyer may learn how difficult it is to plead either a custom or a prescription, without as many exceptions to it, as there are words in either: here we may see what artificial fencing there is between replications and rejoinders, till an end is put to the strife by some general or special demurrer—and abundance more of such cob-web subtleties, spun so very fine by the spiders of the law, that one would think it done on purpose to let justice fall through."—Lutwyche's Rep. by W. Nelson, of the Middle Temple, Esq., pref. iv. (1718).

course to it, flinging "fire-brands, arrows, and death" all around him. Rather, surely, would a sober and rational member of society, applaud the boundaries which our laws have erected—would look indulgently upon the necessary imperfections of such a system, joining in the eloquent and philosophic language of Sir James Mackintosh—

"There is not, in my opinion, in the whole compass of human affairs, so noble a spectacle as that which is displayed in the progress of jurisprudence, where we may contemplate the cautious and unwearied exertions of a succession of wise men through a long course of ages, *withdrawing every case as it arises from the dangerous power of discretion*, and subjecting it to inflexible rules; extending the dominion of justice and reason, and gradually contracting, within the narrowest possible limits, the domain of brutal force and arbitrary will *."

It may be safely said that those have been the warmest panegyrists of special pleading, who have been best acquainted with its principles and details. Hear the venerable Littleton!

"Know, my son, that it is one of the most honourable, laudable, and profitable things in our law to have the science of well pleading, in actions reals and personals; and therefore I counsaile thee especially to employ thy courage and care to learne this †."

* Discourse on the Study of the Law of Nature and Nations, p. 58.

† Tenures, § 534. Mr. Dawes says of this passage, "this is unanswerable; and the editor speaks from many years' experience."

His illustrious commentator, Lord Coke, loses no opportunity of lauding it.

"Good pleading is *Lapis Lydius*—the touchstone of the true sense and knowledge of the common law." "Usual pleading is the *sure oracle* of the law." "One of the best arguments, or proofs in law, is drawn from the right entries, or course of pleading; for the law itself speaketh by good pleading—and therefore Littleton here saith 'it is proved by the pleading,' &c.—as if pleading were *ipsius legis viva vox* *."

The celebrated Sir William Jones speaks of it in the following terms of elegant eulogy.

"The science of special pleading is an excellent logic; it is admirably calculated for the purpose of analysing a cause—of extracting, like the roots of an equation, the three points in dispute, and referring them, with all imaginable distinctness, to the court or jury. It is reducible to the strictest rules of pure dialectics, and tends to fix the attention, give a habit of reasoning closely, quicken the apprehension, and invigorate the understanding †."

"The substantial rules of pleading," says Lord Mansfield, "are founded in strong sense, and in the soundest and closest logic; and so appear, when well understood and explained; though, by being mis-

* 10 Co. Rep. 29 b.; 2 Co. 68 a.; Ib. 54 a.; 3 Co. 9 a.; Litt. 170; Co. Litt. 115 b.

† Prefatory Discourse to the Speeches of Isœus.—Works, vol. iv. p. 34.

understood, and misapplied, they are often made use of as instruments of chicane *." "I have heard it remarked by a gentleman alike distinguished by his philosophical and professional attainments," says Dr. Woodeson, alluding, probably, to the distinguished individual whose sentiments have been already quoted (Sir W. Jones), "that he thought special pleading was the best logic in the world, next to mathematics †." And let it not be imagined that this eulogium is now no longer just. It is far more so than ever, since the recent rules have reduced pleadings to a perilous degree of compression and exactitude.

To these high authorities—selected out of a "cloud of witnesses," may be added that of Mr. Ritso.

"Special pleading," he observes, "is, in fact, only another name for that sort of logical discussion of the subject of complaint, or controversy, which enables the court and the jury to discover at one view the number and nature of the precise points in dispute, upon which the parties are at issue. That we have usually, indeed, so much seeming obscurity to contend with—at least upon our commencement of this course of study, is a natural consequence, not of the want of evidence in things, but of the defect of preparation in ourselves; and more particularly of our not being conversant in the meaning of the *terms of art* which experience has shown to be necessary for the sake of

* Robinson *v.* Rayley, 1 Burr, 319.

† Woodeson's Lectures, xliv. note (*).

certainty, brevity, and convenient precision." "The science of special pleading is not more difficult to be explained by a teacher, than the science of rhetoric itself. *Having succeeded in fairly and distinctly understanding the terms of art*, we are enabled to perceive, in a short time, and with very little labour, that the various doctrines and rules of pleading are demonstrable upon the principles on which they were originally suggested, of plain reason, and common intendment; and that they have usually no further authority in practice, than in proportion as they are calculated to promote the ends of substantial justice, whether by guarding against surprise, by preventing confusion, by saving time to the court and jury, or by defeating the subterfuges of the dishonest disputant, and compelling him to come to an issue upon the precise points in issue between the parties *."

Practically, then, what is pleading? The statement, in logical and legal form, of the facts constituting the plaintiff's cause of action, and the defendant's ground of defence—the formal mode of alleging that on the record, which would be the support or the defence of the party, in evidence †. "It is one of

* Introd. &c. p. 184.

† See 1 Chitt. Pl. 244 (5th ed.) "By pleading," says Wynne, "I shall understand the entire structure of a record; comprehending as well the plaintiff's cause of demand, suited to the nature of the action and the circumstances of his case, as the proper answer of the defendant to destroy that demand: with the subsequent steps arising from them, till the record is brought to some issue, either of law or fact."—Eunomus, p. 198.

the first principles of pleading," says Mr. Justice Buller, "that there is occasion to state only FACTS, which must be done for the purpose of informing the court (whose duty it is to declare the *law* arising upon those facts), and of apprising the opposite party of what is meant to be proved, in order to give him an opportunity to answer or traverse it*." The pleadings are, in short, a series of alternate assertions and denials—all superfluous and irrelevant matter being thrown off at each stage of this exhaustive process, as it may be termed, till the exact point of difference, —the very apple of discord—is developed. There is no room, in this exquisite system, for confusion, for excitement, for exaggeration, for misrepresentation, or concealment. Whatever be the exasperating circumstances attending the cause of action, the statements of each party must be given and adjusted with all the frigid precision and method of a mathematical demonstration—the sole end being,

justum secernere iniquo.

Let us take a familiar instance. Let us suppose that a landlord and his tenant have got to high words about some broken windows. They cannot settle their dispute together, and therefore apply to the

* Doug. 159. And see the observations of Lord Chief Justice De Grey, Cowp. 682, 683. For an interesting account of the origin and progress of pleading, see Reeve's History of the Common Law, vol. iii, p. 424, and Hale's History of the Common Law, p. 173; and for a brief and clear outline of the present system, see Woodeson's Lectures, Lect. xliv.

law to settle it for them. Let us but imagine each of them to be blessed with the rare faculty of *coming to the point*—of stating his case in a plain straightforward way, and 'tis the easiest and pleasantest thing possible. Come forward, then, landlord and tenant, and tell us all that is in your hearts!

Landlord.—I let that man a house for seven years, and he agreed to leave it in good repair when the time was up. He has left the premises, however, with twelve broken windows; for which I demand 3*l.*

Tenant.—I own I left the windows broken, but my landlord *forgave* me, by this deed here [of release].

Landlord.—That deed is mere waste paper; being obtained from me by duress [*i. e.* illegal constraint].

Tenant.—It was given voluntarily; and I will go before a jury upon it.

Landlord.—So will I.

THEREFORE, let a jury come, says the court, to try this matter between the parties.

Here is a "round unvarnished tale!" Here is short work for the jury *! Are not these two most

* The following curious specimen of pleadings among the *Lombards*, as preserved in a compilation of undoubted authenticity (Steph. App. note (40),) may be said to exhibit the utmost degree of brevity imaginable:—

"*M.*—*Petre*, te appellat Martinus, quod tu malo ordine (i. e. *injuste*) tenes terram in tali loco positam.

P.—Illa terra mea propria est per successionem patris mei.

M.—Non debes ei succedere, quia habuit te ex suâ ancillâ.

P.—Vere—sed fecit eam widerbora (i. e. *liberam*) sicut est edictum, et tulit ad uxorem.

exemplary disputants? Here is no intermixture of law with fact—no irrelevant matter—no prevarication —no concealment or exaggeration! Let us now, however, put the matter into the hands of the law; let us envelope the facts in the mystical forms of pleading—and see what is the exact nature of its operation upon them. The landlord goes, in the first instance, to his attorney, and tells him the facts in his own way. The attorney reduces his statements into writing, and sends them as "instructions" to his pleader, to put them into due legal form: *i. e.* to state all the necessary facts, and no more, in the precise and settled language of the law—and who is said, in doing this, to draw the DECLARATION, *i. e.* the plaintiff's "statement of his cause of action—of the nature and quality of his case." It commences thus—

"In the Common Pleas.

"On the 1st day of January, 1835.

Middlesex to wit.—A. B. complains of C. D., who

— Approbet ita, aut amittat."—Leg. Longob. ap. Mur. Leg. Liutpran. lib. vi. 53.

One other instance may be given, very similar, in subject, to that in the text.

"*M.*—Petre, te appellat Martinus, quod tu tenes malo ordine terram in tali loco.

P.—Ipsa terra mea propria est, per chartam quam tu mihi fecisti—et ecce chartam.

M.—Ego feci istam chartam, sed per virtutem (i. e. *vim*).

P.—Non fecisti.

M.—Vis ei probare?

P.—Volo.—Vadiate pugnam."

These were the pleadings of the *barbarous* Lombards!

has been summoned to answer him in an action of covenant."

It goes on to state that a lease was made between the parties (offering it to the court to inspect); from which the pleader selects all that is necessary for his purpose, *i. e.* the terms of the letting to the tenant, and his "covenant" *to repair*. So much for the lease. He then states shortly, that the tenant entered into the premises, and continued there till the end of the term; that the landlord did all that he agreed to do, but not so the tenant; for he quitted the premises, and left the windows broken: so not having kept his covenant, and having occasioned damage to the landlord, to the amount of 10*l.*, "and therefore he brings suit," &c.*

Now could the pleader state less, need he state more, than this? What has he done but mention the parties appealing to the court, the contract they entered into, the breach of that contract, and the injury thereby occasioned? Let it be borne in mind that the *parties themselves* may be so well

* "*Et inde producit sectam*" [a sequendo]. This form was originally used to signify the witnesses, or *followers* (sectores), of the plaintiff: for in former times the law would not put the defendant to the trouble of answering the charge, till the plaintiff had made out at least a probable case; but the actual production of the "suit," —the secta,—or followers, is now antiquated, though the form of it still continues." See 3 Bla. Com. 295; Gilb. C. P. 48; Steph. on Pl. 475 (2nd ed.); 1 Chitt. Pl. 452, 453 (5th ed.).

acquainted with the whole transaction, as to require little or no recital of circumstances; but how is a *third party*, an utter stranger, to be put on a footing with them, in order to decide fairly? "For," to adopt the language of an elegant writer, "in suing, either for a right detained, or a wrong committed, the plaintiff is to recover by his own strength, and not by the defendant's weakness. And if, in point of prudence, as well as justice, he ought to demand no more than he can prove; in point of general convenience, he ought to demand it with that certainty and precision, which may enable the defendant to answer the demand—and a third person, an entire stranger to both, sitting in a court of justice, to judge between them. This, I take it, is the essence of a 'declaration,' in the abstract; it is common to every form, and without which no form of a declaration is perfect. And though the wisdom of the law has invented different forms of actions for the recovery of different rights, you will find that the substantial part of any 'declaration' is, as to its great outlines, what any person of good sense would most probably put together in a demand of that nature *." In short, as observed by Lord Chief Justice De Grey and Mr. Justice Buller, the great object and use of pleadings are the appropriate statement of *facts*, as contra-distinguished from the state-

* Wynne's Eunomus, p. 198.

ment of mere argument or legal deduction, conclusion, or result; in order that the adversary may be fully informed what facts are intended to be relied upon by his opponent, and thereby have an opportunity either to traverse or deny the plaintiff's allegations, or to state such new facts as he may consider will constitute the best answer; and *be prepared with evidence* either to contradict the plaintiff's, or support his own allegations: in order, also, that the court and judge, on the trial, may be explicitly informed of the material facts, and enabled properly to direct the jury which facts are, or are not, material for them to consider and determine upon, before they find their verdict; and, finally, to enable the *judge* to declare to the jury the *legal rights* of the parties arising upon such facts—supposing the jury to find that such facts exist. In other words, the use of pleading is, to state such material facts upon the record, as may *plainly* bring the merits of the case into question before the jury *.

To proceed, however. This declaration is presently laid before the defendant's pleader, who must do one of two things: either object to the legal sufficiency of the declaration, for error, either formal or substantial, apparent on the face of it, or answer the charge by matter of fact. In the first case he is said to *demur;* in the second to *plead.* He scrutinises the document narrowly; and if he find it inaccurately framed, or

* Cowper's Rep. 682, 683; Douglas, 659; Taylor *v.* Eastwood 1 East, Rep. 216, 217; Chitt. Con. View. pp. 13, 14.

that the facts stated themselves afford no ground of action, he says, simply, "This declaration is not sufficient in law *." If, however, he can discover no flaw in it, he turns to the statement of facts laid before him on the part of the defendant, to see whether he can frame out of them a *plea—i. e.*, "an answer of fact." He has still the opportunity of fighting off *the merits* of the case, by resorting to a plea "in abatement," as it is called—a *dilatory* plea, which has the effect only of defeating that particular action, without impugning the *right* of action itself: "as all policy and order," says an old judge, "instruct a man first to skirmish and practise some slight defeats, before he join battle, so we begin first with pleas to the jurisdiction, then to the person, then to the writ, then to the action itself †." Suppose, for instance, the plaintiff has commenced in one of the courts at Westminster, an action, the exclusive cognizance of which belongs to some other court—the defendant "will plead *to the jurisdiction.*" Suppose, again, that the defendant can prove either the plaintiff or himself to be an *alien enemy* that personal disability he will

* Reg. Gen. Hil. T. 4 Will. 4, R. 14. "A *demurrer* [from the Latin *demorari*, or French *demorrer*, 'to wait, or stay'] imports, according to its etymology, that the party objecting *will not proceed* with the pleading, because no sufficient statement has been made on the other side; but will wait the judgment of the Court, whether he is bound to answer."—Steph. on Pl. p. 65.

See forms of demurrer in the Appendix.

† Colt and Glover *v.* Bishop of Coventry and Litchfield, Hobart's Rep. 164.

plead "in abatement *;" or suppose the lease was made to him, jointly with another person, this fact also, of non-joinder, he will plead "in abatement †." If, however, none of these sources supply him with matter of preliminary and temporary defence, he has nothing for it, but to address himself to the MERITS of the case—which he must approach in the most direct and unequivocal manner possible. He must adopt what is called a "*peremptory* plea,"—a plea in BAR,—a substantial and conclusive answer to the action. Such a plea "must either DENY *all*, or *some essential part* of the averments of fact in the declaration; or, admitting them to be true, allege NEW facts, which obviate or repel their legal effect. In the first case, the defendant is said to TRAVERSE—[*i. e.*, to deny, by way of *express contradiction*, in terms of the allegation traversed]—the matter of the declaration; in the latter, to CONFESS, and AVOID it. Pleas in Bar are consequently divided into those by way of traverse, and those by way of confession and avoidance ‡." The following tabular view of Pleas in Bar to actions of covenant, will give the reader a clear notion of the scheme of such defences:—

* This defence is pleadable in *Bar* as well as in abatement.

† See specimens of Pleas in Abatement in the Appendix.

‡ Steph. p. 75.—"*Defence*, in its true legal sense, signifies, not a justification, protection, or guard, which is now its popular signification, but merely an *opposing*, or *denial* (from the French verb 'defender'), of the truth or validity of the complaint. It is the *contestatio litis* of the civilians; a general assertion that the plaintiff hath no ground of action; which assertion is afterwards extended and maintained in his plea."—See 3 Bla. Com. pp. 296-7.

DEFENCES TO ACTIONS ON CONTRACTS UNDER SEAL.

- 1*st*.—DENY THAT THERE EVER WAS A CAUSE OF ACTION.
  - 1*st*.—No deed in fact made, or that it was delivered as an *escrow*.
  - 2*ndly*.—Deed invalid.
    - 1*st*.—Defendant's incapacity to contract.
      - 1*st*.—Infancy.
      - 2*ndly*.—Lunacy.
      - 3*rdly*.—Coverture.
      - 4*thly*.—Duress [the case put in the text].
    - 2*ndly*.—Illegality of consideration, or contract.
    - 3*rdly*.—Deed obtained by a fraud, &c.
    - 4*thly*.—Contract, impossible to perform.
  - 3*rdly*.—Admitting that the deed was originally valid, *excuse of performance*.
    - 1*st*.—Erasure, alteration, &c.
    - 2*ndly*.—Deed become impossible to perform.
    - 3*rdly*.— ———— illegal to perform.
    - 4*thly*.—Plaintiff's non-performance of a condition precedent.
    - 5*thly*.—*Non Damnificatus*, no award, &c.
  - 4*thly*.—Performance in pursuance of the deed.
    - 1*st*.—*Solvit ad diem*.
    - 2*ndly*.—Performance, &c.
- 2*ndly*.—ADMIT THAT THE PLAINTIFF ONCE HAD A CAUSE OF ACTION, BUT AVOID IT BY SUBSEQUENT, OR OTHER MATTER.
  - 1*st*.—Disability of the plaintiff to sue.
    - 1*st*.—Alien enemy.
    - 2*ndly*.—Outlaw.
    - 3*rdly*.—Bankrupt, insolvent debtor, &c.
  - 2*ndly*.—Defendant not liable.
    - 1*st*.—A certificated bankrupt.
    - 2*ndly*.—An insolvent debtor.
  - 3*rdly*.—Cause of action discharged.
    - 1*st*.—By payment *post diem*.
    - 2*ndly*.— „ accord and satisfaction.
    - 3*rdly*.— „ foreign attachment.
    - 4*thly*.— „ tender.
    - 5*thly*.— „ arbitrament.
    - 6*thly*,— „ former recovery.
    - 7*thly*.— „ release.
    - 8*thly*.— „ statute of limitations [3 & 4 W. 4, c. 42, § 3].
    - 9*thly*.— „ Set off.
  - 4*thly*.—Pleas by executors, heirs, devisees, &c. &c. *

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* See 1 Chitt. Pl. p. 505 [5th ed].

Our tenant cannot, however, deny that he executed the lease containing such a covenant as is set forth in the declaration—or that he has been guilty of such a breach of the covenant as is there alleged; and is therefore unable to *traverse.* Can he then plead by way of confession and avoidance?—*i. e.*, admitting every thing in the declaration, bring forward *new matter* to nullify its effect? Yes—for the plaintiff has discharged him from all liability, by a deed of release, the substance of which he sets forth in his plea, and concludes by saying that he is "ready to verify" what he says. This is immediately delivered to the plaintiff's pleader, accompanied with a statement, on the part of the plaintiff, of the circumstances under which this said deed of release was obtained—namely, that the defendant inveigled the plaintiff to his house, where the deed of release was lying ready prepared, and compelled him to execute it, by threats of personal violence and imprisonment, which the law calls "duress." This fact, accordingly, he states as a complete answer to the plea: it is called his REPLICATION, and, as well as the plea, is not a traverse, but a confession and avoidance. This document is forthwith forwarded to the defendant's pleader. Now, the first consideration which strikes him is,—supposing the fact to be as stated—is it, *in point of law*, a valid answer to the plea? He examines into the point, and finds that it *is* good in law; had it been bad, he would instantly have said so, and cut short the pleadings, by

referring it, in the shape of a demurrer *, to the judge, whose exclusive province it is, and always was, to judge of matters of law†. He is instructed, however, that the replication is wholly false in fact—that the release was obtained fairly. What can he do, but say so? He meets the plaintiff's assertion, therefore, of duress, with a point-blank denial—a *traverse*—which is called his REJOINDER, (concluding to the country—*i. e.*, to the *jury*, "and of this the said defendant puts himself upon the country,") and is dispatched, as such, to the plaintiff's pleader. All *he* can do, is to add a short form, called a "JOINDER IN ISSUE," [or *similiter*—*i. e.*, "and the said plaintiff doth the like,"] and the pleading is at an end‡. The whole is then fairly and accurately copied out on paper,—a transcript forwarded to the judge of Nisi Prius, to inform him of the nature of the cause,—and each party knows that all he has to do at the trial, is to prove, or disprove, the single fact of "duress." "The structure of a record, raised on these foundations, is not less solid than the demonstration of a proposition in Euclid; and pleading formed on these maxims, is not only matter of *science*, but,

* See specimens of Demurrers in the Appendix.

† Thus, in the Placitorum Abbreviatio, there is an entry, in the 6th year of Richard I., that "*sub judicibus* lis et contentio fuit, utrum carta prædicta debit teneri versus puerum qui infra ætatem." [Plac. Ab. 5 Warr, temp. 6 Rich. I.] And again, in the fourth year of King John, the jury, upon an inquisition, declare "non pertinet ad *eos* de jure discernere." [*Id.* 40 Linc' temp. 4 Johann.] —Steph. Pl. app. xvi.—See the learned note of Mr. Hargrave, Co. Litt. 155 b (5), and Wynne's Eunomus, Dialogue III. 523, &c.

‡ The pleadings are given at length in the Appendix.

perhaps, affords some of the best specimens of strict genuine logic*." Let us, however, ask,—is not all this common, or rather *good*, sense? What method can be more exquisitely adapted than this, to get at the real merits of a case—judging each party "out of his own mouth," and securing the speedy, accurate, and dispassionate investigation of a Court of Law? Look, for a moment, at the expense and trouble saved to the parties: the landlord is saved from bringing witnesses to prove the execution of the lease, or that the covenant was in fact broken, because the tenant has been compelled to admit them, and rest his defence on the deed of release,—being, in his turn, saved the trouble and expense of proving the execution, &c., of his release; because his landlord has been obliged to acknowledge that in point of fact such an instrument was executed, and rely entirely on the illegality of the circumstances under which it was obtained. The *status quo* of matters is, in short, exactly this: "I own I must pay," says the tenant, "but for this release"—"and I," replies the landlord, "admit that I must fail, unless I can impeach its validity."

"The jury are to take no matter into consideration but *the question in issue*, for it is to try the issue, and that only, that they are summoned†."

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* Wynne's Eunomus, p. 204.

† Steph. Pl. p. 116.

This, then, is SPECIAL PLEADING—such the series of "allegations of fact, mutually made on either side, by which the Court receives information of the nature of the controversy;" thus have the parties, each dislodging the other from his last position, alternately driven one another along, till they have arrived, at length, "at some specific point, or matter, affirmed on the one side, and denied on the other." And is not this, or rather ought it not to be the case, with every well-conducted controversy?—"If the manner of coming to an issue," says Mr. Serjeant Stephen, in one of his many interesting and valuable notes, in the appendix to his Treatise on Pleading, "be considered in a view to its *abstract* principle, it will be found to consist in an application of that analytical process by which the mind, even in the private consideration of any controversy, arrives at the development of the question in dispute. For this purpose, it is always necessary to distribute the mass of matter into detached contending propositions, and to set them consecutively in array against each other, till, by this logical conflict, the state of the question is ultimately ascertained. This ranks, in the present day, among those ordinary logical operations which it is easier to practise than to define, and which it would be superfluous to attempt to reduce to scientific rule. It was, however, as applied to the purpose of forensic disputation, a very favourite topic with the ancient writers

on dialectics and rhetoric; and there was no subject connected with these sciences on which they bestowed more elaborate attention. '*Status excogitandi*,' says Sigonius, 'atque eo probationis omnes conferendi, artificium, in libris oratoriis, multis verbis est demonstratum; neque enim in aliis præceptis antiqui rhetores, tam Græci quam Latini, plus studii aut operis consumpserunt*.' The *question in controversy* is described, among these writers, by the different terms κρινομενον—summa quæstio—res de quâ agitur—quæstio ex quâ causa nascitur—judicatio—and others of similar import, all expressive of the same general idea, though slightly distinguished from each other in their particular application. When this question was developed, there was said to be a *status*, or *constitutio*, *causæ*. Of these 'status' there were many classes, according to the different kinds of questions that might arise, involving not only the distinction recognised in our pleading, between questions of *fact* and of *law* [status conjecturales, et legales], but many additional distributions into status finitivæ, translativæ, and many others, corresponding with the various logical divisions under which the different subjects of civil dispute may be considered. As a specimen of this obsolete but curious learning, and, at the same time, as the best illustration of what is the natural progress of the mind, in effecting that development

* Car. Sigon. de Judiciis. See also Quinctil. lib. iii. c. 6; Cic. in Topic. c. 25; Ger. Vossius Instit. Orat.

of which we have spoken, the following passage of Quinctilian deserves attention :—

* * "In all forensic controversies, I took care, in the first place, to inform myself of all the different matters involved in the cause. * * After thus placing the whole matter of the controversy distinctly in my view, it was my habit to *analyse* it, as well on the part of my adversary as on my own. And first, I applied myself to that which, though easily described, requires a peculiarly attentive performance—I mean, I ascertained what case it was the object of either party to make, and by what allegations such cases might be respectively supported. With this view I began by considering what might be alleged by the plaintiff. This statement would necessarily be either admitted or denied on the part of the defendant. If admitted, no question could, at that stage, arise. I therefore proceeded to consider what would be the defendant's answer; and to this I applied the same dilemma, of admission or denial, by the plaintiff. Accordingly, sometimes the matter of the answer would be admitted, but, all events, *there would, at some period of the process, arise a contradiction between the parties*, and it is then that the question in the cause is first ascertained. For example :—

"'You killed such a man.' Admitted. We proceed. The defendant must now assign some reason for this act.

"'It was lawful to kill him, as surprised in adultery

with my wife.' There is no doubt of the law; we must, therefore, seek in some other point the subject of contention.

"'The parties surprised were not committing adultery.'

"'They were.'

"This, then, is the question, and it is a question of fact. In some cases, however, there might be a further admission.

"'They were in adultery, but you had no right to kill him; for you were an exile, and infamous person.' And here arises a question of law. If, on the other hand, to the first allegation,—'You killed,' it had been answered, 'I did not kill,' the question had been ascertained at the outset. By this kind of process is the matter in dispute, or main question in the cause, to be investigated *." "This oratorical analysis of Quinctilian," proceeds Serjeant Stephen, "exhibits exactly the principle of the English pleading; and when it is considered that the logic and rhetoric of antiquity were the favourite studies of the age in which that science was principally cultivated, and that the judges and pleaders were, doubtless, men of general learning, according to the fashion of their times—it is, perhaps, not improbable, that the method of developing the point in controversy was improved from these ancient sources. On the other hand,

* Quinct. lib. vi. vii. c. 1.

however, it seems not to have been wholly derived from them; for the same method will appear to have been substantially in the possession of the barbarous Franks and Lombards, with whom it was, presumably, a native invention *."

Such, then, is the slender framework of statement, exquisitely contrived and fashioned for the purpose, upon which facts of the utmost complication,—the greatest amount of property,—causes involving the interests of thousands of individuals, and the rights of those yet unborn,—are carried into court for the examination of a judge and jury. It requires only a single sheet of paper, or at the most two or three, by no means closely written, to contain the special pleading by which a dispute involving the right to an estate of 50,000*l.* a year, derived from land of various kinds of tenure; complicated accounts of many years' standing; the property, and even characters, in short, of all,—is brought into court, fitted for adjudication. Simple, however, as is this machinery, and comprehensive in its application, the student must not imagine it to be of easy acquisition, or use. A consummate pleader must needs be a consummate lawyer; for nearly the whole body of the law is, in one way or another, connected with—involved in—the doctrines and practice of pleading. It requires very extensive and accurate knowledge,

* Steph. Pl., App. pp. xxxi.—xxxv.

as well as close thought, to decide, for instance, on the very first question that occurs in every pleading —who will be the proper PARTIES to the action? Who ought to be,—who *may*, who *must*, be the plaintiff, who the defendant, "as well in actions on contracts, as for torts (i. e. *wrongs* unconnected with contract); and not only with reference to the interest and liability of the original parties, and the number of them, and whether standing in the situation of agents, joint-tenants, tenants in common, or partners, and who are to join, or be joined; but also where there has been an assignment of interest, or change of credit, or survivorship between several, or death of all, or any of the contracting parties, or bankruptcy, insolvency, or marriage*." Suppose, for instance, in the case of landlord and tenant abovementioned, that the landlord, either before or after the breach of covenant complained of, had died, either with, or without a will; or that just before his death he had *sold* the house in fee to a man who had become bankrupt, or had mortgaged it twice over, and both mortgagees had either become insolvent, or died: or again, that the lessor had

* 1 Chitt. Pl., Pref. v. vi. (5th ed.) "There are no rules connected with the science of pleading so important as those which relate to the persons who are to be the parties to the action; for if there be any mistake in this respect, the plaintiff is, generally, compelled to abandon his suit, and to proceed *de novo*, after having incurred great expense."—*Id.* p. 1.

bequeathed the house to two persons in trust for one of his nephews, and in case of his death, to his brother; and after the death of his nephew, one of these trustees also dies, and the other becomes insolvent; who ought, in any of these cases, to be made the *plaintiff?* The landlord—his widow—his executor—his first or second mortgagee, or either of *their* respective assignees — *his* assignees — the trustees—the representatives of the dead trustee, or assignee of the bankrupt one—or the second nephew, under the will of the lessor? If out of all these persons the wrong one should be selected, the consequences would be extremely serious! Suppose, again, the case of the *tenant's* death, or bankruptcy, or insolvency, either before or after the expiration of the lease, or breach of covenant,—or that he had assigned his interest in the lease to a person who is dead or bankrupt, and whose assignees have turned over the lease to a stranger, a *woman*, who the next day marries—that her husband pays rent, and then assigns the lease to a man who becomes bankrupt, and obtains his certificate, &c. &c. &c.—who out of all these persons ought to be made the *defendant?* All the above, however, are very simple cases—they are of daily occurrence. It would be easy to fill the remainder of the volume with the instances that are perpetually transpiring of real and very great difficulty in the selection of proper parties to an action.

Then, again, what shall be the FORM of action

adopted?—another matter of capital importance, into which it would be in vain here to enter. Let the reader only consider the vastly-varied facts arising out of the ordinary transactions of life—the infinite disputes concerning rights and liabilities—which set in motion the machinery of a court of justice, and consider that there are but eight or nine forms of action known in the common law,—forms which are fixed and invariable as the great principles which regulate the administration of justice,—forms which must be accurately observed, or litigation will secure only grievous disappointment, and fruitless expense. Truly, indeed, in this respect, did Sir Edward Coke speak of pleading as the "sure oracle of the law"—"*ipsius legis viva vox*"—"*lapis lydius*, the touchstone of the true sense and knowledge of the Common Law." There is not a single cause, either in commercial or real property law, however plain in its merits, that may not be perilled and lost through erroneous pleading; either in the mis-choice of the form of action, or a mistake in the technical structure of the pleadings. Of this an example has been already given *.

There are two grand divisions of what are called personal actions;—EX CONTRACTU (*i. e.* actions for breach of contract) and EX DELICTO (*i. e.* actions for wrongs unconnected with contract). The former are

* See *ante*, pp. 238–245.

principally, "assumpsit," "debt," "covenant," and "detinue;" the latter, "case," "trover," "replevin," "trespass *." All of these have numerous rules, regulating both their substance and form, and an exact knowledge of which is essential to him who uses them. It is often a difficult matter, for instance, to ascertain whether the action should be in form *ex contractu*, or *ex delicto*; and again, this point settled as to the *genus*, a more difficult one arises, as to the *species*; and still greater difficulty, as to the *details* of each form—details which often depend entirely on the particular combination of facts, and the ingenuity and experience of the pleader, accordingly as he is called upon to adapt or invent. He is required, generally speaking, in every instance to say, on considering a given state of facts, whether any action lies, or defence be sustainable at all,—if so, of what kind; and then to draw them in the appropriate form, in, for instance, the following cases:—

Disputes between the consignor, consignee, and carrier of goods, as to who ought to bear their loss; between the buyer and seller of all kinds of real and personal property, either party failing to perform his agreement, under an endless variety of circumstances; the numerous parties to a dishonoured bill of exchange, or promissory note,—a vast and intricate

* Explanations of these terms will be found in all the books of practice.

branch of litigation; between all manner of persons respecting "works and services"—attorneys, surgeons, surveyors, schoolmasters, innkeepers, manufacturers, tradesmen, &c. &c. &c.; and these, too, in every species of representative and derivative character, *e. g.* trustees, executors, administrators, legatees, assignees, partners, &c. &c. &c.; actions for libels; slander; breach of promise of marriage; criminal conversation; seduction; nuisances; assaults; trespass to lands, and goods; frauds; actions on penal statutes; claims to landed property, of various kinds and degrees of intricacy, &c. &c. &c.

The statements of all these cases must be distinctly understood, and carefully weighed; facts material must be separated from those immaterial; all their bearings must be well considered, with reference to analogous decided cases; and their legal effect having been thus ascertained, due learning and acuteness having been displayed by the pleader in the law regulating rights and wrongs, then come to be considered—remedies. *Is* there any remedy? Should it be sought in a court of equity, or of law, or of bankruptcy, or court ecclesiastical, or of Admiralty? Is there a remedy in *any* of these courts?—or does the case fall within the provisions of any statute, referring certain disputes to arbitration, &c.? This point cannot be decided without a general knowledge of the jurisdiction of the respective courts, especially those of law and equity. If the former of these be the

proper tribunal, how ought it to be approached? By mandamus, quo warranto, or any summary application?—Or ought an action to be commenced? In what form? Having selected the proper one, then all the rules of pleading must be called into exercise to enable him to conduct the case through, it may be, all the successive stages of a suit—declaration, plea, replication, rejoinder, surrejoinder, rebutter, surrebutter*, till the goal has been reached—an "issue" produced. But his labours do not end here; the case has been *shaped*, but it must be *supported*—by evidence. The solicitor has to prepare his brief for the trial; and his first step is, to send a draft of the intended brief, comprising a full statement of facts, an abstract of the pleadings, and epitome of the proposed proofs, in the form of a "case, to advise on the evidence." Here is a responsible duty cast upon the pleader! He must first make himself thoroughly master of the whole facts, and then consider how they are affected by the pleadings. Some are conclusively *admitted;* and with them, therefore, he has nothing to do, but be QUITE SURE that they are so admitted. A mistake on this score would have a two-fold effect—to show that the pleader was equally ignorant of pleading and evidence. What

* "Which pleas, replications, rejoinders, sur-rejoinders, rebutters, and sur-rebutters, answer to the *exceptio*, *replicatio*, *duplicatio*, *triplicatio*, and *quadruplicatio*, of the Roman law."—*Inst.* 4, 14; *Bract.* l. 5, tr. 5, c. 1.—See 3 *Bla. Com.* 310.

must a client think of an adviser who has put him to great expense and vexation in bringing witnesses to prove a fact which the defendant was by his pleading clearly estopped from denying? Or who has represented that to be admitted on the record which clearly is *not*—and so led his client to disregard the production of the evidence by which alone his case can be made out! Let him imagine his agitated client listening to the judge: "Have you no proof of this? If not, the plaintiff must be called!" (*i. e.* non-suited.) And the leading counsel's infuriate whisper, "Who got up this case? Who advised on the evidence?" And lastly, his mortified and defeated client's vow never again "to employ Mr. ——!"

> "Think thou of all these things, and pause—
> Heedful, lest they befall thee!"

The student must also ever bear in mind that the urgency of legal business seldom allows of procrastination. The young practitioner must decide *promptly* on the multifarious matters submitted to him. Complicated as may be the facts, difficult as may prove the selection of the requisite forms of process, and the evidence which will be needed for the trial, the pleader must make his decision, generally speaking, *at once*, if he wishes to get through only a moderate share of business: and how can all this be done, with either comfort or safety, unless to

a clear and thorough knowledge of legal principles is added an accurate knowledge of forms, ready and dexterous reference to decisions, and a correct application of them?

The pleader is also expected to afford prompt assistance to his clients in the sudden exigencies arising in PRACTICE; for which purpose a familiar knowledge of the "practice of the courts" is indispensable. If a client cannot obtain and confidently rely upon such assistance, the chances are that he will desert his pleader; nay, he *must* do so, either partially or altogether; for he cannot trouble one man with such questions, and give his pleading business to another.—Thus, therefore, it is that our young practitioner is exercised betimes in pleading, practice, and evidence; three paths, as it were, which traverse nearly the whole territory of the common law. A little persevering attention will suffice to show him the mutual bearings of these three upon one another,—that the knowledge of one is, to a considerable extent, a knowledge of them all.

It ought to be stated, however, that the practice of special pleading is by no means in itself a *lucrative* one. "A young pleader should think himself fortunate," said, the other day, one of the greatest ornaments of the Bench, "if he is able to pay for his library out of his business—at least, *I* did." His fees range between 7*s.* 6*d.*, 10*s.* 6*d.*, 15*s.*, and a guinea; and to earn even the smallest of these sums

requires often great labour and skill. Pupils' fees do certainly contribute to "swell his modest gains;" but it should be borne in mind that the practice of pleading ought, in general, to be viewed as only means to an end. The individual who has patience, resolution, and ability enough to apply steadily to it, even though he should not earn money, is, in point of fact, engaged in thoroughly and practically *studying* his profession in all its secret turnings and windings, — facilitating his discharge of the court business that may hereafter come to him, and slowly but surely organising a connexion which will support him at the Bar.

It is hoped that the above will be found, with reference to our present limits, not an inaccurate or exaggerated representation of the peculiar province of special pleading *. Can it, then, be necessary to insist upon the advantages, nay, the absolute necessity

* The author had prepared, with some pains, an account of the great alterations which have been very recently effected in pleading, but found he could not insert it, without adding to this chapter nearly a third of its present length. He has, therefore, thought it better to omit here all mention of the subject, except in this note; as it is thought that a sufficiently accurate idea for non-professional persons, of the changes which have taken place, may be gathered from the "Introduction" (*ante*, pp. 16—20.). See also the excellent tract lately published by Mr. Chitty, entitled, "A Concise View of the Principles, Objects, and Utility of Pleadings, &c. &c. with reference to the New Rules." (1834.) "The whole improved system of the law," says Mr. C., "whether as it regards *practice* or *pleading*, may be now considered as nearly, if not entirely, FIXED, as it will be practised for many years."—*Id.* Pref. v.

of blending the knowledge both of chamber and court practice? Every one that is competent to express an opinion will tell the student, that to attempt going into court with any prospect of success otherwise than through a special pleader's chambers, is preposterous. "However the petulance of wit or warmth of imagination may tempt the hasty and unthinking youth to look upon the persons who are bred up to such a scene of drudgery as no better than 'hewers of wood and drawers of water,' he will one day be sensible, that to fix a plea, or settle a draft with accuracy, is the readiest introduction to business, the surest inlet to reputation*." To a young counsel ignorant of pleading, a brief will be little else than a sort of Chinese puzzle. He must either give up in despair all attempts at mastering its contents, or hurry in ridiculous agitation from friend to friend, making vain efforts to "cram" himself for the occasion; and then, feverish with anxiety, wretched under the apprehension of public failure, and the consciousness of incompetence, after trembling in court lest he should be called upon to show himself, return to chambers to curse his folly—to make too late exertions to retrieve his false position, or abandon it for ever, with all the cloud-picturings of a vain and puerile ambition. He, on the contrary, who has gone successfully through the routine of pupilage,

* Simpson's Reflections, pp. 48, 49.

or even the practice of pleading, though but for a year or two, will despatch the most intricate and responsible business with ease, satisfaction, and credit. Secure in previously-acquired and well-methodised learning, he will have but to *use* it; and all the judges and juries in the kingdom will fail to "fright him from his propriety." Let not, then, the young reader despise or dread these mysterious personages —special pleaders— "the people who furnish the language and conversations of the courts; yet how few of them are seen there themselves! Like poets, they plan the drama which others are left to perform *."

"Notwithstanding the deference that is paid," observes a judicious and experienced author, "and the greater rewards that are given, to those who happen to be blessed with the power of elocution, still the *draftsmen* are to be considered as the master-builders. They are the architects who form the plan, and lay the foundation for all those beauties with which eloquence charms the ear and captivates the judgment. If the foundation happens to be bad, or defective, the whole superstructure and assemblage of ornaments, grand and magnificent as they may seem, at once tumble into ruin †."

"There are but two sure ways of getting on at

* Wynne's Eunomus, p. 155. † Simpson's Reflections.

the Bar," said a distinguished judge, who had been an admirable special pleader, "special pleading, or a miracle. I preferred the former!"

*** The Act to establish a Court of Bankruptcy (1 & 2 W. 4, c. 56, § 1), contains the following important enactment in favour of SPECIAL PLEADERS:—

It shall be lawful for his Majesty, "by a Commission under the Great Seal, to appoint (the Chief Justice, &c.) and three persons, being serjeants or barristers at law, of not less than ten years' standing at the bar, or of *five* years standing at the bar, *having previously practised five years as a special pleader under the bar*, to be other judges of the said court; and six persons being barristers at law, of not less than seven years' standing at the bar, or of four years standing at the bar, *having previously practised as a special pleader for three years below the bar*, to be called Commissioners, &c. &c.

CHAPTER X.

COURSE OF READING,

WITH REFERENCE TO

PLEADING, PRACTICE, EVIDENCE, REAL PROPERTY, AND COMMERCIAL LAW.

WHATEVER confidence the author may feel in the soundness of his opinions as to the proper course of reading to be adopted by the common-law student, it cannot but be abated, when he adverts to the singular discrepancies existing between the recommendations of advisers in our own day,—even as was the case in Roger North's time,—who complained that "of those who were so civil as to assist a novice with their advice, what method to take, few agreed in the same,—some saying one thing, some another, and amongst them rarely any one that was tolerably just." At least three widely different courses of reading were recommended to the author, greatly to his vexation and embarrassment, on entering the legal profession; and he was not relieved from his dilemma by a reference to several of the

works professing to "guide" legal learners. There is, however, one very obvious cause for such contrariety of opinion. The Common-law branch of the profession has so many distinct compartments; so many different kinds of knowledge are required before the pupil can advantageously address himself to business; the calls of that business upon his attention are so *simultaneously* urgent, that neither the pupil himself,—nor often his adviser,—can readily make up his mind which subject to commence, much less which to persevere with. In attempting to read a single case, he is often distracted by the multiplicity of topics it involves: and so he begins, unless under very firm and judicious superintendence, to enact the part of a legal grasshopper—jumping about from one subject to another—learning nothing distinctly and thoroughly, but satisfied if, by any means, he can get over each individual exigency. This being the case, different advisers, considering also the different tempers and abilities of students, have suggested very different remedies. Some, as before intimated, would have a youth devote a year or two to preliminary and solitary study,—but of what books no two can agree. Others, considering, with the author, that the period of life and circumstances of the bulk of law students, will not prudently admit of such a postponement of the practical commencement of their studies, advise them to put themselves at once under the superintendence of a pleader; but

here, again, no two agree in the course of study to be pursued. Some urge the concurrent, others the consecutive study of works on three or four subjects. Some recommend a diligent perusal, in the first instance, of one comprehensive elementary text-book, such as Blackstone's Commentaries; while not a few advise the student to give up all idea of consecutive or systematic reading—at least for several years—and pick up his knowledge by practice alone. There are who insist upon the poor student's laying a

"Foundation deep and sure,"

in the abstract principles of the science of jurisprudence—wading to the common law through the deep waters of Grotius, Puffendorff, Burlamaqui, and Vattel! And, lastly, some advise him to approach it through the long and dusky avenue of historical research.

One class of advisers, again *, follows the Lord Chief Justice Reeve; who has left it as his opinion, that "the best, the easiest, and the shortest way for a man to be educated, and formed to be a lawyer, is to make himself master of Lord Coke's Commentary upon Littleton's Tenures †."

"Him if we will hear,
Light after light well-used we shall attain,
And, to the end persisting, safe arrive!"

Lord Mansfield, however, speaks in a very different

* Mr. Ritso and others.

† Harg. Coll. Jur. vol. i. p. 79.

strain of Coke upon Littleton—as "an uncouth, crabbed author, who has disappointed and disheartened many a tyro *." This course has, indeed, been loudly and generally condemned, as tending to disgust, confound, and mislead the student at the very outset of his career, by plunging him at once into the abstrusest discussions, often, too, upon branches of law which have fallen into desuetude †; and his difficulties are enhanced by the total want of method exhibited by Lord Coke; and, indeed, incident to the functions of a commentator ‡.

Some will have the student begin with Wynne's Eunomus, Blackstone's Commentaries, Sullivan's or Woodeson's Lectures, or Reeve's History of English Law.—"Betake yourself at once to Chitty's Pleadings," say others; or "Selwyn's Nisi Prius," or "Tidd's Practice §." Without venturing to offer

* Hollinshed's Life of Mansfield, p. 89.

† See an instance of this kind cited at page 225 (note.)

‡ "The principal value of the writings of Sir Edward Coke," observes one of his learned editors, Mr. Butler, "consists in their being the centre of ancient and modern law."—Pref. to Co. Litt.

§ To the last edition of Wynne's Eunomus (by Bythewood) there is prefixed the following "plan of reading for special pleaders;" for which, the editor says, in a note, he "has been considerably indebted to a course of reading prepared by a gentleman eminent in the science of pleading:"—

Buller's Introduction to the Law of Nisi Prius.
Selwyn's Abridgment of ditto.
Starkie on Slander.
Holt on Libels.
George on Libels.

any observations on the propriety or impropriety of any of these suggestions, the author will proceed in the present chapter to sketch out a course of practical

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Retrace Blackstone's Commentaries, vol. iii. pp. 119—143; Buller's Nisi Prius, pp. 3—24; Selwyn's Nisi Prius, titles, Assault, Imprisonment, and Adultery, reading the appropriate titles in Bacon's Abridgment and Comyn's Digest.

Retrace Blackstone's Commentaries, vol. ii. from chap. xxiii. to the end.

Powell on Contracts.

Comyn on ditto.

Long on Purchases of Personal Property.

Roberts on the Statute of Frauds, pp. 104—240.

Jones on Bailments.

Bayley on Bills of Exchange, by Barnes.

Chitty on ditto.

Abbott on Shipping.

Lawes on Charter Parties.

Park on Insurance.

Marshall on ditto.

Watson, or Montagu, on Partnership.

Paley on Principal and Agent.

Chitty on Apprentices.

Whittaker, or Montagu, on Lien.

Montagu on Set Off.

Cullen and Whitmarsh on the Bankrupt Laws, referring to Roots's edition of Cooke, Christian, or Montagu, on the Bankrupt Laws.

1 Geo. 4, c. 119, relating to Insolvent Debtors*.

Roper on Husband and Wife.

Kyd on Corporations.

Kyd on Awards, or Caldwell on Arbitration.

Toller's Law of Executors.

Retrace Blackst. Com. vol. ii. to the end of ch. xxiii.; Roberts on the Stat. of Frauds, from pp. 241 to 287; Sugden's Vendors; Bac.

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* Mr. B. was writing in 1822.

reading which he has had several opportunities of seeing most successfully prosecuted. It will be found, he hopes, to steer clear of the *præpropera praxis*, and *præpostera lectio*, so pointedly and justly reprobated by Lord Coke *; and that thus the advice of Quinctilian may be constantly kept in view, and acted upon: —

Modus mihi quidam videtur tenendus, ne quæ præpropere distringatur immatura frons, et quicquid est illud adhuc acerbum proferatur. Nam inde et contemptus operis innascitur, et fundamenta jaciuntur im-

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Abr. Tit. *Leases*; Comyn on Landlord and Tenant; Gilbert on Distresses; Bradby on ditto (reading 57 Geo. 3, c. 193); Runnington on Ejectment; Gilbert on Uses; Sugden on Powers; Coote on Mortgages.

Retrace Blackst. Com. vol. iii. ch. viii.—xxi.; Summary Treatise on Pleading; Lawes on Pleading, in assumpsit; Chitty on Pleading; Saunders's Reports, with Serjeant Williams's Notes, referring, with the two last, to Archbold's Pleading and Evidence.

Phillips on Evidence, referring to Gilbert on ditto, Peake on ditto, and Archbold's Digest.

Crompton's Introduction; Sellon's Practice; Boote's Suit at Law; Gilbert's Common Pleas; Tidd's Practice and Forms.

Retrace Blackst. Com. vol. iv. omitting the last chapter; East's Pleas of the Crown, and Russell on Crimes, referring to Hale's Pleas of the Crown, Hawkins's ditto, Foster's Crown Law, and Coke's Third Institute; Chitty on Criminal Pleading.

Chitty on the Game Laws, and on Fisheries.

Paley on Penal Convictions.

Nolan's Poor Laws, referring to Bott on the Poor Laws, and the fourth vol. of Chetwynde's Burn's Justice.

"This course of reading may be pursued FROM HALF PAST ELEVEN TILL TWO, by those who intend to become Special Pleaders." Eunomus. Pref. (By Bythewood,) p. xlvi.

* Co. Litt. 70, b.

pudentiæ, et (quod est ubique perniciosissimum) prevenit vires fiducia *.

It may be recollected that in a former part of this work the author endeavoured to point out the advantage, and, indeed, necessity, of the student's early directing his attention to the *machinery* of law, before addressing himself to the systematic acquisition of that upon which such machinery operates. It is no part of his design, however, to recommend, in the first instance, the *exclusive* study of pleading and practice. It will be found, on the contrary, that he has endeavoured to secure the concurrent pursuit of such knowledge, and that which may be termed the *general* science of the law; giving only greater prominence to the acquisition of the former, because the want, or undue postponement of it, will perpetually harass the student, and interrupt his progress when his time is most valuable, and his opportunities are the fewest. There is scarce a single topic, in any department, but will be found clogged with technical expressions, which he must distinctly understand,—and for that purpose hurry to the elementary books of pleading and practice, which, after all, he scarce, perhaps, knows how to refer to—or rest contented with the most obscure and imperfect conceptions of his subject. And is it not obvious how greatly these perpetual turnings aside must hinder his progress? "The

* Lib. 12, c. 6.

study of pleading," says an able annotator upon Roger North's Discourse, "is the foundation of the common lawyer's knowledge. An acquaintance with it is as essential to a lawyer as a knowledge of anatomy is to a physician. The principles, divisions, and distinctions in pleading, are founded upon, and arise out of the general rules of law, or have, in their turn, given origin to those rules; and it is therefore impossible to be acquainted with the mode of pleading, and at the same time to be ignorant of the law of the case to which that pleading is applicable *. It is, consequently, of the highest importance to obtain an insight into the theory and practice of this science, which, from its extent and occasional difficulty, exacts a considerable portion of diligence and perseverance. The student of the Common Law ought, therefore, to bestow his best attention upon this science, which at the present day is properly accounted an essential part of professional educa-

* Littleton having mentioned a matter which "is proved by the pleadings," Sir Edward Coke's comment on this, is,—"Note—one of the best arguments, or proofs in law, is drawn from the right entries, or course of pleading; *for the law itself speaketh by good pleading;* and therefore Littleton here saith, 'it is proved by the pleading,' &c.—as if pleading were *ipsius legis viva vox.*"—(Litt. § 170, Co. Litt. 115, b.) Holt, C. J. says, "Pleading, though it does not make the law, yet is good evidence of the law, because it is made conformable to it."—(1 Ld. Raym. 522.) And see per Baron Hullock, 3 Bing. 541; Abbot, C. J. 2 B. & Ald. 610; Ashurst, J. 2 T. R. 10; Lord Kenyon, 4 T. R. 648.—See Ram's Legal Judgment, p. 13.

tion*." The plan of study hereafter sketched out may be so disposed, as to secure at once the opportunity of cultivating practical and theoretical knowledge; it will enable the pupil to illustrate the principles of pleading and practice by daily examples, and, by early disposing of those studies which are always the most disheartening and disgusting to a beginner, leave him at leisure to pursue those other and more recondite researches, by which alone the whole theory and principles of the law can be thoroughly understood. A clear and connected view, early obtained, of the course of an action—of the relations and connexions between the different branches of pleading, practice, and evidence, will interest the young lawyer the more in those matters which put in motion the secret machinery of the courts, with which he has already been familiarised. Let him, therefore, in the words of Lord Coke, "diligently apply himself to a timely and orderly course of reading,—that, by searching into the arguments and reasons of the law, he may so bring them home to his own natural reason, that he may perfectly understand them as his own†." Let it then be taken for granted, that the student will at once enter himself with a special pleader, under whose eye he may adopt

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* Roger North's Law Studies—Notes and Illustrations, pp. 78, 79.
† Co. Litt. 70, b.; 97, b.; 232, b.; 394, b.

the suggestions here offered, and offered only with great deference, in the spirit of the poet—

"Si quid novisti rectius istis,
Candidus imperti; si non, his utere mecum."

"Neither do I see," says Lord Bacon, "but that they proceed right well in all knowledge, which do couple study with their practice, and do not first study altogether, and then practise altogether *."

The student cannot more profitably employ any spare time he may have on his hands *before* entering into a pleader's chambers, and even *after* doing so, than by a thoughtful perusal of Paley's Moral Philosophy—especially Books II., III., (Part I.) and VI.; in which last, the *eighth* chapter, "On the Administration of Justice," will be found one of particular interest and importance †.

The first book then which the student should sit down to, in a pleader's chambers, is Serjeant Stephen's Elementary Treatise on Pleading ‡—a work distinguished equally by its accuracy, perspicuity, and comprehensiveness—its elegance of language, and felicity of illustration. It is divided into two parts—the first (of a hundred and fifty pages only), containing "a summary and connected account of the whole proceedings in

* Pacification of the Church—Works, vol. 7, p. 92.

† One cannot help here remarking what an unrivalled law-writer would Paley have proved! Probably as far excelling even Blackstone as Blackstone all his predecessors, contemporaries, and successors.

‡ A new edition of this work, adapted to the new practice, is just published.

an action, from its commencement to its termination;" the second (constituting the bulk of the work), "The Objects of the System of Pleading, and Distribution of the RULES OF PLEADING, in reference to those objects." A week's or a fortnight's attentive study of the first part, under the eye of his tutor, will enable the pupil thoroughly to master its clear and brief details, and so to comprehend the general drift of the business transactions in chambers. The following is the outline of the first part of the treatise.

"Of the division of actions (*i. e.* real, personal, and mixed),—Courts of superior jurisdiction, in which actions may be instituted—writs (*i. e.* summonses, capiases, detainers, and forms of actions)—ancient state of practice as to appearance and pleading—of appearance—of pleading—of making up 'the issue'—of amendment—of the decision of issues *in law*—of the trial of issues *in fact*—of judgment—of writs of execution—of writs of error."

The whole of this ought—no very difficult task to a man who is in earnest—to be well-nigh learnt off by heart; or, at least, the leading definitions, all of which are singularly concise, accurate, and elegant. If the author's earnest exhortations, on this head, are but adopted by his young reader,—if he can but be prevailed upon to make vigorous and persevering efforts to master these hundred and fifty pages of Stephen on Pleading,—to exercise himself in them *catechetically*—he will have rendered a service not easily to be for-

gotten. Let nothing tempt him to deviate—to flinch from his task—till he feels that almost every line is imprinted on his memory—and then he will turn with keen interest to see it verified and illustrated by the business transacting in chambers. In this application of what he has learnt to practice, let him neither hurry, nor suffer himself to be hurried, if he wishes to avoid continual indistinctness and error. Slow work at first, makes quick work ever after.—Proceed then, with his tutor, to the *second* part. "In no previous publication," says the Serjeant, in his Preface, "has any attempt been made to develope systematically the *principles* of this science, or, in other words, to explain its scope and tendency—to select from the mass of its various rules such as seem to be of a primary and fundamental character—and to trace the connexions of these rules, and show their bearing, as parts of a general scheme or system. It is to this object that the present work is directed *."

A better account of the contents of this very important portion of the volume, cannot be given, than in the words of its author.

"On the whole, therefore, the author conceives the chief objects of pleading to be these—*that the parties be brought to issue*, and that the issue so produced be *material*, *single*, and *certain* in its quality. In addition to these, however, the system of pleading has always pursued those general objects also which

* Preface, pp. ix, x.

every enlightened plan of judicature professes to regard—the avoidance of *obscurity* and *confusion*, of *prolixity* and *delay*. The whole science of pleading, accordingly, when carefully analysed, will be found to reduce itself to certain principal or primary rules, the most of which tend to one or other of the objects above enumerated, and were apparently devised in reference to these objects; while the remainder are of an anomalous description, and appear to belong to other miscellaneous principles. It is proposed in this chapter, to collect and investigate these principal rules, and to subject them to a distribution conformable to the distinctions which thus exist between them, in point of origin and object. This chapter will therefore treat:

I. Of rules which tend simply to the *production* of an issue.

II. Of rules which tend to secure the *materiality* of the issue.

III. Of rules which tend to produce *singleness*, or *unity*, in the issue.

IV. Of rules which tend to produce *certainty*, or *particularity*, in the issue.

V. Of rules which tend to prevent *obscurity* and *confusion* in pleading.

VI. Of rules which tend to prevent *prolixity* and *delay* in pleading.

VII. Of certain *miscellaneous* rules.

"The discussion of these principal rules," proceeds the Serjeant, "will incidentally involve the considera-

tion of many other rules and principles, of a kind subordinate to the first, but extensive, nevertheless, and important in their application; and thus will be laid before the reader an entire, though general view of the WHOLE SYSTEM OF PLEADING, and of the relations which connect its different parts to each other*."

The above will supply the student with employment during a considerable portion of the day, for at least *a month*—and that of downright hard labour. Over and over it again he must go, frequently testing the accuracy of his recollection both of the various rules, and their *examples*. A very short time will satisfy him of the importance, or rather necessity of so doing—of perfect familiarity with so masterly and concise an epitome of all the multifarious rules of special pleading. Nothing will contribute so essentially to a complete and available knowledge of this portion of the treatise, as perpetual recurrence to the leading definitions and illustrations, and *deliberate* application of them to the actual business which passes under his eye. If he ever feel, in doing this, at a loss, and yet hesitate to apply to his tutor, he will be a fool indeed. Let him but slide into this habit for a constancy, and he may bid adieu to the attainment of any real knowledge of his profession. What excuse can he have for indolent superficial reading, when his tutor, or senior fellow-pupils, are ever at

* Treatise on Pl. pp. 168, 169.

hand to assist him?—So much at present for PLEADING. The student will next proceed to work out the *first* portion of the work above mentioned into its details —which details are all that is meant by the term "PRACTICE *." Pupils are too frequently in the habit of underrating the importance of this kind of knowledge—are apt to look at the two great works of Tidd and Archbold, merely as books of occasional reference —never thinking of using them but on sudden emergencies, and then only picking their way to what they want, by *index-hunting*. Satisfied if they can catch some leading word which their eye may light upon in running down the index, and so be referred to "*something about it*"—they never think of any connected and systematic perusal of a book of practice, and consequently never have a distinct knowledge of these topics which are concerned in daily business. Thus it is that many young lawyers are so deplorably deficient on this important subject, and compelled, besides, to exhibit that deficiency on the most mortifying occasions.

There are, as already intimated, two great books on Practice—that of Mr. Tidd, and that of Mr. Arch-

* "The 'PRACTICE' of the court," says Mr. Tidd, "by which the proceedings in an action are governed, is founded on ancient and immemorial usage (which may not improperly be termed the common law of practice), regulated from time to time by rules and orders, acts of parliament, and judicial decisions. The practice is the law of the court, and as such is a part of the law of the land." 1 Tidd Pr. Introd. lxxi.

bold. The former is, and has long been a work of paramount authority, on account of its admirable accuracy and arrangement. It is called by that laborious collector of precedents, Mr. Wentworth, "the polar star* of the practitioner." It is, including the forms, in three large volumes, closely printed; but since the last edition was published, the law of practice has undergone such sweeping and incessant alterations as have called forth supplement after supplement, each framed with great ability and care: but the inconvenience of a work of reference with three or four supplements to it, are manifestly very great. A new edition of the whole work is loudly called for by the profession, and would confer signal service not only on practitioners, but pupils. As with the exception of the abolition, or modification, of the law of arrest, few, if any material alterations in practice are now anticipated, the profession will not, perhaps, wait long for the publication of a new and complete edition of this invaluable work.

Under these circumstances, the author cordially recommends to the student Chitty's Archbold's Practice, a fourth edition of which is just published (1835), incorporating *all* the latest alterations effected by decisions, rules, and statutes. It is a far less formidable *looking* book than that of Tidd; and, though inferior to it in extent and scientific arrangement, it is, on the whole, better calculated for the student's purposes;

* 10 Wentworth, pref. v.

being more accessible, and containing numerous little practical suggestions and explanations, which are not to be found in Tidd. It has long been a standard book in the profession, and has not suffered in the hands of its experienced and learned editor. To this work, then, the student, after completing his perusal of Stephen, will devote at least two hours, twice a week. He will find it but an expansion of the first portion of Stephen on Pleading, the latter of which may be viewed as a kind of map or chart of the former. Yes—two hours, at least, twice a week, must the pupil devote to a hearty perusal of Archbold, if he wish to make a sure and rapid progress in his professional studies. Nothing but this will familiarise him with the machinery of the law—with its practical working. Without it, he can never know anything thoroughly that is required in actual business. He is candidly apprised that this is very far from an inviting task—on the contrary, it is one very dreary and disheartening to the bulk of pupils, not one out of five, or perhaps ten of whom will probably be at the pains we are speaking of. He will therefore thus obtain a great advantage over very many of his competitors: for there is nothing that tells *earlier* in a young pleader's or barrister's favour, than the reputation of being a sound and ready *practice-lawyer*—nothing that gains him so quickly the confidence, and even personal attachment, of his clients. Let him therefore set himself down early and resolutely to his task; nor

start at hearing that he must make a point of reading Archbold *twice through*—and well through—from cover to cover. Whatever other studies his attention may be directed to, how numerous and pressing soever may be the calls upon him, let him never give up his Archbold. Let him perpetually pause and reflect on the *reason* of the various rules he meets with; and if *that* is not obvious, he must make a point of perusing the case referred to, as an authority in the note: "for," as Lord Mansfield said, "the *reason* and *spirit* of cases make law—not the *letter* of particular precedents *." Any other mode of reading can be that only of a pettifogger. There is not a sentence—scarce a line, even, of a book of practice, that does not contain the result of acute and learned argumentations before a judge, or the full court,—where all the *pros* and *cons* of these apparently trivial matters, were most keenly contested: and nothing is better calculated to train the youthful mind, betimes, to legal habits of thought—to caution and exactitude—than frequent researches of the kind in question. He will often be astonished at the secret difficulties hanging about, apparently the very plainest points of law—the great ingenuity and learning displayed in arguing and deciding them.

The student must not smile, when he is recommended even to draw up a kind of *catechism* of the

* Fisher v. Prince, 3 Burr, 1364.

leading heads of practice—framing, for instance, a particularly difficult and important section into short questions, and minuting answers to them on the other side of a small note-book, which can be easily slipped into the pocket, and carried about *.—But surely this is overrating the importance of such knowledge, murmurs the student. By no means. Let him only consider, for a moment, that this is the kind of learning which he is soonest called upon to exercise, and that in a manner which will not admit of his veiling ignorance—namely, when questions are suddenly put to him by

* *E. g.*—As to MISNOMER of the defendant, in a writ of summons.

Q.—The plaintiff having miscalled the defendant, in the writ,—in what name ought he to declare against the defendant, if the defendant appears by the wrong name?

A.—By the wrong name; because, &c.

Q.—But suppose the defendant appears by his *right* name?

A.—The plaintiff must then declare against him by his right name, stating that he was sued by the wrong name.

Q.—Suppose, however, that the defendant does not appear at all, could the plaintiff appear *for* him, according to the statute, in his *right* name?

A.—No; because, &c.

Q.—Could he then appear for him in the name by which he is sued, and afterwards declare against him in his right name?

A.—No; because, &c.

Q.—What course, then, ought the plaintiff to adopt under these circumstances?

A.—Let him appear to the defendant in the wrong name, and declare against him by that name—which would subject the plaintiff only to be compelled, by judge's order, to amend his declaration by inserting the right name.

Q.—Was this the old practice, or is it the result of any of the recent rules, or statutes? &c. &c. &c.

his clients, themselves, in some emergency—" how is this to be done—when must that—what will be the consequences of this mistake—how can it be remdied," &c. &c. How painful must be his position, if he neither knows the law, nor can readily, if at all, find it, and stands stammering, hesitating, bewildered, fumbling about his books—compelled, at last, to dismiss his client, after an evasive, erroneous, or mere *guessing* answer, with a more dissatisfied and puzzled air than he brought, and the belief that he is employing a superficial and incompetent person, whom it is, consequently, his *duty* to get rid of as soon as possible! Why, now, will the student hazard all this—why throw such serious obstacles in his way—why confuse and perplex himself, and mislead his clients, when a little timely persevering industry will ensure such happy results? Say that there are seven or eight hundred pages of Archbold,—what are they to a man who resolutely reads them for two hours, twice a week, for two or three years, even? And what is all this time and labour, when it is considered as ensuring the easy and pleasant discharge of business *hereafter*, which would otherwise be perpetually annoying and delaying him, when *time* is an object?

" Tidd's Practice, and Coke upon Littleton," said a learned and eminent friend, the other day, to the author, " I read over well, from cover to cover, *three times* during my pupilage; and I think the former was the making of me! I was seen often

extricating my friends from momentary difficulties, in court; *that* led to small *cases* being sent me on points of practice—these to little briefs—which last led to greater ones, and on general matters. I often say that Tidd was my foundation-stone!"

So much, then, for Practice—let us now return to Pleading. We left the student carefully reading the second part of Stephen, and shall suppose him to have completed its perusal. As he resorted to Archbold's Practice, in order to carry out the former portion of Stephen, so he will be directed to the first volume of Chitty on Pleading, to carry out the latter portion. Hear the liberal eulogy pronounced by the Serjeant upon his *collaborateur*.

"It is to a writer of our own day that the honour is due, of having first thrown effectual light upon the science of pleading, by an elaborate work, in which all its different rules are collected, arranged in convenient divisions, and illustrated by explanation and example. The work here mentioned is the well-known Treatise on Pleading, by Mr. Chitty; which no person competent to appreciate the difficulty of the task performed, can ever peruse without high admiration of the learning, talent, and industry of the author *."

This work happened, unfortunately, to be the *first* that came in the author's way, on entering the legal profession; and he rose from a perusal of the

* Pleading, pref. pp. viii, ix.

first twenty or thirty pages of it with an almost mortal disgust—one which he was long in getting rid of. Having subsequently, however, adopted the course which he has been above recommending—and which he has often recommended, with similar good effect—Chitty's Pleading became as interesting and attractive, as it had formerly been repulsive. He saw that he had, in perusing it, only to fill up the comprehensive outline of Serjeant Stephen, and be thus, easily and pleasantly, put in possession of the whole SYSTEM OF PLEADING.—This admirable treatise opens with a subject which has been already adverted to in the last chapter, as one of pre-eminent importance and difficulty—"PARTIES TO ACTIONS." As formerly observed, there are two classes of actions —those on Contracts, and those on Wrongs [*Ex Contractu—Ex Delicto*]; and the first one hundred and six pages (constituting Chapter I.) of Mr. Chitty's Treatise, are devoted to the question, who ought to be made the plaintiff, and who the defendant, in both of these. "In laying down a rule," says Mr. Hammond, in an admirable little treatise on the subject of Parties to Actions, now out of print, "to determine who should be plaintiff in suing for a civil injury, in other words, who is interested in redressing it, the reflections that would occur to one unversed in legal distinctions, would be the following:—As civil actions are brought to repair some loss sustained, the party to whose use the fruits of the suit are to be appropriated,

and whose interests, have, in fact, been impaired, should complain. Why sue in the name of one who is to derive no benefit from the event, who has sustained no real loss for which to demand a reparation? This reasoning, however plausible, and even just in actions *ex delicto*, would often deceive, if applied to actions for a breach of contract. Here the choice of a suitor must be guided by considering, not whose are the losses meant to be repaired, but *with whom the agreement has been made;* for he alone can enforce its performance, and complain when it has been broken. It must, therefore, and with the view of deciding whether two or more should sue jointly for a breach of contract, be inquired, with whom shall it be said that a contract has been concluded; or which reaches the same meaning, and is the technical mode of expressing the same thing, who has the legal interest in a contract. Now, the answer to the question in whom resides the legal interest in contracts, is by no means uniform, but is governed by the nature of the agreement respecting which the question is asked."—It is obvious that this is a subject which involves, directly and indirectly, a considerable extent of general legal knowledge—as of the law of principal and agent—bankruptcy, insolvency, assignment, partnership, marriage, death, &c. &c.: and which will consequently require very careful instruction and numerous explanations on the part of the pleader, in his morning prelections with the pupil. The latter must not complain at being kept at this extensive

portion of his studies for a month or two; for if he does justice to it, he may rest assured that he has made very considerable progress.

The next subject to which the pleader will direct his pupil's attention, will be the FORMS OF ACTION *, which, with but moderate effort, can be easily mastered in a few weeks; for with their general outlines he has been already partially made acquainted in Stephen, and their minor details are perpetually exemplified and illustrated by the business going on in chambers. The remaining portions of the treatise, which are but an amplification of that of Serjeant Stephen, and which will require to be read with much caution, and perpetual reference to the subsequent decisions, rules and statutes, by which such extensive alterations have been effected—the student will take every opportunity of acquainting himself with, though unable for the present, to go as *systematically* through them, as through the previous portions. He must not fail *to study the precedents of declarations, pleas,* &c., contained in the second and third volumes; anxiously observing how they are adapted to particular

* "It is of the utmost importance to observe the boundaries of the different actions, not only in respect of their being most logically framed, and best adapted to the nature of each particular case, but also in order that causes may not be brought into court confusedly and immethodically, and that the record may at once clearly ascertain the matter in dispute: a regulation which, since the different legislative provisions respecting costs (the right to which varies in different forms of action), has become of still greater importance."—1 Chitt. Pl. 110: and see per Lord Kenyon, C. J., 6 T. R. 129, 130; Eyre, C. J., 1 B. & P. 476; Abbott (Tenterden), C. J., 5 B. & A. 654.

cases, and treasuring up in his mind the important *notes* appended to almost all the forms, and containing information which is often sought for elsewhere in vain. If he will but make a point of seeking *thus* a solution of the various little difficulties which he encounters in actual business, he will soon be sensible of making rapid progress in the acquisition of the science. —While the pupil, however, is thus vigorously applying himself to the study of pleading and practice, he must make a point of reading such portions of the second volume of Blackstone's Commentaries, to be pointed out by his tutor, as will give him a general notion of the nature of property real and personal, with their respective incidents. This he will follow up by occasional perusal of Selwyn's Nisi Prius, a work which he ought ever to have at his elbow, for the purpose both of continuous reading and reference. It consists of a number of concise elementary treatises on all the leading heads of Nisi Prius law, conveniently arranged with reference to pleading and evidence *. Suppose, for instance, his pleader gives him " instructions " to draw a declaration in an action for assault and battery: he will read them over, and then turn to that head in

* " Assumpsit," " Insurance," and " Slander," the first of which is universally allowed to be the best in the book, will give the reader a very favourable idea of Mr. Selwyn's mode of treating a subject: but it must be constantly borne in mind by the student that since the publication of the last edition (1831), so many and great have been the alterations which have taken place, as to require great vigilance in reading it,—constant reference to later text-books, and inquiries of the preceptor.

Selwyn, to gain a general notion of the law on that subject. He is already familiar with the structure of a Declaration of Trespass, which he finds is the form of action he must adopt; and also obtains an insight into the mode of sustaining the case at the trial, by "evidence."—By this means the student will not only understand more distinctly the scope and bearing of the rules of special pleading, but make daily accessions to the fund of his general legal knowledge. He will soon perceive that almost three-fourths of his pleader's business consists of opinions and pleadings in actions "*Ex Contractu*;" and that it will therefore be necessary for him early to direct his attention to *the law of contracts.*

The great treatise of Pothier*, a foreign author, on the Law of Contracts, is strenuously recommended to the student's attention. It is thus spoken of by Lord Tenterden and Sir William Jones:—"It is remarkable," says the former, in the preface to his "Shipping," "for the accuracy of the principles contained in it, the perspicuity of its arrangement, and the elegance of its style."

"Here I seize with pleasure an opportunity," says Sir William Jones, "of recommending his (Pothier's) admirable treatises on all the different species of express or implied *contracts* to the *English* lawyer, exhorting him to read them again and again: for if his great master Littleton has given him, as it must be

* Which has been excellently translated, with notes, by the late Sir W. D. Evans—in 2 volumes, 8vo (1806).

presumed, a taste for luminous method, apposite examples, and a clear manly style, in which nothing is redundant, nothing deficient, he will surely be delighted with works in which all these advantages are combined, and the greatest portion of which is law at Westminster *, as well as at Orleans: for my own part, I am so charmed with them, that, if my undissembled fondness for the study of jurisprudence were never to produce any greater benefit to the public, than barely the introduction of Pothier to the acquaintance of my countrymen, I should think that I had, in some measure, discharged the debt which every man, according to Lord Coke, *owes to his profession* †."

The student will also provide himself with a copy of Mr. Joseph Chitty's (jun.) Treatise on Contracts, of which a second edition has appeared very lately (1834). It is in one octavo volume, of moderate size, and is, in the author's opinion, decidedly the best practical treatise extant, upon the subject. He has had occasion frequently to examine it for practical purposes, and is happy to bear testimony to its admirable arrangement, accuracy, compression of detail, and comprehensiveness of design. Its late date has enabled its author to present the very im-

* See Cox *v.* Troy, 5 B. & A. 474; S. C. 1 D. & R. 38; in which the judges principally grounded their decision upon the writings of Pothier.

† *Quære*—Lord *Bacon*? See his Law Tracts, 28.

portant subject of which he treats, as the law now stands, after the numerous changes that have taken place since the publication of the first edition *. If the student, in short, will but do justice to this work, he will have obtained no mean acquaintance with a very important and extensive branch of law.

Thus, then, may the student advantageously occupy himself during the first twelvemonth of his pupilage; and at its close, let him take a review of what he has done:—he has thoroughly acquainted himself with the outlines and leading details of the system of pleading and practice,—having, to adopt Lord Bacon's language, repeatedly "returned unto the fundamentals of the science." He has marked their practical application; has tolerably familiarised himself with the most extensive head of business in a pleader's chambers—the law of contracts; and the numerous subjects discussed in Selwyn's Nisi Prius: by which means he has acquired a considerable fund of miscellaneous information, and a knowledge of the mode of using

* "I have endeavoured to render this work," says Mr. C., "not only an elaborate and complete treatise on the *principles* of the Law of Contracts, illustrated and explained by practical cases, but also a useful *Nisi Prius* book on the very many important subjects which it embraces. * * The law of *defences* to actions for debts, and upon special contracts, has also been detailed with considerable diffuseness. No pains have been spared to render this part of the treatise practically useful. Not only are the nature and validity of each probable ground of defence, fully considered, but the *mode of pleading* and of *proving* such defence, is also explained."—Pref. iii, iv.

it. He has acquired something like settled business-like habits,—an aptitude for legal investigation, and tolerable facility of reference.

Has not this, then, been a well-spent year? While some, ill-advised, have been poking about disconsolately in the regions of ethics—have been poring over Locke, Hobbes, Grotius, Puffendorff, Vattel—and are only just emerging out of the cold atmosphere of unsuccessful abstract speculation; while others have been galloping over Blackstone, or losing themselves in the gloomy tortuosities of Coke upon Littleton, or frittering away their time over this, that, and the other "elementary" book, or dancing attendance on various lecturers, or gadding about in search of the conflicting suggestions of their friends:—our practical student, turning neither to the right hand nor to the left, has already advanced far on his way; has learnt the use of all the weapons of ordinary legal warfare; has acquired a keen relish for the pursuit of professional learning; has found out a way of reading *many* books, in thoroughly mastering one; and where he does not actually know the law, can at once discover where it may be found *.

His *second* year will be spent, according to circumstances, with the same pleader, provided his ability, learning, and business warrant it,—or with another, of longer standing, greater experience, and business

* See Boswell's Life of Johnson, vol. iii. p. 75 (7th ed.).

of a more difficult description. This second tutor, when he sees the intelligent business-like manner in which his pupil sets to work, will scarcely believe that he is but commencing his *second* year's study of the law!—Here, however, he must be "up and doing;" all his former habits are brought into full play; all his acquisitions and facility of reference are heavily taxed, for the business he now sees is not only of a more arduous character, but passes necessarily in quicker succession before him. Nevertheless, he will not lose his breath, or presence of mind: he will not over-eagerly attempt too much,—but what he *does* attempt, will be creditably done, and thoroughly understood. How often he will bless himself for his familiarity with Stephen, but especially with Archbold! How many little difficulties he finds daily disappearing! How numerous the opportunities now afforded him of correcting or corroborating his impressions of practice! Nevertheless, he may yet be disheartened at finding nearly a hundred heads of law perpetually brought into action that he had before scarce more than heard of. "Perhaps," he will begin to think, "I have been premature: I feel that I am taken suddenly out of my depth—I had better have stayed half a year, or a year longer with my first preceptor—but, *n' importe*, 'tis now too late; so I'll even make the best of it." In this humour he goes on with dogged patience, with steady resolution, not attempting to grapple with every thing at once,—to monopo-

lise "papers," in order to hurry through them sooner than his fellow pupils, and so acquire a reputation for superior acuteness and dexterity. He will indulge no such puerile feelings. In a month or two's time he will discover that he is leaving his competitors far behind him. Though some of them may have been in the field a year or two before him, yet his superior energy and method give him so evidently the advantage over them, that *he* is often consulted in their difficulties, instead of their tutor; who, not slow to appreciate his merits, gives him papers of increasing difficulty, and affords him at the same time less assistance than he found necessary at first. Our student, as he looks at his well-worn Archbold and Chitty, is conscious, not that he knows so much *more* than his fellows, in point of extent—but, that what both know, he knows so much better than they,—what he does *not* know, he can learn so much more easily and effectually, retain so much longer than they, and apply with so much superior expertness. To proceed, however.—He will feel every day more and more the necessity of understanding the law of EVIDENCE *, a subject with which he has already become incidentally and partially acquainted, but of

* "That," says Mr. Starkie, "which is legally offered by the litigating parties to induce a jury to decide for or against the parties alleging such facts (as contradistinguished from all comment and argument on the subject) falls within the description of *evidence*.

"Where such evidence is sufficient to produce a conviction of the truth of the fact to be established, it amounts to *proof*."—1 Stark. Ev. p. 10.

which he must now begin to seek a more systematic knowledge.

The two standard works on this branch of law are those of Phillips and Starkie. Either of them may be studied with great advantage; the former may be considered, perhaps, to be of a more direct practical, the latter (published in 1833) of a more elementary and philosophical character. The first volume of Mr. Starkie's Treatise consists of an admirable exposition of the general principles of the law of evidence. In the preface he thus lays out the plan of his work:—

"It is proposed, in the following treatise, to consider the practice of the law in England on the subject of judicial proof. With this view the *elementary principles* by which the admissibility of evidence to prove matters of fact before a jury is governed, will first be considered. A second division will contain an enumeration of *the different instruments* of evidence as governed by these principles and elementary rules. In a third, the application of these principles and instruments to the purposes of proof will be considered, as also the distinction between law and fact, and the force and effect of direct and circumstantial evidence; and, lastly, [which occupies the whole of the second volume] the evidence essential to the proof of particular issues will be detailed, and references made to the leading decisions connected with the particular subject of proof*."

* 1 Stark. Ev. Pref. vii.

"The great PRINCIPLES of evidence," proceeds Mr. Starkie, in the body of the work, "may be reduced to three classes:

"I. Those which depend on ordinary experience and natural reason, independently of any artificial rule of law.

"II. The artificial principles of law, which operate to the partial exclusion of natural evidence, by prescribing tests of infallibility, and which may properly be called the excluding principles of law.

"III. The principles of law which either create artificial modes of evidence, or annex an artificial effect to mere natural evidence *."

—"We are next to consider what are the MEANS AND INSTRUMENTS of evidence—how they are to be procured and used—their admissibility and effect. These are, first, oral witnesses, examined *vivâ voce* in court, as to the facts within their own knowledge, and, in some particular instances, as to what they have heard; and, secondly, written evidence †."

—"A more interesting branch of the subject—the APPLICATION of these principles and instruments to the proof of issues generally and particularly, is now to be considered. It is to be recollected, that every verdict is compounded of law and fact: of the facts, as ascertained by the finding of the jury; of the law, as expounded by the judges, with relation to the

* 1 Stark. Ev. p. 13. † Ibid, p. 76.

evidence, and applied by the jury to the facts; and the trial is the process by which the facts are thus ascertained, and the law applied.

"In this proceeding it is the business of the parties to supply the necessary evidence; it is the province of the court to pronounce on the legal effect of the evidence; and it is the duty of the jury to decide upon the facts, and to apply the law. Hence naturally result three distinct subjects for consideration *."

The above outlines will suffice to show the student the nature and extent of the preliminary dissertation, occupying the first volume of Mr. Starkie's great work; and he may rest assured that an attentive perusal of it will be attended with the happiest effects. The more he reads it, the oftener he connects and illustrates his readings with the actual business of chambers—the more distinct and accurate will become his notions, not only of evidence, but of pleading and practice. He will be astonished and delighted to find how rapidly his old difficulties disappear, as he acquaints himself with the intimate—the secret connection between pleading, practice, and evidence; their mutual bearings—their action and re-action upon one another †. He will therefore devote two hours twice a week to the perusal of Starkie, and make a point of devoting particular attention to every "case on evidence" that comes

* 1 Stark. Ev. p. 361.

† See *ante*, "Introduction," p. 23.

into chambers. He could not have a better book at his elbow, for ordinary purposes, than Saunders on Pleading and Evidence; which contains, in a very convenient form, the law both of pleadings (with precedents) and evidence; but that the late alterations, which have taken place since its publication in 1828, have rendered it very unsafe to rely upon, especially in the case of learners. A new edition of this work, carefully compiled, would be a timely and acceptable addition to the library of both pupils and practitioners.—While, however, the student is thus vigorously addressing himself to "evidence," let him not lose sight of pleading and practice: Mr. Starkie must not be allowed to jostle aside Messrs. Chitty and Archbold! Let the pupil make a point of frequently testing the accuracy of his recollections of these two works, as well as extending his knowledge of them. Chitty on Contracts, too, must continue to be an object of constant attention; nor must Selwyn's Nisi Prius be forgotten.—Thus is he to become "thoroughly furnished" with respect to pleading, practice and evidence. Let us now, however, look to the *substance* of the law upon which this machinery operates—in its two leading divisions of real property and commercial law. With both of these, especially the latter, he has become in some degree acquainted, in going through the ordinary routine of business; but he is now anxious for a more connected and systematic knowledge of them.

Let him, then, with reference to the former of these subjects * betake himself forthwith to the second volume of Blackstone's Commentaries, and read with profound attention such portions as his tutor may select—who will at the same time apprise him of the extensive alterations which have taken place in that branch of law, and point out other works which may enable the student to follow up advantageously his study of particular topics. Watkins on Conveyancing, will probably be one of the books selected. After having carefully considered Blackstone and Watkins, the student cannot do better than betake himself to Burton's Elementary Compendium of the Law of Real Property †, which will be

* The following is the advice given by the late Mr. Butler to a student of the law of real property :—

" He should begin by reading Littleton's Tenures, with extreme attention, meditating on every word, and framing every section into a diagram ; abstaining altogether from the Commentary, but perusing ' Gilbert's Tenures.' After this, he should peruse ' Sir Martin Wright's Tenures,' and ' Mr. Watkins' Treatise on Descents '—and then give Littleton's Tenures a second perusal. After this second perusal of the text, he should peruse it a third time, with the ' Commentary ' of Lord Coke ; and afterwards peruse ' Shepherd's Touchstone ' in Mr. Preston's invaluable edition of that work. The reminiscent presumes to suggest that the student may then usefully peruse the Notes on Feuds, on Uses, and on Trusts in the last edition of Coke upon Littleton ; and then read Littleton and Coke, and the notes of the last editors."—Butler's Reminiscences, p. 61. There is a beautiful little pocket edition of Littleton's Tenures, published in 1831, by Messrs. Clarke, which the student would do well to purchase, and carry about with him.

† In 1 vol. 8vo. A second edition is just published.

found, though by no means so easy, yet a most instructive performance. It is distinguished equally by its perspicuity, accuracy, and compression—to which latter quality is attributable no little of the obscurity and difficulty which are sometimes complained of by students. If this volume be read with due perseverance and reflection, and frequent reference be made to Coke upon Littleton and the other authorities, the pupil will find that he has made no inconsiderable progress in this—one of the most difficult and uninviting departments of his studies; and will be prepared to enter hereafter, with great advantage, upon a six months' course of study with a conveyancer, who will at once direct him to the proper sources of information—to Coke upon Littleton, and Cruise's Digest—and familiarise him with the practical working of the system.—Landlord and Tenant-Law the student must have become already tolerably well acquainted with; and the best, though bulkiest, book on this subject, for occasional reference, is Woodfall, by Harrison. Adams on Ejectment, a clear, accurate, and well-arranged work, will be found to concentrate within a narrow compass, as much of real-property law as is ordinarily involved in the "title" necessary to maintain that important action.

With some of the leading topics of Commercial Law, our student has already acquired a respectable acquaintance in the pages of Chitty on Contracts, and the various heads in Selwyn's Nisi Prius, to

which he has had occasion to refer in the course of actual business. The eloquent observations of Lord Glenbervie (formerly Mr. Douglas) are highly descriptive of the general character of Commercial Law.

"Such are the various modifications of which property is susceptible, so boundless the diversity of relations which may arise in civil life, so infinite the possible combinations of events and circumstances, that they elude the power of enumeration, and are beyond the reach of human foresight. A moment's reflection, therefore, serves to evince that it would be impossible, by positive and direct legislative authority, specially to provide for every particular case which may happen *." It was, till very lately, a difficult task to point out an elementary introduction to Commercial Law generally, worthy of the student's attention. The ponderous octavos which pass by the name of "Chitty's Commercial Law," were, of course, out of the question; and Mr. Woolrych's "Treatise on Commercial Law," though in its dimensions more consistent with the time and opportunity of the learner, was calculated both in plan and execution, exclusively for non-professional readers—so as to be of little or no immediate utility to the student or practitioner. A work has, however, just issued from the press, which has long been felt to be a desideratum—one, namely, which should be to Com-

* Dougl. Rep. Pref. iii.

mercial what Burton's is to Real Property Law. The one alluded to is SMITH'S COMPENDIUM OF MERCANTILE LAW, which is in one volume, of the same size as Burton. "The idea of this work," says its author, "was suggested by Mr. Burton's Compendium of the Law of Real Property. The acknowledged utility of that book induced me to believe, that an attempt to compress the chief doctrines of an equally important branch of law, into a treatise of similar dimensions, might not prove altogether useless *." As Mr. Smith has taken Burton for his model, in point of form, so he has nearly equalled him in compression and perspicuity. The pupil may safely purchase and study this work, as the most comprehensive and accurate summary of the leading principles of Commercial Law that is extant. The treatise is divided into four books. "The first, concerning Mercantile Persons; the second, Mercantile Property; the third, Mercantile Contracts; the fourth and last, Mercantile Remedies:—a method which appears the simplest and most comprehensive; since

* The following passage occurring in the preface, is worth quoting at length:—"The Mercantile Law is, in one respect, better adapted to elementary compression than the law of real property; inasmuch as the reasons upon which the former is based, can be explained more shortly than those which support the latter. The reasons upon which our law of real property is founded, are, generally speaking, historical; and part of history must, therefore, be recounted, in order to explain them clearly and philosophically:

it includes, under a few heads, the various considerations respecting those by whose intervention trade is carried on; that which they seek to acquire, by so employing themselves, the arrangements which they are in the habit of adopting in order to do so effectually, and the mode in which the proper execution of those arrangements is enforced *." The first book

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while the Mercantile Law is deduced from considerations of utility, the force of which the mind perceives as soon as they are pointed out to it. If I were desirous of explaining, for instance, why a rent-service cannot be reserved, in a conveyance, by a subject, of lands in fee simple, I should be obliged to shew the feudal relation that existed between Lord and Tenant, the nature of subinfeudations, and how the lord was injured by them in such his relation to his tenant, how the statute *Quia Emptores* was passed to prevent this injury—in consequence of which statute, a tenure, without which no rent-service exists, cannot be raised by a conveyance from one subject to another in fee simple. In like manner, the explanation of a recovery, of a fine, of a copyhold, of an estate in ancient demesne, of an use, or of a trust, would require a process of historical deduction. When, however, the reader is told that the drawer of a bill of exchange is discharged if timely notice be not given him of its dishonour—because, without such notice, he might lose the assets he had placed to meet it in the drawee's hands; or, that if A. hold himself out to me as B.'s partner, he will be liable to me as such, because he might else enable B. to defraud persons who had trusted him upon the faith of the apparent partnership and joint responsibility:—when these reasons, and such as these, are given, every man *at once* perceives their cogency, and needs not to be told *how*, that he may know *why*, the law was settled on its present footing. The fitness of this subject for compression is, therefore, I think, hardly questionable." Smith's Compendium of Mercantile Law, pref. iii. iv. v.

* Compendium, Introd. p. 1.

accordingly treats of—I. Partners; II. Corporations; III. Principal and Agent. The second of—I. Incidents peculiar to Mercantile Property; II. Shipping; III. Goodwill; IV. Negociable Instruments. The third of—I. Bills of Exchange and Promissory Notes; II. Contracts with Carriers; III. Contracts of Affreightment; IV. Maritime Insurance; V. Insurance upon Lives; VI. Insurance against Fire; VII. Bottomry and Respondentia—and several other heads which need not be here enumerated, as the pupil has been already familiarised with them in Chitty on Contracts. The fourth of—I. Stoppage in Transitu; II. Lien; III. Bankruptcy; IV. (Appendix) Insolvency. The student will, of course, be aware, that such extensive and complicated subjects as those above enumerated, can admit of but *epitomising* in a work of such dimensions as that now recommended; and, however able such an epitome may be, its *chief* use is to shew, at one view, the commercial law, in its great connections and dependencies. Its leading heads are Bankruptcy,—Partnership,—Principal and Agent—Insurance,—Sale of Goods,—Bills of Exchange and Promissory Notes.

The first of these—BANKRUPTCY—is incomparably the most formidable, both to students and practitioners, on account of its prodigious intricacy of relations and subtlety of distinctions—complicated, too, as it generally is, with the perplexities of partnership and

bill transactions. "The policy of the Bankrupt Laws" is an expression so often used in argument, that the author thinks the following outline of the system will be not uninteresting to non-professional readers.

"The legislature, considering that men engaged in mercantile pursuits must, of necessity, be more often and largely indebted than other persons—considering also that it would be unfair to creditors, and injurious to the interests of commerce, to allow a failing trader to select some favoured claimant, and liquidate his demand at the expense of the rest, has enacted a series of regulations called 'the Bankrupt Laws,' which ensure to the creditors of an insolvent trader an impartial distribution of their debtor's property, if they will take the right steps to obtain it; while, in order to prevent a trader really in a state of hopeless insolvency, from continuing to speculate and deceive others, until he has consumed the last remnant of his effects, and left nothing to be shared among his creditors,—it has directed that certain acts, if done by him, shall be looked on as conclusive evidence that he is in such a condition as entitles his creditors to proceed against him under the bankrupt laws. These acts, the nature of which will be presently explained, are therefore called *acts of bankruptcy;* the trader who has committed one of them is, from that time forth, *a bankrupt;* and, if proceedings be not thereupon taken against him, it is only in con-

sequence of the ignorance, indisposition, or good nature of his creditors. But, as it would be inhuman to reduce a trader whose failure is imputable less to his fault than to his misfortune, to perfect destitution, by stripping him of all the remnant of his property; he is—except in cases of misconduct—allowed a sum of money, out of the produce of his own effects, for his future support, and to put him in the way of honest industry; and this sum is proportioned to the value of his property, as compared to his debts—so that additional inducement is thus held out to fair dealing, and an *early disclosure* of his embarrassment. Besides this, he has an indemnity granted him, of being free and discharged for ever, from all debts owing by him at the time when he became a bankrupt—so that he is a clear man once again; and, by the assistance of his allowance, and his own industry, may become a useful member of the commonwealth. Thus we see, that as, upon the one hand, the bankrupt law is a law of severity, inasmuch as it compels a total cession of the bankrupt's property, whether he will or not, and subjects him to very heavy punishment in case of misconduct; so, upon the other hand, it is a law of mercy, rescuing him from the pressure of embarrassment, which might otherwise have damped his spirits, and crippled his future exertions, and providing him with the means of re-commencing his trade, and again claiming the support of former connections; who, if during the

legal scrutiny to which it is subjected, his conduct prove to have been blameless, are, as we find from experience, often very forward to assist him.—From all this it appears that the policy of the Bankrupt-Law comprehends two grand objects:—*first*, the distribution of the debtor's effects in the most expeditious, equal, and economical mode; *secondly*, the liberation of his person from the demands of his creditors, after he has made a full surrender of his property *."—There is but one method for the student to adopt, of acquiring sound and early knowledge on this difficult subject; to give the utmost attention to all bankruptcy cases, great and small, that come in his way—and to some elementary treatise, accompanied by the oral instruction of his teacher. The author is inclined to think that this subject will be found best set forth, for learners, in Smith's Compendium above mentioned, and, with reference to bills and notes, in the last edition of Chitty's Treatise on Bills of Exchange. Either of these may be read with great advantage. There are three standard *practical* treatises on the Bankrupt Law—that of Lord Henley—who, under Lord Eldon's superintendency, framed the great act of 6 Geo. IV, c. 16, and may be, therefore, considered well qualified to act as an interpreter of its multifarious provisions;—that of Mr. Deacon, published in 1827, and that of Archbold—of which Mr. Flather has just published a new edition, comprising

* Smith's Compendium of Mercantile Law, pp. 343, 344.

all the recent alterations effected in the machinery of the system. The first of these two works is in one large volume octavo, the second in two, and the third is a compact and closely-printed duodecimo. The first succinctly and elaborately enunciates *principles*, the others concisely state and arrange the various statutes and decisions in a manner very convenient for reference. The first, in short, is better calculated for the student, the others for the practitioner.

PARTNERSHIP,—another most complicated and extensive head of law,—has been written on specifically by Watson, Montague, Gow, and Collyer; and ably treated of, in an elementary manner, in Selwyn's Nisi Prius *, Chitty on Contracts, and Smith's Compendium of Mercantile Law. Any one of these last will suffice to give the student an *outline* of the subject —its general principles, and bearings upon pleading and evidence—aided by the illustrations afforded by actual business and a tutor's instructions. It will require, however, very great attention, and several years' experience, to acquire any thing like a competent practical knowledge of the law of partnership. Of the four treatises above mentioned, the chief are Gow's and Collyer's—the former published in 1830, the latter in 1833; either of them will conduct the reader to the very depths of the subject. Mr. Coll-

* The law of Partnership comprehends too much of *Equity* to admit of any but a very slight exposition in books of Nisi Prius Law.

yer's is, perhaps, upon the whole, to be preferred, on account of his fuller statement of the cases, whereby the reader will be better able to understand and appreciate the wonderful decisions of the most sagacious, profound, and comprehensive lawyer that ever sate upon the Woolsack—Lord Eldon. His magnificent intellect shone forth pre-eminently in the adjudication of partnership and bankruptcy cases; and his is by no means an ordinary mind that can comprehend his Lordship's judgments and apply them in practice.

> "His sure is no ignoble arm,
> That wields a giant's weapons."

The young lawyer must not be too anxious, therefore, about the early and complete mastery of bankruptcy and partnership law. He must be content to approach these difficult subjects by slow and sure steps; gaining out of the *elementary* works above referred to, sufficient to guide him in the ordinary exigencies of pleading, practice, and evidence, till he has leisure to apply himself to a deeper and closer study of these subjects.

PRINCIPAL AND AGENT.—Smith's Compendium, Chitty on Contracts, and Selwyn's Nisi Prius, contains each of them an excellent introduction to this important branch of law; but the first is decidedly the most preferable for the learner, being most complete, and containing the latest law. Some idea of the nature and extent of this subject may be gathered

from the following enumeration of the sections in Chap. iii. of Smith's Compendium:—

"§ 1. Definition and Character of 'Agent.'
2. Rights of Principal against Agent.
3. Rights of Agent against Principal.
4. Rights of third parties against Principal.
5. Rights of Principal against third parties.
6. Rights of Agent against third parties.
7. Rights of third parties against Agent *."

The only treatise on this subject is that of Paley, a new edition of which has been lately published, with many valuable notes by Mr. Lloyd.

INSURANCE.—This is a subject which, though of great importance, comes less frequently in the way of the young lawyer than, perhaps, any of those already enumerated. It was under the auspices of that distinguished judge, Lord Mansfield, that this branch of law was organised into a system. "The law of insurance has been frequently mentioned," says Mr. Roscoe, "as an instance of the admirable manner in which his powerful mind created a system of law adapted to all the exigencies of society. When his Lordship was raised to the bench, the contract of insurance was little known, and a few unimportant Nisi Prius decisions were all that were to be found upon the subject. Yet this branch of law, so little

* P. 43. See also the same subject very well stated with reference to pleadings and evidence, in Saunders on Pl. and Ev.

understood, grew up, under his administration, into a system remarkable for the excellence of its principles, and the good sense and simplicity of its practice *."

An excellent summary of the law of insurance will be found in Smith's Compendium, or Selwyn's Nisi Prius; and Hughes on Insurance, may be consulted with advantage for the practical details. Abbott on Shipping †, must be studied carefully by him who wishes to obtain a thorough and comprehensive acquaintance with the law of shipping. This work is characterised by Lord Tenterden's well-known clearness, caution, and accuracy, and is an authentic and authoritative digest of foreign as well as English law on the important subject of shipping.

"It is now," says Lord Tenterden, "more than a century since the first publication of the work of *Molloy*, the only English lawyer who has written on these matters. During that period the law of the country has grown with its commerce; many interesting points have been argued by able and eloquent advocates, and decided by learned and enlightened judges; and some very important regulations have been introduced by the legislature: but very little of useful addition has been made to the collection of *Molloy*, either by the subsequent editors of his treatise, or by the other authors who have written

* Lives of Lawyers, pp. 216, 217.

† And see Selwyn's Nisi Prius, art. "Shipping," pp. 1226—1257.

on the same topics. Yet the absence of a general and established code of maritime law, which almost every other European nation possesses, serves to render a collection of the principal points of that law peculiarly necessary, both for English merchants and English lawyers. On the subject of insurance, this has been already effected. In the present treatise an attempt is made to supply the defect in some other branches. The treatise now offered to the public is compiled, not only from the text-writers of our own nation, and the reports of the decisions of our own courts, but also from the books of the civil law, and from such of the maritime laws of foreign nations, and the works of foreign writers, as I have been able to obtain a knowledge of*."

SALE OF GOODS, &c.—All the law respecting the sale of goods is stated in Chitty, and Comyn on Contracts, Smith's Compendium, Ross's Vendors (edited by Harrison), and in so many other easily accessible works as render it unnecessary to specify them.

BILLS OF EXCHANGE, PROMISSORY NOTES, CHEQUES, &c.—This is a great and very intricate head of law, and one to which the student's attention will be called almost daily. "An intimate acquaintance with the commercial law, in respect of bills of exchange, &c." observes Mr. Chitty, "is of the greatest importance to every professional man, because more ready and

* Abbott on Shipping, Preface viii. ix.

immediate advice is required from him in respect of bills and notes, than on almost any other point; and the pleader, in particular, is called upon for the utmost expedition in advising and framing the legal proceedings *." Mr. Chitty's treatise, from which the above is quoted, and which is a very complete and masterly one, contains everything relating to the subject, very conveniently arranged, and with an excellent analytical index. It is, however, a work of such formidable dimensions as are apt to scare the student, and confuse him, when suddenly consulting it, with its minuteness and multiplicity. Roscoe's Digest of the Law of Bills of Exchange, is a very accurate and well arranged work; but Smith's Compendium contains, perhaps, the best and briefest summary to be anywhere found, of this difficult and extensive subject. There is but one work extant on this subject, of a strictly elementary character, but that work is an admirable one,—the little treatise of Mr. Byles. A second edition, just published, sufficiently testifies the estimation in which it is held by the profession. Its slight appearance † might, perhaps, lead a hasty observer to treat it as a meagre and superficial performance; but the more it is read and used, the more will be appreciated the ability, method, accuracy, and compression, which it exhibits. It is

* Chitty on Bills, Pref. to first edit.

† It is a duodecimo volume, containing (exclusive of the Appendix) only 261 pages.

surprising that the author should have contrived to combine such comprehensiveness and compression—to render his work at once so elementary and practical.

"Simple as a bill or note may in form appear," says Mr. Byles, in his well-written preface, "the rights and liabilities of the different parties to those instruments have given rise to an infinity of legal questions, and multitudes of decisions—a striking proof of what the experience of all ages has already made abundantly manifest, that law is, in its own nature, necessarily voluminous; that its complexity and bulk constitute the price that must be paid for the reign of certainty, order, and uniformity; and that any attempt to regulate multiform combinations of circumstances, by a few general rules, however skilfully constructed, must be abortive." * * This little work aspires merely to supply a want felt by many, of a plain and brief summary of the principal practical points relating to bills and notes, supported by a reference to the leading or latest authorities. In many cases, however, the reader will find the law laid down *in the very words of the judgment*—a plan which the author has been induced to adopt, partly that those, who may not have access to the authorities, may be satisfied that the law is correctly stated; partly because he distrusted his own ability to frame, on so complicated a subject, a general rule, neither too narrow nor too wide—beset, as almost all such rules

now are, with numerous qualifications and exceptions; and, partly, because the language of the judges is infinitely superior to any which he could presume to substitute—remarkable as are many of the reported judgments on this subject in our courts of law, for accuracy, precision, and perspicuity*."—It were to

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* Pref. pp. xv, xvi. The following passage from the same part of the work will be read with interest by the student.

"There is no vestige of the existence of Bills of Exchange among the ancients; and the precise period of their introduction is somewhat controverted. It is, however, certain, that they were in use in the fourteenth century, though we find, in our English law-books, no decision relating to them, earlier than the reign of James I. [*i. e.* Martin *v.* Boure, Cro. Jac. 6].

"It is probable that a bill of exchange was, in its original, nothing more than a letter of credit from a merchant in one country to his debtor, a merchant in another, requesting him to pay the debt to a third person, who carried the letter, and happened to be travelling to the place where the debtor resided. It was discovered by experience that this mode of making payments was extremely convenient to all parties:—to the *creditor*, for he could thus receive his debt without trouble, risk, or expense; to the *debtor*, for facility of payment was an equal accommodation to him, and perhaps drew after it facility of credit; to the *bearer* of the letter, who found himself in funds in a foreign country, without the danger and incumbrance of carrying specie. At first, perhaps, the letter contained many other things, besides the order to give credit. But it was found that the original bearer might often, with advantage, *transfer* it to another. The letter was then disencumbered of all other matter—it was open, and not sealed—and the paper on which it was written gradually shrunk to the slip now in use. The assignee was, perhaps, desirous to know beforehand, whether the party to whom it was addressed would pay it—and sometimes showed it to him for that purpose. His *promise to pay* was the origin of—Acceptances. These letters, or bills—the acceptances of debts in a foreign country,—were some-

be wished that the perspicacious intellect of Mr. Byles would address itself more frequently to such tasks as the one he has undertaken with reference to Bills of Exchange.

The only other treatise—if it should not rather be called a *Digest*—on this subject is that of the very learned Mr. Justice Bayley, and is, as it deserves to be, a work of acknowledged authority. It is less calculated, however, than either of the others above named, for consecutive reading, especially on the part of the learner.

Such are the leading heads of Commercial Law, both in difficulty and importance—such the works, and manner of reading them, which the author has ventured to point out to the attention of the learner. There are, however, several other most important heads of law which demand the student's close and early attention—as, for instance, the law of LIBEL AND SLANDER, an interesting, and not particularly difficult subject, of which Selwyn's Nisi Prius, Phillip's Evidence, and Saunders on Pleading and Evidence, contain each of them excellent summaries. The only treatise of note is that of Mr. Starkie, of which a new edition has been lately published. Such portions only of this work must be read as may be pointed out by

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times more, sometimes less, in demand; they became, by degrees, articles of traffic: and the present complicated and abstruse practice and theory of exchange were gradually formed."—pp. vi—ix.

the tutor—for the whole work is too bulky to admit of being read through, at least during the early part of the student's career.

The law of EXECUTORS AND ADMINISTRATORS is very intricate and difficult, and yet is involved in a very considerable portion of the business to which a young lawyer's attention is called at an early period of his studies. It is therefore of importance that he should soon acquire a distinct notion of the character and functions of executors and administrators, and, at least, a general acquaintance with their extensive and complicated rights and liabilities. Let him therefore peruse attentively Blackstone's Commentaries, book ii. c. 32, "of Title by Testament and Administration;" and chap. v. part viii. of "Chitty's General Practice of the Law," vol. ii. pp. 510—560 (*a*) (2nd ed.), which is a sort of abridgment of WILLIAMS ON EXECUTORS "one of the most able and correct works," says Mr. Chitty very justly, "that has ever been published on any legal subject" (p. 511 (*y*)).

This latter work is in two large octavo volumes, recently published, and was mentioned with commendation by the late Lord Tenterden, from the bench. The pupil's attention will be directed by his preceptor to those portions of the work which most require it.

SHEPHERD'S TOUCHSTONE is a work which will be found very useful to the young common lawyer. It is a work of very high authority, and contains the cream of Coke upon Littleton. The chapters "On

Deeds," and "The Exposition of Deeds," "Condition," "Covenant," "Testament," are worthy of special attention.

It would be an endless task to enumerate all the treatises on specific subjects, with which the student ought to be more or less acquainted. Experience, and his tutor, will from time to time point them out to him. There are, however, two or three standard works of a general character which must be mentioned before concluding this chapter.

SAUNDERS' REPORTS, with the commentaries of Serjeant Williams, and annotations of Mr. Justice Patteson—all three of them lawyers of very great eminence—has long been a celebrated text-book of the common lawyer—a mine of pleading knowledge—a model of legal analysis. Since, however, such wholesale alterations have been lately effected by rules, statutes, and decisions, the utility of this admirable work has been, as far as learners are concerned, considerably impaired; and it requires to be read with much caution. A new edition, however, which has long been called for, will, no doubt, ere long, make its appearance, and be hailed by our student as a prize.

HARRISON'S DIGEST is a *sine quâ non* to the common lawyer, whether at or under the Bar—whether pupil or practitioner *.

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* "As the leading object was to make the work useful as a Common Law Digest," says Mr. Harrison in his preface, "I have

A new edition of this work, very carefully prepared, has just been published in three large volumes, closely printed in double columns; and, if the student can but acquire a moderate dexterity in referring to its contents, he will have a tolerable command of the whole body of the modern Common Law. Some practical directions on this point, as also with reference to the great Digest of Comyn, will be found, however, in a subsequent portion of this work.

Mr. Chitty's "GENERAL PRACTICE OF THE LAW," which is now nearly completed, and of which the first three parts have already passed into a second edition,—a work which, says its author, "incorporates the result

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inserted ALL the cases determined in the several Courts of Common Law, both in Banco and at Nisi Prius (beginning in 1756, at the time when Lord Mansfield became Lord Chief Justice of the Court of King's Bench) and the Court of Bankruptcy; and also the crown cases reserved:—and with the view of extending its general usefulness, I have made a very full selection of all such determinations in the House of Lords and the several Courts of Equity, as appeared to me to be of value in general practice. Besides this, there will be found collected many important notes of cases, which are taken from the best modern treatises, and which are not elsewhere reported—and the cases determined in the Court of King's Bench in Ireland, by Messrs. Alcock and Napier. As the enactments of the legislature have of late made such important alterations in the state of the law, and as so many of the recent cases turn entirely upon the language of the statutes, it appeared to me that the work could not be considered as at all complete without an abridgment of those enactments: I have, therefore, added, under the proper heads, the statutes in more or less of an abridged form; but, as far as it was possible to do so, I have retained the words of the legislature."—Pref.

of forty years' severe study and experience"—will be a great accession to the young lawyer's library, at any period of his studies. Its plan and arrangement are very comprehensive and convenient *. It may be looked upon as a kind of cabinet, in which may be deposited one's law, new and old—or rather as a series of "pegs to hang modern decisions upon." It is the only work, of modern days, that really presents, as it professes, a connected view of the whole system of the civil administration of justice, in every department, as it now exists—and is, therefore, well

* "I have attempted," says Mr. Chitty, "in the following work, to give a concise but practical view of the principal legal and equitable rights of private individuals; of the injuries and offences affecting the same; and the best remedies and punishments for such injuries, whether by acts of the parties themselves, or by the intervention of legal proceedings; and as well to prevent or remove the injury, as to enforce specific relief, or performance, or compensation, or punishment—and as each proceeding has been improved by recent enactments, rules, and decisions. One object has been to assist students, by affording them a compact view of the present law, nearly in the same arrangement as adopted by Blackstone, and so as to form a practical continuation of that admirable work:—but the chief object has been to assist practitioners in every branch of the law, so that every individual, although practising principally in one department or in a particular court, or even unconnected with the practice of the law, may be enabled at once to observe the general rules and practice affecting the whole, and thereby to suggest to his client the best remedy, though in a different course to that which he has usually adopted. * * * It has, therefore, been my object, in the present treatise, to collect and digest the whole practice of the law, as regards the civil administration of justice in every department."—Gen. Pr. of the Law, Pref. vii—viii. (2nd edit.)

calculated to become a companion to BLACKSTONE'S COMMENTARIES—a work which cannot be mentioned but with feelings of pride and gratitude towards its illustrious author. It is becoming too much the fashion to depreciate the practical utility of the Commentaries, on the alleged ground of their having become in a considerable measure obsolete *—and of their "superficiality" and "inaccuracy of details." It may be safely asserted, that not all the alterations which have taken place since their publication, put together, have seriously impaired the intrinsic excellence and utility of the Commentaries. They will last as long as the laws of England. A persevering study of them will always confer very great benefit upon learners, young and old. No where else will they see subjects of the most perplexing intricacy and obscurity explained with such masterly ease, such exquisite felicity of disposition and illustration. "He it was," to adopt the graceful illustration of Lord Avonmore, "that first gave to the law the air of a science. He found it a skeleton, and clothed it with life, colour, and complexion: he embraced the cold statue, and by his touch it grew into youth, health, and beauty." It may, indeed, be said of Blackstone—*nihil tetigit quod non ornavit.* There are, certainly, portions of the Commentaries which may

* Mr. Amos calls them, in one of his lectures at the London University—"*A charnel-house of dead law!*"

be passed over—at least during the pupil's earlier years—with but a cursory glance; but the great, the unalterable, PRINCIPLES of law, the exposition of which occupies the bulk of the work, shine forth, there, in their fitting, their native, dignity and simplicity *.

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* The author once asked one of the most eminent political writers now living,—one who had on several occasions been signally successful in attacking the opinions of lawyers in Parliament—how it was that he, who had never been a member of the legal profession, was so completely *at home* on legal subjects, especially on questions of constitutional law.—"Why," he replied with a smile, "I *study* a book which you lawyers only talk about, or look down upon—Blackstone's Commentaries—the most delightful and instructive work that ever came in my way. I must have read it over at least four or five times."

The author has thought it would not be uninteresting to set before his younger readers the opinions which have been expressed by several eminent persons, professional and others, concerning the Commentaries.

Lord Mansfield.—"Till of late, I could never, with any satisfaction to myself, point out a book proper for the perusal of a student; but since the publication of Mr. Blackstone's Commentaries, I can never be at a loss. *There* your son will find analytical reasoning diffused in a pleasing and perspicuous style. *There* he may imbibe, imperceptibly, the first principles on which our excellent laws are founded; and *there* he may become acquainted with an uncouth crabbed author—Coke upon Littleton—who has disappointed and disheartened many a tyro, but who cannot fail to please, in a modern dress."—Holliday's Life of Mansfield, p. 89.

C. J. Fox.—"You, of course, read Blackstone over and over again; and, if so, pray tell me whether you agree with me in thinking his style of English the very best of our modern writers: always easy and intelligible—far more correct than Hume—less studied and made up than Robertson."—"His purity of style I particularly admired. He was distinguished as much for simplicity and strength

A neat and portable edition of Blackstone, by an editor of competent practical learning, who would confine himself strictly to pointing out what is erroneous and obsolete, without attempting to encumber it with such unwieldy annotations as have disfigured some editions,—is much wanted, and would, doubtless, be well received by the profession and the public.

Such is the outline of a course of reading—if one may adopt so formal a term—which the author ventures to hope will be found advantageous to a diligent and enterprising student. It is *but* an outline; for the multitudinous exigencies arising in the course of two or three years' practical study of the profession, will call for frequent reference to, and perusal of,

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as any writer in the English language."—Trotter's Memoirs of Fox, p. 512.

Jeremy Bentham.—"He it was who first, of all institutional writers, has taught jurisprudence to speak the language of the scholar and the gentleman, put a polish upon that rugged science, and cleansed her from the dust and cob-webs of the office; and if he has not enriched her with that precision which is drawn only from the sterling treasury of the sciences, has decked her out, however, to advantage, from the toilet of classic erudition; enlivened her with metaphors and allusions, and sent her abroad, in some measure to instruct, and in still greater measure to entertain the most miscellaneous, and even the most fastidious societies."—Fragment on Government, Preface, lxxxix.

Sir William Jones.—"His Commentaries are the most correct and beautiful outline that ever was exhibited of any human science."—Law of Bailments, p. 3.

Mr. Selwyn.—"A justly-celebrated writer, who for comprehensive design, luminous arrangement, and elegance of diction, is unrivalled."—Nisi Prius, vol. 1, p. 45 (*n*) 7th ed.

works which could not be specified in the foregoing chapter, without converting it into a mere catalogue of books. Such must be suggested, from time to time, by an experienced tutor,—if, indeed, the pupil be not able to discover them for himself.

In reading, however, *the books* here recommended, it is hoped that they will be read in the *manner and spirit* pointed out: that the student will ever have before his mind's-eye that important maxim—

NON QUAM MULTA, SED QUAM MULTUM.

CHAPTER XI.

METHOD AND OBJECTS OF LAW READING, WITH REFERENCE TO APPREHENSION—MEMORY—JUDGMENT.

In the last chapter was suggested an outline of the course of law reading, considered by the author most desirable and practicable to be pursued by the student, while in a pleader's or barrister's chambers—accommodated, as far as possible, to the business passing under his eye, with a view to each of them facilitating and illustrating the other. The student was supposed, moreover, to be under the constant *surveillance* of his legal tutor. Let it now, however, be taken for granted, that the period of his pupillage has expired, and that he is anxious to deepen and widen his acquisitions, by a still more sedulous and systematic course of reading—to erect a goodly superstructure upon a sound and extensive foundation. All that is intended, in the present chapter, is to offer a few observations on the temper and spirit in which such

a task should be undertaken—the objects that should be constantly kept in view.

Whatever, then, may be the course of reading he proposes to follow, however few or numerous his opportunities of so doing, he is reminded that his object is, or ought to be, two-fold: not only to acquire and retain legal knowledge, but in doing this to *discipline his mind*—to engender legal habitudes of thought. An eager but short-sighted student is apt to read only for the momentary satisfaction of his curiosity—or, at most, in order to recollect what he has read; but a judicious student will take care, in addition to this, constantly and vigorously, to exercise those great faculties of his understanding,—apprehension, memory, and judgment.

"Perception," says a judicious author, "is to the mind what the eye is to the body: if the sight be dim or imperfect, the ideas communicated will be also dim and imperfect *. The near-sighted man must have the object brought close to his eyes; for that reason he can see but little of it at once, and requires much time and leisure to view all the parts successively before he can pronounce concerning its due symmetry and proportions. In the same manner the man of slow capacity must have

* "A clear apprehension," says Phillips, "makes the mind receive the right and distinct notion of the thing represented, as the clearness of a glass serveth for the admission of a more exact image of the face that looks upon it; whereas, if it be soiled or dim, it rendereth either none, or an imperfect shape."—Stu. Leg. Ra., p. 10.

the question long before him—revolve it over and over in his mind, and consider and weigh each circumstance singly, in order to form a judgment of the whole: but the sharp-sighted man—such an one was Lord Mansfield—takes in the object with all its relations and consequences at a glance: and so quick is his distinguishing faculty, that the act of conception and judgment seems almost to be formed and executed at the same instant. * * Those endowed with this faculty, are in the fairest way of becoming eminent in any science or profession. With it, a man *may* fail, but, without it, he cannot ever be considerable *."— "Without this," says Phillips, "none of the particular cases can be thoroughly sifted, or sufficiently set forth. For, considering the depth of knowledge reposed in the laws of this land, and that cases of much conformity and resemblance daily happen; sharpness of apprehension is necessary, not only for the understanding of one, but also upon circumstances of matter to espy a difference in the other, and upon any sudden occasion to be able to reply to an adversary's unexpected objections—to understand his client's case at first opening, the drift of his adversary's reasons at the first urging, and likewise readily to invent and fitly to apply his provided arguments. If this faculty of apprehension faileth—saith Hippocrates—all other diligences are lost, for it is the inlet

* Simps. Reflect., pp. 8, 9.

of knowledge *." These are judicious observations; but it should be borne in mind, that as there is no faculty of more importance than this in the study of the law, so is there none that requires such vigorous controul and management, lest it should, in a manner, defeat itself. *Nihil sapientiæ odiosius acumine nimio.* The youthful possessor of a quick apprehension is too apt to rely upon it unduly—if not exclusively. Accustomed to penetrate in an instant, with little or no effort, to the meaning of what he reads, he is satisfied with such momentary success, and incurs the risk of forming a hasty superficial habit of reading and thought, that will soon unfit him for competition with men who are very greatly his inferiors in natural ability. What is the use of acquiring legal knowledge, without the power of retaining, and of using it? It is but vapour disappearing from the polished surface of the mirror the moment after being breathed upon it! Let the student, then, who is conscious of possessing this "sharpness of wit," watch it with the utmost jealousy, if he wish to render it his greatest friend, instead of his greatest enemy—let him prevent its encroachments upon the province of its less showy and active sister-quality—the judgment †. Let him

* Stu. Leg. Ra., pp. 10, 11.

† "Men often stay not," says Locke, "warily to examine the agreement or disagreement of two ideas, which they are desirous or concerned to know; but either incapable of such attention as is requisite in a long train of gradations, or impatient of delay, lightly

check it when it would hurry him on from page to page—from topic to topic—each little more than glanced at! Let him resolutely pause, and take a survey of his recent and rapid acquisitions; for if he look not well after them, they will prove—to adopt the beautiful comparison of Locke—"like fairy money, which though it were gold in the hand from which he received it, will be but leaves and dust when it comes to use *." How often will a few moments' such retrospection convince the self-satisfied student, that what he thought he had thoroughly understood, he has only

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cast their eye on, or wholly pass by, the proofs; and so, without making out the demonstration, determine of the agreement or disagreement of two ideas, as it were, by a view of them as they are at a distance, and take it to be the one or the other, as seems most likely to them upon such a loose survey." Essay on the Understanding, Book IV., ch. 4, § 3.

"A student should labour by all proper methods," says Dr. Watts, "to acquire a steady fixation of thought. The evidence of truth does not always appear immediately, nor strike the soul at first sight. It is by long attention and inspection, that we arrive at evidence; and it is for want of it that we judge falsely of many things. We make haste to determine, upon a slight and a sudden view,—we confirm our guesses which arrive from a glance; we pass a judgment while we have but a confused or obscure perception, and thus plunge ourselves into mistakes. This is like a man who, walking in a mist, or being at a great distance from any visible object, (suppose a tree, a man, a horse, or a church,) judges much amiss of the figure and situation and colours of it, and sometimes takes one for the other; whereas, if he would but withhold his judgment till he came nearer to it, or staid till clearer light came, and then would fix his eyes longer upon it, he would secure himself from those mistakes."—Improvement of the Mind, chap. xv. "Of Fixing the Attention."

* Essay, Book I., ch. 4, § 23.

half-understood, or, perhaps, even altogether, *mis*-understood! Has what he read a day, or week, or month or two ago—passed away—

"as flits the shade across the summer field?"

If so, he has, indeed, read to no purpose—he has wholly mis-spent his time. He might as well have been witnessing a boat-race, or flying a kite!—Whatever, then, such an one reads, let him read with moderate slowness, "abiding," as South says, "and dwelling upon it, if he would not be always a stranger to the inside of things."—But *has* the student, after all, this quick apprehension for which he is here given credit? Or does he only *think* he has, deluded by his friends and flattered by self-love? How often is a *lively fancy* confounded with an acute perception—fancy, which is, in legal studies, but as the brilliant poppy-flower in the corn-field!" *

It would be well if every legal student, whatever be his quickness, would liken himself, for a while, to the near-sighted man described in a preceding page, and make similar efforts to obtain a clear and complete view of his subject. If he wish to become really and permanently bright, let him imagine him-

* Since writing this, the author happened to discover the same thought very beautifully expressed by Pope:—

"Flowers of rhetoric in sermons and serious discourses, are like *the blue and red flowers in corn*, pleasing to those who come only for amusement, but prejudicial to him who would reap only the profit."—Thoughts on Various Subjects, xxix.

self for a while to be *dull*—and take his measures accordingly. It may be safely asserted that, *cæteris paribus*, the slow is always preferable to the quick legal reader, at the commencement of his studies.—Let the pupil ever bear in mind, that but a very little interval must elapse between the acquisition of legal knowledge and habits, and their use; and that it rests only with himself whether or not he shall be hereafter "fit for the occasion sudden," or be numbered throughout life among those who are "*ever learning and never able to come to the knowledge of the truth.*"

There is nothing more captivating to young lawyers of the kind now describing—of "lively parts," as Phillips hath it—nothing more calculated to mislead them, than those *general principles* which have been already alluded to *—general principles, which to be at all serviceable, must be applied with prompt exactitude to the innumerable and ever-varying combinations of circumstances presented to the mind of the lawyer. Nothing will ever enable them to appreciate and apply those principles justly, but patient study and long practice. "*The tenant shall not dispute his landlord's title,*"—is, for instance, a well-settled rule of law; it is, apparently a very simple one, and its policy obvious, perhaps, at a glance. The student, therefore, passes on, yielding full and instant assent. Presently a case arises which he confidently considers

* *Ante*, p. 229—230.

exactly governed by this maxim—apparently a mere instance of its application: and yet he will find, when perhaps too late, that it is *not* applicable—that in his hasty superficial examination, he has committed a fatal blunder, and deeply injured at once the interests of his client, and his own reputation. And so of fifty other maxims. Indeed, it requires the nicest discrimination to ascertain whether a particular case falls within the general rule, or is governed by some of its endless limitations and exceptions; and this discrimination must be the result of calm, leisurely, and extensive study. General principles are edge-tools in the hands of the legal tyro; and he must take care how he handles them.

While, however, the student is warned against falling into a hasty, slovenly, superficial habit of mind, let him not fall into the opposite extreme—that of sluggishness and vacillation. Careful and thoughtful reading does not imply a continual poring over the same page, or subject. The student might in such a case justly compare himself to the pilgrim stuck in the Slough of Despond. Because he is required to look closely at each individual part, in order thoroughly to comprehend the whole, let him not suppose that he is to scrutinise it as with a microscope. What is required is simply, *attentive reading*. If he cannot, after reasonable efforts, master a particular passage, let him mark it as a difficulty, and pass on. He will by and by return, in happier mood—with increased knowledge—

and find his difficulty vanished. The student's reading, however, must not only be thus attentive—it must be *steadily pursued.* "Without a solid, settled, and constant mind, it is impossible to make any progress in this study; for, the cases being so intricate, and the reasons thereof so deep and weighty, a wavering and unsettled mind cannot attain to the apprehension thereof—being herein like the mathematics—wherein, if the mind be caught away for but a moment, he is to begin anew. One of such an unsettled mind is not capable of meditating and ruminating upon those things that it hath with difficulty apprehended, so as to fix it, and make them its own. *Qui ex aliis,* saith Seneca, *in alia transiliunt, aut ne transiliunt, quidem, sed casu quodam transmittuntur, quomodo habere quicquam certum mansurumve possunt, suspensi et vagi?* And this unsettledness and inconstancy is *signum vacillantis animi et nondum tenentis tenorem suum;* in Seneca's style—it produceth divers and contrary thoughts, *aliis alio nitentibus,* which, like divers and contrary diet, hinder digestion, one thought smothering the other, not suffering him to have the least benefit of any. His body is among his books, but not his mind; or, if reading, doth not shew himself attentive and diligent, but doth either number the tiles of the house, or build castles in the air—or doth nothing less than what he should do—his thoughts being much like good women's talk at a gossiping; whereof Seneca tells us—*varius nobis fuit*

sermo ut in convivio, nullam rem usque ad exitum adducens, sed aliunde transiliens *."

One of the most frequent but unperceived sources of hinderance, to one who wishes to pursue a systematic course of legal reading, is *the undue prosecution of particular topics.* In perusing, for instance, a treatise, the student will stumble on a difficult—an obscure passage; which, as it ought, excites his attention. He begins to examine the chief case cited—that refers to others—which again lead to others—and he follows. In doing this, he accidentally lights upon a point that occupied his attention some time ago: here he finds the law so invitingly stated that he cannot think of quitting it. *This* he follows up, as he *was* following up another topic—and so he goes on, hour after hour, perhaps, till he finds that he has drifted out of sight of the point from which he originally started, and has quite lost the connection between his previous readings. Now, if he does not check this erratic tendency, he will never get through any book, or pursuit, satisfactorily; he will gradually incapacitate himself for fixed and continuous mental exertion.—The acquisition of learning, however, will serve but little purpose unless it be permanently and serviceably *retained*†. This will depend

* Stu. Leg. Ra., 52, 53.

† "What booteth it to read *much*, which is a weariness to the flesh; to meditate often, which is a burthen to the mind; to learn daily with increase of knowledge; when he is to seek for what he hath

much on the natural powers of the memory, but more on the manner in which it is exercised and cultivated.

"For my own part," says Dugald Stewart, "I am inclined to suppose it essential to memory, that the perception, or the idea that we would wish to remember, should remain in the mind for a certain space of time, and should be contemplated by it exclusively of every thing else; and that attention consists partly (perhaps entirely) in the effort of the mind to detain the idea or the perception, and to exclude the other objects that solicit its notice *."

"When we first enter on any new literary pursuit," says the same distinguished writer, in another part of his work, "we commonly find our efforts of attention painful and unsatisfactory. We have no discrimination in our curiosity, and, by grasping at every thing, fail in making those moderate acquisitions which are suited to our limited faculties. As our knowledge extends, we learn to know what particulars are likely to be of use to us; and acquire a habit of directing our examination to those, without distracting the attention with others. It is partly owing to a similar circumstance, that most readers complain of a defect of memory, when they first enter on the study of history. They cannot separate important from trifling facts,

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learned, and perhaps, then especially, when he hath most need thereof? Without this, our studies are but lost labour!"—Stu. Leg. Ra., 15, 16.

* El. Philos., c. 2, p. 108.

and find themselves unable to retain any thing, from their anxiety to secure the whole *."

It is a trite remark that no power of the mind is susceptible of such rapid and sensible improvement as the memory, provided proper means be resorted to. It is, also, a common observation that the imperfection of their memory is one of the earliest and loudest complaints of legal students. And is not the reason obvious, at least in the generality of cases? The "variety almost infinite" of objects †, to which their attention is called, they are anxious to recollect—at once; to fix them indiscriminately in their memory; and their vain efforts to do so, ensure but intense chagrin, and fruitless exhaustion both of body and mind.

"As the great purpose to which this faculty is subservient," says Dugald Stewart, "is to enable us to collect, and to retain, for the future regulation of our conduct, the results of our past experience; it is

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* Phil. ch. vii, § 7, p. 462. (vol. 1.)

† "It is reported of Cyrus that he could have saluted all his army by the names of his soldiers respectively; and Seneca tells us that he himself, by memory, repeated 2000 names in the same order in which they were spoken to him. These facts, if true, shew to what a height the memory may be carried: and if this faculty be useful to a general and a philosopher, how much more so must it be to a lawyer, when the very cases which are reported are, perhaps, more numerous than the soldiers in Cyrus' army, and are certainly more difficult to remember, there being fewer associations of ideas to assist us in recollecting the names of cases, than the names of men."—Simps. Reflect.

evident that the degree of perfection which it attains, in the case of different persons, must vary; first, with the facility of making the original acquisition; secondly, with the permanence of the acquisition; and, thirdly, with the quickness or readiness with which the individual is able, on particular occasions, to apply it to use. The qualities, therefore, of a good memory are, in the first place, to be susceptible; secondly, to be retentive; and, thirdly, to be ready*."

The law-student, then, having distinctly comprehended what he has been reading, should reflect upon it, and so—as it were—work it into his mind, if he wishes to retain it for future use. But he must make a prudent *selection* of his topics—not bestow equal attention upon things of moment, and of insignificance—upon principles and details. If he does this his mind, he may rely upon it, will be soon choked up with rubbish. It is puerile to attempt to remember every thing. The memory is, undoubtedly, a most valuable repository—but it may be, and too often is, made not a store-house, but a lumber-room.

* Phil. ch. VI., § 7, p. 417. "It is but rarely that these three qualities are united in the same person. We often, indeed, meet with a memory which is at once susceptible and ready; but I doubt much if such memories be commonly very retentive: for, susceptibility and readiness are both connected with a facility of associating ideas, according to their more obvious relations; whereas retentiveness, or tenaciousness of memory, depends principally on what is seldom united with this facility—a disposition to systematise, and to philosophical arrangement."—Ib. 418.

In vain do we flatter ourselves that we have a memory of those ideas which we cannot recollect—or which, if we do recollect, are so confused, that they perplex or embarrass, instead of explaining and illustrating a question *." Not only must the powers of the memory be thus directed to proper objects, but the student must form the habit of reading with a constant reference to subsequent practical utility. He must read to remember. "Not only the *inclination* to recollect," justly observes Mr. Raithby, "but the very powers themselves of recollection are impaired, and at length lost by disuse."

The following observations are so full of practical importance to the young lawyer, that it has been thought fit to quote them at length from the work of that distinguished writer, to whom such frequent reference has been already made—Dugald Stewart:—

"Every person must have remarked in entering on any new species of study, the difficulty of treasuring up in the memory its elementary principles; and the growing facility which he acquires in this respect, as his knowledge becomes more extensive. By analysing the different causes which concur in producing this facility, we may, perhaps, be led to some conclusions which may admit of a practical application.

"1. In every science, the ideas about which it is

* Simps. Reflect.

peculiarly conversant, are connected together by some particular associating principle; in one science, for example, by associations founded on the relations of cause and effect; in another by associations founded on the relations of mathematical truths; in a third, on associations formed on antiquity of time and place. Hence, one cause of the gradual improvement of memory with respect to the familiar objects of our knowledge; for whatever be the prevailing associating principle among the ideas about which we are habitually occupied, it must necessarily acquire additional strength from our favourite study.

"2. In proportion as a science becomes more familiar to us, we acquire a greater command of attention with respect to the objects about which it is conversant; for the information which we already possess, gives us an interest in every new truth, and every new fact, which have any relation to it. In most cases, our habits of inattention may be traced to a want of curiosity; and, therefore, such habits are to be corrected, not by endeavouring to force the attention in particular instances, but by gradually learning to place the ideas which we wish to remember, in an interesting point of view.

"3. When we enter on any new literary pursuit, we are unable to make a proper discrimination in point of utility and importance, among the ideas which are presented to us; and by attempting to grasp at every thing, we fail in making those mode-

rate acquisitions which are suited to the limited powers of the human mind. As our information extends, our selection becomes more judicious and more confined; and our knowledge of useful and connected truths advances rapidly, from our ceasing to distract the attention with such as are detached and insignificant.

"4. Every object of our knowledge is related to a variety of others; and may be presented to the thoughts, sometimes by one principle of association, and sometimes by another. In proportion, therefore, to the multiplication of mutual relations among our ideas (which is the natural result of growing information, and in particular, of habits of philosophical study) the greater will be the number of occasions on which they will occur to the recollection, and the firmer will be the root which each idea, in particular, will take in the memory. It follows, too, from this observation, that the facility of retaining a new fact, or a new idea, will depend on the number of relations which it bears to the former objects of our knowledge; and on the other hand, that every acquisition, so far from loading the memory, gives us a firmer hold of all that part of our previous information, with which it was in any degree connected.

"5. In the last place, the natural powers of memory are, in the case of the philosopher, greatly aided by his peculiar habits of classification and

arrangement—the most important improvement of which memory is susceptible *."

Influenced by such reflections as these, let the student approach his task with a well-directed, and well-regulated energy—and he will soon find that his memory is sufficient for the duties imposed upon it. A patient, perspicacious intellect, adopting and adhering to a methodical plan of study, will very soon feel conscious of a memory gradually adapting itself to its office—forming daily innumerable secret sources of association, at once facilitating the acquisition, retention, and use of legal learning. Attention, and method are, indeed, the foundation and support of memory. Frequent reflection on what has been read—perpetual recurrence to leading principles †, and application of it to the actual occurrences of

* El. Phil. c. vi. § 3, pp. 430, 431., vol. 1, 6th ed.

† "I am inclined that to believe, both from a theoretical view of the subject, and from my own observations, as far as they have reached, that if we wish to fix the particulars of our knowledge very permanently in the memory, the most effectual way of doing it, is *to refer them to general principles*. Ideas which are connected merely by casual relations, present themselves with readiness to the mind, so long as we are forced by the habits of our situation, to apply them to daily use; but when a change of circumstances leads us to vary the objects of our attention, we find our old ideas gradually to escape from the recollection; and if it should happen that they escape from it altogether, the only method of recovering them, is by renewing those studies by which they were at first acquired. The case is very different with a man whose ideas presented to him at first by accident, have been afterwards philosophically arranged, and referred to general principles. When he wishes to recollect them, some time and reflection will frequently be necessary, to enable him

business, will be the readiest way of making what is read—*our own*. It cannot, indeed, be too frequently impressed upon the student, that with METHOD he may do everything, without it he can do nothing, in legal studies. "The law is a labyrinth; and certainly, if there *be* any, *method* is that Ariadne's clew that must lead us out of it*." "I must, in general, say thus much to the legal student," says Sir Matthew Hale; "it is very necessary for him to observe a method in his reading and study. Let him assure himself, though his memory be never so good, that he will never be able to carry on a *distinct serviceable memory* of all, or the greatest part of what he reads, to the end of seven years, or a much shorter time, without the help of method: nay, what he hath read seven years since will, without the aid of method, or re-iterated use, be as new to him as if he had scarcely read it†." This great man then proceeds to recommend the student's copying into a *common-place-book* "the substance of whatever he reads:" but, it may be suggested—why not rather imprint it in his memory? Why beget the habit of reliance rather on a common-place book, than on the memory?—This subject, however, will be discussed hereafter.—One of the pro-

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to do so; but the information which he has once completely acquired, continues, in general, to be an acquisition for life; or, if, accidentally, any article of it should be lost, it often may be recovered by a process of reasoning."—Stewart's El. Ph. ch. vi. § 2, vol. 1. p. 420, (6th ed.)

* Leg. Ratio, p. 124. † Pref. to Roll's Abridgment.

foundest and most versatile scholars in England, and, perhaps, in Europe—in many respects one of the most eccentric—has a prodigious memory, which the author once told him was a magazine stored with wealth from every department of knowledge. "I am not surprised at it," he added, "nor would you be, or any one, that knew the pains I have taken in *selecting* and *depositing* what you call my 'wealth.' I take care always to ascertain the *value* of what I look at—and if satisfied on that score, I most carefully stow it away. I pay, besides, frequent visits to my 'magazine,' and keep an inventory of at least everything important, which I frequently compare with my stores. It is, however, *the systematic disposition and arrangement* I adopt, which lightens the labours of memory. I was by no means remarkable for memory, when young; on the contrary, I was considered rather defective on that score."

In conclusion, a little familiarity with legal studies and practice, will convince the young reader of the truth of one of the observations already quoted from Dugald Stewart—of the practicability of acquiring a sort of technical dexterity in remembering both facts and principles.—But of what avail are quick and accurate acquisition, and tenacious retention of knowledge *, without the power of turning it to practical

* The writer recollects a poor pious soul—one Victory Purday by name, a collier in Somersetshire—who, incredible as it may seem, had the bible off by heart! The writer had many opportunities of testing the reality of his acquisitions—which proved, indeed, pro-

account? Of what use is the finest supply of drugs and chemicals, never so beautifully arranged, if their owner cannot *compound* them? In other words, what are apprehension and memory, without JUDGMENT?

"The faculty of examination, or judgment," as Sir John Doddridge saith, "is almost alone sufficient to make a ready and able lawyer. This solidity of judgment teacheth to weigh and try the particulars apprehended, and to sever for use the precious from the vile. * * Nothing is more prejudicial to it, than precipitancy and impatience of delay or attendance on the determination of right reason, which makes us commonly run away with half or a broken judgment: in which respect Aristotle in his Ethicks very elegantly compares it to a hasty servant that goes away posting without his errand. Without this faculty of judgment, though a man were furnished with everything else, he hath no more sufficiency to judge or plead, than the Code or Digest—as one saith—which, compassing within them all the laws and rules of reason, for all that, cannot write one letter *."

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digious. He had chapter and verse for everything. Mention only one word of any verse, and he would tell you exactly where it was to be found, *cum pertinentiis*, with unfaltering readiness and precision. Not a step further, however, could poor Victory go. As far as *reasoning* went, he was an idiot. He could no more put two texts together in proof or disproof of any particular doctrine, than he could fly.

* Stu. Leg. Ra., pp. 14, 15. "Patience and slowness of belief," says another writer on legal studies, "are the strongest mark of a

Let the student, it is once more entreated, bear in mind, in all his readings, that he is reading not for speculative but *practical* purposes—that the period will soon arrive when he must *use* his acquisitions—often in very arduous circumstances; that he can appear in public but as he shall have qualified himself beforehand by private study. If he do not thus reflect, and act,—if considerations of this kind do not constantly *influence* his mind, he may shut up his books. Quickly as he may acquire, firmly as he may retain—it will be all lost upon him; all his faculties and acquisitions will fail him when the day of trial arrives.

Whatever be the subject of the student's reading—either a treatise, or a report, let him imagine himself doing so in preparation for the next day's business. This reflection is calculated, more than anything else, to set an edge upon his attention—to put all his powers on the *qui vive*—to throw an air of intense and vivid interest over the driest studies. Is he reading an intricate case, full of elaborate and profound argumentation? Let him, after considering each side of the question, draw upon *his own* ingenuity—imagining him-

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sound judgment, and are nowhere more necessary than in the study and profession of the law. The seeming agreement which many cases have with each other, in point of circumstance, is too apt to mislead the warm imagination, and make us fancy there is an exact similitude, where, in fact, there is an essential difference between them."—Simpson's Reflections.

self to be one of the parties engaged. Does he differ on any points from the counsel, whose argument is before him? Let him note down his reasons for doing so—let him, in short, carefully and calmly weigh each in the balance of his own understanding; endeavour to put a particular argument in a more striking point of view—in more cogent terms—to develop some latent objection—in short, to realise the case, and make it his own. His reasoning powers cannot fail to improve very rapidly under this sharp and constant exercise, which transforms a reporter into a learned and ingenious, and friendly personal opponent. If, instead of this, he rests satisfied with what he considers a rapid conception of an author's meaning—with a sort of general notion of the scope and drift of a particular argumentation—and makes no effort to enter into it as a matter of personal investigation—he will receive but little real practical benefit from the best course of reading that could be devised; he will become one of those, already alluded to, who are "*ever learning, and never able to come to the knowledge of the truth.*"

Thus then, let the student make a prudent selection of a course of reading, and steadily adhere to it—but in doing so, sedulously and perseveringly labour in the discipline of his mind; keeping in view this contemporaneous exercise, never curing how severely, of his apprehension, his memory, and his judgment: fixing his mind's eye upon a splendid instance of the advantages conferred by early discipline upon a naturally

fine intellect—Lord Mansfield;—of whom it is eloquently said, that "he apprehended the facts with such clearness, retained every circumstance with such ease, and weighed the ingredients of equity in so just a balance, that one is at a loss whether to admire most, the quickness of his apprehension, the strength of his memory, or the soundness of his judgment."

There occurs in an excellent work on legal studies, such a vivid picture of the advocate destitute of a "clear and settled judgment," as is calculated to form an instructive finale to this chapter.

"How would that advocate appear, who should stand up in a court of judicature, without having acquired a clear comprehension of the nature of his case, and of its various parts and circumstances: wandering from this to that part of his subject, unable to discern what part to produce and what part to retain; fixing, by chance, upon some weak or disjointed member, and then, with an unmeaning solemnity, dragging it forth as the main support of his cause; discovering his mistake only by the impatience of his auditors, and covered with confusion at a sense of his inability to rectify it! Unwilling, however, to terminate his efforts abruptly, he has recourse to his imagination—and this serves only to make his weakness the more conspicuous: his uncertainty increases; he continues to heap words upon words without meaning or end;—now, in all the violence of anger, he declaims upon the injustice—but *of what*, he cannot

tell: now, he would argue—but like a man talking in his sleep, he has no single certain position on which to found his argument: now, he would complain—now, remonstrate—now, entreat: till at length, his speech becomes a chaos, and nothing but his silence can restore him, and those whom he addresses, to regularity and the light *."

* Raithby's Letters, pp. 224, 225, 2nd ed.

CHAPTER XII.

PRACTICAL SUGGESTIONS FOR FACILITATING LAW STUDIES.

Qui studet optatam cursu contingere metam,
Multa tulit fecitque puer sudavit et alsit. Hor.

SECTION I.

IMPORTANCE OF AN EARLY AND THOROUGH ACQUAINTANCE WITH THE USE OF THE COMMON COUNTS IN *ASSUMPSIT* AND *DEBT*.

It has been already stated that Contracts are a very fertile source of litigation—and that, too, often of the most difficult description. It has also been explained that there are but eight* forms of personal actions, *i. e.* settled modes of prosecuting particular claims. It will be sufficient for our present purpose further to

* In a former part of the work (page 16), it is said that there are now but *six* forms of personal actions, which is perhaps the correct method of stating it; inasmuch, as assumpsit and trover, important and extensive in their case though they be, are but *species* of the genus of "trespass on the case." See Per Tindal, C. J., Richards v. Stuart, 10 Bing. 320.

inform the young reader, that "all contracts are, by the laws of England, distinguished into agreements by *specialty*, and agreements by *parol*—there being no such third class as contracts *in writing*. If they be merely written and not specialties, they are parol, and a consideration must be proved*." By the term "*specialty*" contracts, is signified, those which are effected by means of instruments in writing, deliberately and solemnly *sealed and delivered* as deeds—two things, "which alter the nature and operation of the agreement†." It does not signify how formal

* Per Skynner, C. B., Rann *v.* Hughes, 7 T. R. 350, note (*a*).

† Chitt. Jun., on Contracts, p. 3 (2nd ed.)—The following passage from Plowden's Reports, will place the subject very distinctly before the young reader:—"And, Sir, by the law of this land there are two ways of making contracts or agreements for lands or chattels. The one is by words, which is the inferior method; the other is by writing, which is the superior. And because words are oftentimes spoken by men unadvisedly, and without deliberation, the law has provided that a contract by words shall not bind *without consideration*. As if I promise to give you 20*l.* to make your sale *de novo*, here you shall not have an action against me for the 20*l.* for it is a nude pact, *et ex nudo pacto non oritur actio*; and the reason is, because it is by words which pass from men lightly and inconsiderately; but where the agreement is by deed, there is more time for deliberation; for when a man passes a thing by deed, first there is the determination of the mind to do it, and upon that he causes it to be written, which is one part of deliberation; and afterwards he puts his seal to it, which is another part of deliberation; and lastly he delivers the writing as his deed, which is the consummation of his resolution: and by the delivery of the deed from him that makes it to him to whom it is made, he gives his assent to part with the thing contained in the deed to him to whom he delivers the deed—and this delivery is as a ceremony in law, signifying fully his goodwill, that the thing

and complicated a written agreement may be—it is still, in legal language, a *parol* one—if it be not sealed and delivered as a deed by the party executing, and *bound* by it, to the person to whom the liability is incurred. This latter class of agreements by parol it is, therefore, as may readily be supposed, which, suddenly made and often as thoughtlessly broken, most frequently occupies the attention of courts of law; and the only "forms of action" appropriated to them, are those of Assumpsit and Debt*. Without entering into a definition or description of these actions, it may be here stated, that each has a special and a common form, *i. e.* the one long, intricate, and difficult; the other short, simple, and easy. Now it is the object of this section to call the young reader's earnest attention to the latter—the "*common counts*" of assumpsit and debt: in Littleton's language, "to counsel him to employ his courage and care to learn" *how* and *when* to use them.

A special count sets out the facts of the case fully: the circumstances under which the agreement was made—the agreement itself, or its legal effect, ex-

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in the deed should pass from him to the other. So that there is great deliberation used in the making of deeds—for which reason they are received as a *lien* final to the party, and are adjudged to bind the party, without examining upon what cause or consideration they were made." *Sharrington* v. *Strotton*, Plowden, 308 a.

* To show the formal difference between the common counts in Debt and Assumpsit, an instance is given in the Appendix, of the same demand made in both species of action.

actly—the manner in which the plaintiff performed his part of it, and the defendant's non-performance—all this being a matter often of much nicety and responsibility; especially since only one count is now allowed, and by it the plaintiff must stand or fall*. Hence it is, that when papers come into chambers, affording promise of "a special declaration," they are caught up by eager and zealous pupils, who bestow upon them infinite pains; and when the declaration has been "settled," as it is called, by the pleader, they will contrive to copy it into their book of Precedents, where it may be "found after many days," should such a peculiar combination of circumstances ever again come under their notice. In the meanwhile, a dozen sets of papers may have come in, requiring, as the pleader informs them, "*only* the common counts," and, therefore,—thinks the pupil—beneath his notice. They are therefore left to the tender mercies of the clerk, or to their tutor; or, perhaps, our worthy student may at length condescend to fill in the "common forms" with careless haste, murmuring at his being detained from higher matters. Thus, too often, does the student sit day after day, watching, as it were, for a high wave of interest and importance to rise above the surface of ordinary routine; while the great under-cur-

* In order to give an idea of the mode of stating facts in the form of a special count in assumpsit, instances will be found in the Appendix of Declarations for a breach of promise of marriage—for a wager at a horse-race—and money won at cribbage.

rent of business is gliding away unregarded through the fixed and settled channels of these same *common* counts;—thus the prudent pupil will stand a fair chance of doing that well, which he will probably not be called upon to do above once or twice a-year, and be puzzled and confounded at that which will constitute his daily business!

The "form" of these counts is certainly *common* enough, that is to say, as far as brevity and simplicity of structure are concerned; but very *un*common learning and judgment are often necessary to enable the practitioner to decide upon the adoption of them. A long and complicated state of facts is, alone, sufficient to induce a superficial lawyer to adopt a *special* count; but one who clearly understands his profession, will see at once that the proper mode of declaring will be in the common form*.—The student must not suppose that because he sees three-fourths of a book on pleading occupied with special counts, that the common ones are dismissed so summarily because they are of less importance. It is true that the rules regulating the latter are comparatively few and simple; but those which regulate their *applicability* to given combinations of fact, are as extensive and complicated,

* "There are a great variety of agreements not under seal," says Lord Ellenborough, "containing detailed provisions regulating prices of labour, rates of hire, times and manner of performance, adjustment of differences, &c., which are every day declared upon in the *general form of a count for work and labour.*" Clark v. Gray, 6 East, 569.

as the consequences of a mistake are serious. If a man declare specially, when he ought to have declared in the common form, or *vice versâ*, a nonsuit is inevitable. One or two instances may be selected out of a very great number, in illustration.

The first is that of Power *v.* Wells, [1 Douglas, 18.] The transaction was as follows. Power (the plaintiff) exchanged a mare with Wells (the defendant) for a horse; giving him, in addition, the sum of twenty guineas—the defendant warranting his horse to be sound. The plaintiff, however, discovered that the horse was unsound—and immediately sent it back, together with a letter, by his servant; who put the letter, and the halter, into the defendant's hands, in his yard: but he refused to take them. The plaintiff's servant at the same time demanded the return of his master's mare, and the twenty guineas. The defendant said he had sold the mare —would have nothing to do with the plaintiff's servant, and turned him out of the yard. Upon this the plaintiff brought two actions against the defendant: one of trover for the mare, and another of assumpsit, in the common form of *money had and received*, for the twenty guineas. The trial of these two actions came on before Mr. Justice Ashhurst, who expressed a doubt as to the propriety of the forms of action adopted. Verdicts were obtained by the plaintiff, in both actions; but, in the next term, the defendant

plied for a nonsuit to be entered against the plaintiff, in both actions—and succeeded! For—

"The Court were of opinion that BOTH actions were misconceived. First, the action for '*money had and received*,' with no other count, was an improper action to try the warranty. Secondly, the action of trover could not be maintained, because the property was transferred by the exchange*." A nonsuit was accordingly ordered to be entered up in both causes.

"Hunt *v.* Silk"—[5 East. 449] is another instance of a mistake in choosing a common, instead of a special count in assumpsit. The facts were these. On the 31st of August, 1802, an agreement of that date was made between the plaintiff and the defendant, whereby the latter, in consideration of 10*l.* to be *paid at the time of executing the lease*, after mentioned, and for other considerations therein stated, agreed, that *within ten days* after the date of the agreement, he would grant the plaintiff a lease of a certain dwelling-

* So, where the plaintiff exchanged a watch with the defendant for a pair of candlesticks, which the latter warranted to be silver, Lord Ellenborough decided that the plaintiff could not maintain trover for the watch, on proof that the candlesticks were of base metal. "The watch remains the property of the defendant, though the plaintiff be entitled to a compensation in damages for a breach of the warranty that the candlesticks were of silver. I cannot try a question of warranty in an action of trover."—Emanuel *v.* Dawe. 3 Campb. 300.

house for nineteen years (determinable by the plaintiff in 5, 10, or 15 years) from the 29th of September next ensuing (but possession to be given immediately to the plaintiff) at the yearly rent of 63*l.* The defendant also agreed to make, at his own expense, certain alterations in the premises; and that the premises, fixtures, and things, should *at the time of executing the lease*, be put in complete repair. And the plaintiff, *in consideration of the aforesaid*, agreed to accept the lease at the rent and in the manner above mentioned—to execute a counterpart—and pay the rent. The plaintiff accordingly took immediate possession of the premises, under the agreement, and paid the 10*l.* at the same time, in confidence that the alterations and repairs stipulated for would be done within the period agreed upon, *i. e.* ten days. That period, however, and some days after it, having elapsed, without any thing having been done, notwithstanding several applications to the defendant to perform the work—the plaintiff quitted the house, giving the defendant notice of his having rescinded the agreement, in consequence of the defendant's default—and brought this action to *recover back the money he had paid.*—How ought he to have declared for this purpose? The plaintiff thought that he ought to adopt the common count for "money had and received."—He did do so—went to trial upon it, and was non-suited:—Lord Ellenborough deciding that

the plaintiff's only remedy was by a *special* assumpsit on the agreement *.

Numerous instances might be given of failure occasioned by declaring, on the other hand, specially, when a common count would have enabled the plaintiff to recover: and such are most frequently cases founded on the ordinary transactions of business, and on which the practitioner is called to exhibit equal promptitude and accuracy. A tradesman or manufacturer may have so acted as to deprive himself of any remedy on

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* The ground on which Lord Ellenborough decided, was, that the plaintiff was too late to *rescind the contract*. After distinguishing between the case before him, and that of Giles v. Edwards 7 T. R. 181, his Lordship proceeded—

"The plaintiff there had no opportunity, by the terms of the contract, of making his stand to see whether the agreement were performed by the other party before he paid his money, which the plaintiff in this case had: but instead of making his stand, as he might have done, on the defendant's non-performance of what he had undertaken to do, he waived his right, and voluntarily paid the money; giving the defendant credit for his future performance of the contract; and afterwards continued in possession, notwithstanding the defendant's default. Now where a contract is to be rescinded at all, it must be rescinded *in toto*, and the parties put *in statu quo*. But here was an intermediate occupation, a part execution of the agreement, which was incapable of being rescinded. If the plaintiff might occupy the premises two days beyond the time when the repairs were to have been done, and the lease executed,—and yet rescind the contract, why might he not rescind it after a twelvemonth on the same account?—This objection cannot be gotten rid of; the parties cannot be put *in statu quo*."—And see a similar mistake made in Mussen v. Price, 4 East 147, and Lightfoot v. Creed, 8 Taunt. 268.

the agreement that has been entered into between him and his employer, and yet be entitled to remuneration for his labour and materials bestowed and provided—and which a common count would secure him, at very little risk or expense. Where work, for instance, is to be done according to a special agreement between the parties, regulating the quantity, price, and times of payment, and the parties deviate from the original contract, the terms of which are not applicable to the new work, the plaintiff would be entitled to recover for the latter, on the common counts, even although the time for completing the payments under the original agreement had not expired when the action was commenced*.

It was always important to discriminate between a

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* See Robson *v.* Godfrey, 1 Starkie, 275—and cases collected in Harrison's Digest, Phillipps on Evidence, and Saunders on Pleading and Evidence. The first case was an action brought against the owners of a ship, for repairs done to her; the plaintiff declaring upon the common counts for work and labour. It appeared in evidence that a special agreement had been entered into for repairing the vessel according to an estimate which had been made, according to which the plaintiff was to be paid certain sums at specified periods, viz. 100*l.* at the end of a fortnight—the like sum at the end of four weeks; the like sum at the end of six weeks; and the remaining sum of 320*l.* by an approved bill at six months, with interest. The six months had not expired when the action was commenced. After the repairs had been proceeded in to a considerable extent, the parties *deviated from the original plan*, and the repairs had been completed in a manner to which the estimate already made did not apply.—Gibbs, C.J. then, in his summing up, laid down the principle stated in the text.

cause of action which might be prosecuted exclusively in a common or a special count: but as these two were almost invariably joined together, the plaintiff, if he had any merits, was generally sure of a verdict on one or other of his counts. Now, however, as has been already stated in a former part of the work, only *one* count is allowed for a single cause of action! So that a plaintiff can no longer fly from a general to a special, or a special to a general count—he must stand or fall with the one he has selected: and to enable him to do this with safety, he must possess an accurate acquaintance with the very extensive and difficult subjects of sale and delivery of goods, works and services, &c. &c.—of which an instructive instance was given in a former page *.—As a general rule, it may be laid down in the language of Mr. Saunders, that "the declaration must be *special*, when the contract is founded on a consideration which remains executory, or on a consideration of legal liability without an express promise,—or on a consideration of mutual promises—or on a contract to do or forbear an act which is not to pay or re-pay money, or the value of chattels. It cannot be *common*, but where debt lies, and where the contract was to pay or re-pay *money*, or the *value* of chattels,—and the consideration is executed, (and not merely executory) and not upon mutual promises †."

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* See *ante* pp. 237—242. † Saund. Plead. & Evid. pp. 111, 2.

Let then, the student—at least during the earlier period of his pupilage—address himself chiefly to these common counts, with the correspondent pleadings—by which so much of the ordinary business of life is regulated: let him not concern himself with the "weightier matters of the law"—heavy special declarations and pleas, but leave them to those more advanced in their studies. When *they* have drawn their declaration or plea, and it has been settled, *then* let the junior pupil take it, and read over the whole with great care and attention—making a copy of it where his tutor advises him to do so. A little steady perseverance in this course will soon reward the student with the consciousness of making rapid progress in his studies.

SECTION II.

HOW TO ACQUIRE A FACILITY OF REFERENCE.

"Knowledge is of two kinds," said Dr. Johnson; "we know a subject ourselves, or we know *where we can find* information upon it."

This is especially applicable to the study and practice of the law: for in the vast multiplicity of its topics, what memory can, especially in the early stages of study, pretend to a practical familiarity with a

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* Boswell's Life of Johnson, vol. iii. p. 75.

thousandth paat of it? A facility of reference will in a great measure compensate for this deficiency—and as the acquisition of that facility may certainly be expedited, it will be the Author's endeavour, in this section, to offer a few little practical expedients and suggestions toward the advancement of so desirable an object.

When a "case" is put into the hands of the young student, unless his tutor happen to be at hand to assist him, he will be often utterly at a loss in what direction to look for *the law* on the subject—and possibly spends hours in turning over book after book, in the vain hope of lighting upon something "in point."—Few things are so calculated to fret and dishearten a student, as frequent unsuccessful researches of this kind. Let, therefore, one of his earliest objects be to familiarise himself with the *leading heads* of law, so that, on reading over any statement of facts, he may at least know in what quarter to look for information—as, Principal and Agent—Stoppage in Transitu—Tender—Set-off—Agreements—Bills of Exchange—Death of Parties—&c. &c. &c. as enumerated in the Table of Contents in any of the leading works of reference. Harrison's Digest will prove thus a *nomenclator*—

> Servus, qui dictet nomina, lævum
> Qui fodicet latus.

He must make a practice of carefully running his eye

over the chief and sub-divisions, down to the very sections, and endeavour to retain as distinct an impression as he can, of the kind of matter to be found in each. When he has been led into a long and close investigation on any particular point, let him endeavour to bear in mind—so to speak—the traces of the country he has quitted, in order that, on a future visit, he may be able to find his way about readily. Let him strive to recollect the trains of thought—the suggestions and associations which led him from step to step in his researches, till at length he discovered what he sought; an effort this which, constantly repeated, will not only serve to fix in his mind valuable information, but also sensibly improve his memory. When any statement of facts is laid before him for an opinion, the student will, as he goes over it, strive to refer particular topics to their appropriate departments: *e. g.*—"Sale of goods by sample—Principal's right as against agent—Admissions by agent," &c. This, perhaps, will be a somewhat intricate mercantile case respecting an agent's sale of goods by sample; in which the buyer disputes, *inter alia*, the right of the undisclosed principal to maintain an action, &c. &c. Possibly the pupil had, not long ago, occasion to go over the whole province of Principal and Agent law, and recollects the precise spot where there is a little heap of decisions on the main point in his present case—the *subsequent recognition* of his agent's authority, by an undisclosed principal. Thither, therefore,

he turns—finds a case—say *Grojan* v. *Wade*—underscored; and on turning to that case in Starkie's Reports, discovers the fruit of some previous researches, in the shape of four or five MS. notes of recent decisions—one of them exactly in point on the present occasion—and thus, it may be, further attention to the case is rendered unnecessary; inasmuch as all the seller's objections depended upon this one, which has been demonstrated to be untenable. If, however, our student be not pressed for time, he will make a point of considering the whole case, just as carefully as though he had not made any such discovery of a governing decision as that above mentioned; for it must be a rule with him to omit no opportunity of thoroughly investigating a case, of hunting about for authorities, and endeavouring to apply them to facts. This is the way to get—a *facility of reference;* and is it not preferable to the silly habit that some have of running—scared with the first sight of a case—to their pleader, with the hurried inquiry—"Where shall I get any thing about it?"—Surely the pleader should reply, as did the mother of Sir William Jones to her splendid son, "*Read*, and you will know."

"The best book of reference," justly observes the editor of Wynne's Eunomus, "is COMYN'S DIGEST." With this great storehouse of law, the student must be at uncommon pains to familiarise himself; striving to know every chamber of it, every closet in every chamber, every shelf in every closet, and also the contents

of every shelf—so that he may be able, as the saying is, to "find his way to it in the dark." Thus will he not only be able to refer at once to all the existing law, but be enabled duly to distribute the products of the current sittings in Banco—the new *reports*. It is impossible to speak in too high terms of this noble monument of the Lord Chief Baron's prodigious learning. "In this admirable collection," says Dr. Woodeson, "the usual method pursued of conveying the doctrine on any subject, is, to set down a general position, then to illustrate it by examples, and finally to restrain it by exceptions: all of which is done with remarkable clearness and conciseness of expression, and the information desired is seldom long sought after, or in vain*."

"The whole of this work is equally remarkable," says Mr. Hargrave, "for its great variety of matter, its compendious and accurate expression, and the excellence of its methodical distribution: but the title "*Pleader*" seems to have been the author's favourite, and that in which he principally exerted himself†."

"This digest being founded on an entirely new and comprehensive system of arrangement, and framed

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* Elem. of Jurispr. p. 103.

† Co. Litt. 17 a. n. (1.) "One great advantage of Comyn's Digest is its being the most scientifically arranged digested index to Coke upon Littleton, yet published."—Wynne's Eunom., Pref. by Bythewood, p. xvii. xviii. And see the opinion of Lord Kenyon, expressed in 3 T. R. 631—and 64.

upon an accurate, profound, and scientific disposition of the several parts of our jurisprudence, is esteemed the most perfect model of an abridgment or system of our law. The method, however, of digesting the substance of the several cases, being very close and concise, the use of this work is more particularly advantageous to the experienced barrister, in furnishing a ready reference to the cases as recorded at large in the books of reports and other authorities*." If the student would sit down, study, and draw up a kind of tabular view of any particular head of Comyn's Digest, —say that of "Action on the Case for Defamation"— with a view of ascertaining the author's system and method of distribution, he would speedily be convinced of the justice of the eulogiums above cited, and be stimulated to a further and more minute investigation. There is, however, one little impediment to be found in the Lord Chief Baron's constant adoption of obsolete words for the headings of particular articles. Who would think, for instance, of hunting for information concerning *tithes*, under the head of "*Dismes*;" *goods and chattels*, under "*Biens*;" *deeds*, under "*Fait*;" *highways*, under "*Chimin*;" for the signification and construction of particular *words* and phrases, under "*Parols?*" This little obstacle, however, may be soon surmounted by a little perseverance. There is, besides, an *index verborum* prefixed to the later

* Bro. Acc. of Law Writers, 224.

editions, which will serve to guide the pupil, by the modern terms, to those more ancient, which head particular sections. The latest edition is that of Mr. Hammond, published in 1822*, with many very learned and valuable notes, and a copious and well-arranged appendix of Chancery and Nisi Prius cases. Right profitable would the student find it, to collate Comyn's with Harrison's Digest,—and thus see at a glance the immense changes which have taken place since the publication of the last edition of Comyn. A little patient perseverance in this task would richly reward the student; and he need not then trouble himself with apprehensions about a new edition of Comyn. He will have edited one for himself; and the good it will have done him, will far outweigh the price of a hundred copies of the new edition!

One other suggestion is offered to the student, and it is reserved for the last, on account of its special importance. Let the student—or rather young practitioner—set himself down resolutely to the task of reading, with the utmost care, each new number of the Reports; and after *noting up* every decision, *i. e.* minuting it on the margin of some previous case in the Reports, which it materially affects—either corroborating, over-ruling, or qualifying it—distribute their

* A new edition of this great work has been announced as in preparation. Very great learning and judgment will be required for the task of editing it.

contents under their appropriate heads in any favourite text-book. If it be Comyn's Digest, and the hint already given respecting Harrison's Digest be acted upon, the student will be enabled easily and leisurely to keep pace with the decisions which now, truly,

> ——— "Come not single spies,
> But in battalions."

SECTION III.

HOW TO ACQUIRE READINESS AND ACCURACY IN THE APPLICATION OF LEGAL PRINCIPLES.

If legal principles could be *applied* as easily as they are acquired, there would be an end of the greatest difficulty which is experienced in prosecuting the legal profession. "Practice makes perfect" in this respect, as in every other; and should the student not have the opportunity of seeing sufficient practice in chambers, he must make practice for himself—by *imagining cases of ordinary occurrence* submitted to him for an opinion. Let us suppose him, for instance, to have carefully read and reflected upon the law of self-defence, as thus stated in Blackstone.

"The first species of redress of private injuries which is obtained by the act of the party himself, is

the defence of one's self, or the mutual and reciprocal defence of such as stand in the relations of husband and wife, parent and child, master and servant. In these cases, if the party himself, or any of these, his relations, be forcibly attacked in his person or property, it is lawful for him to repel force by force; and the breach of the peace which happens, is chargeable upon him only who began the affray*." Let him now put such simple cases to himself as the following, and endeavour to apply the above principles to them with as much precision as if his opinion were actually asked by a client.

Suppose, while a man is riding on horseback, another beats the *horse*, from which the rider is obliged to dismount for fear of being thrown; would he be justified in horse-whipping the offender? [See 1 Mo. 24—1 Siderfin, 433.] Or, suppose a gentleman and his wife riding on horseback on the high road, and that a man commenced violently shouting, obviously intentionally, so as to alarm the lady's horse, and cause it to rear and plunge—and persisted in doing so: would the gentleman be justified in riding him down to put a stop to his clamour?

Would a man be justified in knocking down one whom he saw in the act of aiming a blow at one of his most costly mirrors?

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* 3 Bla. Co. 3—4.

If he were to see, at a little distance, a man threatening to strike his little sister—were to rush up and strike the man, would he be liable to an action?

If a father were to come up the instant *after* his child had been struck by a man, and, in the frenzy of alarm and passion, were to knock him down—would he be liable to an action?

—Thus let him go on imagining cases occurring among husbands and wives, parents and children, masters and servants, and others—accustoming himself, in short, to the prompt application of legal principles, not only in such cases as those above instanced, but in all the little occurrences and transactions of business which might lead to litigation. Suppose, for instance, a tradesman who has undertaken to repair an umbrella by a particular day, fails to *complete* the repairs by that day, and his customer calls for it, just before setting off for India; can he insist on having his umbrella in its unfinished state, without paying the tradesman any thing —or can the latter insist upon being paid for the little that he has actually done *? Or suppose a man were to give another a cheque on his banker, which was not presented in time, would the banker be justified in paying it? Or suppose a banker were to pay a bill *before* it is due?—A fertile fancy can never be at a loss for such means as these of exercising the mind in

* See Sinclair v. Bowles, 9 B. and C. 92.

the application of legal principles, and thus preparing it for the ready and skilful discharge of actual business. Thus may one student, either when at chambers, or even while *walking*, whether alone, or in company with "like-minded friends,"—find

> "Books in the running brooks,
> *Cases* in stones, and—*law* in everything!"

Another expedient may be mentioned, easier, but not less useful, than the foregoing. Let the student, after having carefully mastered the details of a particular case in the Reports, *frame variations of particular circumstances, and consider what would have been their effect.* Let him imagine himself conducting such a case, when it took an unexpected turn—would that turn have been of consequence or not? Introduce—suppress—vary particular facts; will it signify? Suppose the woman had married, at a particular moment—or a man become bankrupt in the midst of certain transactions—or one of several partners had retired or become insolvent—that a certain document had been missing—or a sentence omitted, or changed, &c.—what would have been the precise situation of the parties?

Take for instance, the case of *Carvalho v. Burn*, 4 B. Adol. 382. A, who resided at *Liverpool*, was in the habit of making consignments of goods to B, his agent in South America, for sale; on the faith of, and against which consignments, A drew bills proportioned to their amount, to be paid by the agent out of the

proceeds—and the bills were negociated by the indorsements of C, A's correspondent in *London*. Some of the bills so indorsed were refused acceptance by the agent. C, on receiving information that they had been so dishonoured, requested that A would order his agent, in case he did not pay his (A's) drafts, immediately to hand over to C's agent, *such property as he had of A's*, of an equivalent value to the bills *that should not be paid by him;* and A agreed to do so. Thus far all is plain sailing. Let the student, now, imagine the death, or bankruptcy, of A, B, or C, either before or after the accepting or indorsing the bills—or the consignments of goods—or otherwise vary the arrangements between the parties, and see what would then be their respective rights and liabilities. Let us, for instance, suppose that A, between the time of giving his order to transfer the goods, and that of the arrival of that order in South America, became bankrupt,—which was really the case,—what would be the consequence of such an event?—Did the bargain between A and C operate as an *assignment* of the property in A's goods, then held by his agent B? Or did the goods continue to be A's property at the time of his bankruptcy, and consequently go *to his assignees* * ?—Or suppose that B had, before the receipt of the order, *sold* the goods, and the order had been for so much of the *proceeds* as would cover the debt due to C; would

* The latter was held to be the case.

C have been, under *these* circumstances, entitled to the money*?

There cannot be a better preparative than this for the student who meditates an early entrance into court. He will have been so accustomed, as it were, to take *himself* by surprise, that he will be prepared for all the "chances of the war,"—he will suffer *no one else* to take him by surprise. If a judge suddenly pops upon him an artful question, he will be ready and dexterous, while another would be *posed*, and either faintly stammer forth a ridiculous reply, or sink, as if suddenly stupified, into his seat. A small affair of this kind once happened to the author. He had occasion, soon after commencing practice, to appear before a judge at chambers, and had arranged in his mind a "most neat and appropriate" statement of the case—when an ugly query, somewhat varying the aspect of facts, was started by his Lordship;—whether or not the author acquitted himself satisfactorily, he does not choose to state; he well recollects blessing himself, however, that he was not in open court, but in a dingy little chamber at Serjeant's Inn, and before a very learned, but kind-hearted judge! On returning to chambers, he happened to cast his eye upon a passage in a familiar text-book, that had he but recollected it five minutes before,—why, he would have been all the better pleased.

* See Crowfoot *v.* Gurney, 9 Bing. 372, and Best *v.* Argles, 4 Tyrr. 256.

It is becoming every day more frequent with the judges to interrupt counsel in the course of their argument, by suggesting questions, and putting cases, which are often very trying and dangerous to those who have not either had long experience, or have accustomed themselves to *continuous* reading and thought in private: and nothing is a more satisfactory test of legal ability, than the readiness with which such sudden and unexpected objections are answered. If the train of a man's ideas is on these occasions altogether interrupted —it is clear, either that he is not sound and firm in his law, or lacks that clear-headedness, confidence, and presence of mind which are essential to success.

While, however, the student is anxious to acquire the habit of looking at facts in a legal point of view, he is cautioned against pushing it too far, and falling into a captious, quibbling, *crotchetty* humour. He must remember that there is a *common sense* view to be taken of even the most complicated facts— one which the judges themselves are always anxious to take and present to a jury. *Medio tutissimus ibis.* Many men are very successful at the bar, especially at Nisi Prius, merely through possessing this valuable faculty.

SECTION IV.

HINTS FOR FACILITATING THE MASTERY OF COMPLICATED CASES.

" Je veux parler seulement," says M. Renouard *, " de cette aptitude pratique qui découvre promptement le siége des difficultés, prend un parti sur leur solution, écarte les circonstances étrangères et les accessoires inutiles, s'appuie à propos sur des axiômes généralement admis, et sur des exemples non contestés, qui, sans posséder parfaitement les sources de la doctrine, sait du moins y recourir sans embarras, et les consulter avec fruit.

" Pour acquérir cette aptitude, et le degré de science qu'elle exige, l'usage des affaires est le supplément indispensable, des leçons puisées dans les écoles, et même des meditations du cabinet.—Cet apprentissage pratique est une préparation que rien ne saurait complétement remplacer, et qui doit nécessairement précéder l'exercise de la profession d'avocat."

Some minds have naturally a wonderful aptitude for mastering the most intricate combinations of facts—seeing at a glance their true bearings, and remembering them with accuracy for any length of time. This is a very rare and valuable quality in a lawyer—one

* Thémis, IV.

which will enable him to discharge the most arduous professional duties with ease and rapidity. Attention, and judicious exercise, however, will give a high degree of this power to even those who have long, and with reason, despaired of acquiring it—who have lamented the want of a clear and comprehensive intellect. He who is in this situation, and would better himself, must not only *begin well*, but "persevere in well doing:" and that he may do this effectually, he is requested to attend to the following brief suggestions.

Let the student address himself to any statement of facts, or arguments, either in the books or in actual business, with calmness and deliberation,—not permitting his mind to wander, or hurry over details even apparently the most insignificant. It requires much skill and experience to know what facts are, and are not insignificant; and the student must wait for some years, before he undertakes such a decision—*at first sight*. Let him read right through it, from the beginning to the end; and in doing so, make any notes or marks he pleases in order to assist his recollection of what appears to be of leading importance. Then let him cast off his eye, and strive to go over the whole in his mind—a habit which will be attended with several advantages. It will teach him forcibly the frailty of his own powers—his indistinctness of apprehension, his feebleness of memory. Before he undertook this ordeal, he probably fancied himself in perfect possession of what he had read—that he retained a distinct and or-

derly recollection of the whole, when—alas, mortifying fact!—he finds himself, on being put to the trial, utterly at fault; scarce a trace clear—but all indistinctness, confusion, and error. Is not this, then, calculated to *shock* him into strenuous efforts to remedy so serious and fundamental a deficiency?—A second perusal will probably clear up many—a third, *all* obscurities: he will then have his case fully in his mind—so that he could undertake to state it even in open court, before judge and jury: and having thus mastered the facts, he will not find much difficulty in applying to them the law. Let the student persevere in this course for a little time, and he will soon find how it has quickened and invigorated his powers. It will inure him to habits of patient investigation, accurate discrimination, tenacious retention, and decisive judgment. Six months' perseverance will form this habit, and repetition will improve it to an extent he could scarcely have believed. He will be no longer under the distressing necessity of reading a thing, on perhaps the most urgent occasions, three or four times over, before he can *take it in*, each time letting slip more than before,—till he is fatigued, irritated, and confused, beyond the power of recovery, and has earned, perhaps, the ruinous character of "a *muddle-headed* fellow."

Discrimination must be used in choosing the subjects of such exercises as these. Those cases must be first selected which are comparatively short and simple, and gradually those more difficult and complex,

or the student will get discouraged from going on with this wholesome process. Imagine a young and volatile, but anxious student, set to work upon such cases as are to be found in Bankruptcy and Partnership! Cases, too, which are not prepared beforehand for investigation, with their perplexing superfluities stripped off, by the experienced hand of a reporter! Let not the student be too anxious to take in the whole details of his heavier cases at once. The effort may be too great for his unpractised powers. Let him split them into parts, and master each separately before proceeding to the other, or considering their general effect in combination.

Let the student, lastly, never think of looking for the law applicable to a case, before he has obtained this accurate and thorough knowledge *of the facts.* How can he come to correct conclusions from premises only half understood, or misunderstood? A single circumstance in a long chain of facts, lost sight of, or misapprehended, will often invalidate all his reasonings, ensuring vexation to himself and defeat to his client. "First catch your fish," says the incomparable Mrs. Glasse, "and then cook it:" and so say we to the student: first fix the facts in your mind, and then "deal with them according to law."

SECTION V.

HOW TO PROMOTE DISTINCTNESS OF THOUGHT AND RECOLLECTION.

THIS is a quality essential, of course, to the successful study of any science; but there are reasons why the want of it is peculiarly felt by legal students, and why its attainment is a matter of great difficulty. It is certainly a much rarer quality than is generally imagined—and he is often most signally destitute of it, who is least conscious of the fact. The very nature of legal science contributes to this—for its general principles, based though they be upon truth and reason, become, after all, little more than nominally such: they are fettered and restricted by such subtle distinctions—they admit of such endless exceptions and modifications, as often to prevent any thing like a clear and distinct knowledge of their proper character and functions, at least in the case of beginners. The science of the law thus expands into a vast series of details—details barely distinguishable from one another by the most practised powers of discrimination. The facts, again,—often very imperfectly stated,—are always varying, frequently only by shades of difference scarcely perceptible; and are generally so perplexed and intricate, that unless extraordinary effort is made, the mind loses sight of the governing facts—the leading

details, and floats away amid a haze of minor circumstances. This requisite accuracy of discrimination the student is, too often, indisposed to give, chiefly because he is distracted and confounded with the vast number, variety, and difficulty of the topics he has to deal with—of the knowledge ever to be yet acquired, and is apt to make eager and hasty efforts to "get over the ground"—without pausing to reflect *how*, or adverting to the possibility of his having to traverse it again. "They that read and write *cursim et properantes*, are like pilgrims, who have many hosts and few friends—read much and understand little." He is perhaps inclined to rest satisfied with a mere glance at his subject, if he can by that means get rid of the individual emergency—and procrastinates thus from day to day, from week to week, from year to year, the task of going a second time over the ground, in order to acquire a better knowledge of it. He may be compared to a glutton, whose object is quantity, not quality—the greatest quantity devoured in the shortest time: and may be addressed in the words of Bishop Hall,—"How much better is it to refresh yourselfe with many competent meales, than to buy one day's gluttony with the fast of many?"

Thus our student may eat of fifty dishes without appreciating the flavour, or receiving nourishment from one; and is, besides, by and bye laid up with fits of indigestion, which at length recur so often as

to impair both appetite and health. There is, in this respect, no difference between physical and intellectual indigestion*.

The necessity too, which has been elsewhere alluded to, of rapidly passing from one subject to another, in actual business, is another fertile source of indistinctness and superficiality. Students and young practitioners, not calm and confident in their own resources—not sufficiently stored with accurate and well-arranged information, nevertheless find themselves kept in perpetual bustling activity—ever "up and doing." They do little more, for instance, than hastily cast their eye over the marginal abstracts of the new Reports, even of the most important decisions—or deposit them, it may be, in some text-book, resolving to recur to them at a more "convenient season"—relying upon finding them there when wanted, ready for use; and making thus no effort to incorporate each new ingredient with the existing stock of their knowledge. Can it be wondered at that such people—"lawyers in haste"—are always

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* "Our reading keeps proportion with our meats," says Phillips, "which if it be swallowed whole, is rather a burthen than nourishment. *Quod in corpore nostro videmus operari naturam, alimenta quæ accepimus, quamdiu in suâ qualitate perdurant, et solida innatant stomacho, oneri sunt; at cum ex eo quod erant mutata sunt, tunc demum in vires et sanguinem transeunt. Idem in illis quibus aluntur ingenia præstemus, ut quæcunque hausimus non patiamur integra esse, ne aliena sint coquamus illa, alioquin in memoriam ibunt, non ingenium.*"—Stu. Leg. Ra. pp. 186-7.

confused and overwhelmed? That a perpetual series of such slovenly and superficial acquisitions at once impairs their powers, and vitiates their knowledge—spreading a thick haze over everything? Such persons have a faint recollection, on a question being asked which requires a prompt and accurate answer, of a particular decision—they "know there *is* such an one"—but they are "not quite sure what was the precise point decided"—"satisfied it was *something*—nay, a good deal—like the present, &c. &c.:" and if they cannot succeed in discovering it at the moment, will perchance blurt out a confident answer, as if from sudden recollection of the substance of the decision—and thus perhaps very seriously mislead a client. Those who will not strenuously and perseveringly cultivate this intimate knowledge and accurate recollection of what they have read, are apt to fall into very mortifying dilemmas. But a short time ago, a barrister stated a case in court, very confidently, as deciding—so and so: but on the judge asking him to point out the case, and hand up the report, he found, to his infinite mortification, and even alarm, that he had represented *exactly the reverse* of the case referred to. The judge looked somewhat distrustfully on the embarrassed counsel, admitted his explanation, but cautioned him to *look*, another time, before he leaped!—Now let our student keep this little instance in view, while dealing with the slippery matters of law. Surely *five* leading cases, recollected with accuracy, are worth

five hundred imperfectly understood*. *Attentive reading, frequent reflection upon whatever is read, and application of it to business, are the only guarantees of distinctness of thought and recollection.* "As reason," says Lord Coke, "is the soul of the law, it cannot be said that we KNOW the law, until we apprehend the reason of the law; that is, when we bring the reason of the law so to our own reason, that we perfectly understand it as our own; and then, and never before, we have an excellent and inseparable property and ownership therein, so as we can neither lose it, nor any man take it from us: and we shall be thereby directed very much, the learning of the law being chained together in many other cases. But if by his study and industry the student makes not the *reason* of the law HIS OWN, it is not possible for him to retain it in memory: for though a man can tell the law, yet if he know not the reason thereof, he will soon forget his superficial knowledge; but when he findeth the right reason of the law, and so bringeth it to his natural reason, that he comprehendeth it as his own, this will not only serve him for the understanding of the particular case, but of many others: for *cognitio legis est copulata et complicata;* this knowledge will long remain with him.†"—Let the student, on discovering any leading case, devote his utmost efforts to the mastery of it, in all its particulars—and make fre-

* "One book," says Phillips, "well digested, is better than ten hastily slubbered ever."—Stu. Leg. Ra. 188.

† 1 Inst. 394 b.—183 b.

quent *reference* to it, in order to test the accuracy of his recollection of it. Let him keep a list of such cases always beside him, and frequently inquire of himself thus: '*Saunders* v. *Wakefield*, 4 B. & Ald.—what did that decide?—*Guarantee* must contain *consideration* for promise.' '*Dawes* v. *Peck*, 8 T. R.—Carrier, consignor and consignee—general principle that the latter must sue carrier for loss.' '*Lickbarrow* v. *Mason*, 2 T. R. No right of stoppage *in transitu* as against *bonâ fide* assignee of consignee,'—&c. &c. The great advantage of this will be very soon discovered by the student. If he knows a leading case well, all he has to do, on an emergency, is to turn to it in the list of cases in some approved treatise or digest, and he will find it surrounded by all its kindred and more recent cases. Pursue a similar course with reference to *statutes*. Select those which are of leading practical importance, such as the statute of Wills—of Uses—of Entails—of Frauds; and having carefully weighed all the most material parts of them, and considered the questions that have been raised, and interpretations that have been put upon them, minute down in a note book, the substance of each section, *as nearly as possible in the words of the act*. This will require, however, the very greatest care. Very serious omissions have been made even by those most skilled in abridging and condensing statutes.*

* "A remarkable instance of the necessity of using caution in abridging statutes occurs in the abridgment of the Factor's Act,

If any young reader should consider such labours as these excessive and unnecessary, let him try to state accurately the substance of some of those cases and statutes with the *names* and *titles* of which he is most familiar—and he may be less disposed to undervalue the importance of the hints now offered. It is impossible here to do more than thus call the student's attention to the necessity of uniform vigilance and circumspection, in order that he may early acquire the habit of reading and thinking with calmness and deliberation. "This study being built upon the per-

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6 Geo. 4 c. 94, in Abbot on Shipping. This abridgment has always been considered so well executed, that it has been adopted, with but little variation, in every succeeding treatise; and yet one short phrase is omitted, which materially alters the sense of the entire enactment. Lord Tenterden's abridgment, in the work in question, is as follows: "A person entrusted with and in possession of a bill of lading, or any of the warrants, certificates, or orders mentioned in the act, is to be deemed the true owner of the goods described therein, so far as to give validity to any contract or agreement made by him for the sale or disposition of the goods, or *the deposit or pledge thereof* [AS A SECURITY FOR ANY MONEY OR NEGOTIABLE INSTRUMENT—omitted] if the buyer, disponee, or pawnee, has not notice by the document or otherwise, that such person is not the actual and *bonâ fide* owner of the goods." The reader would imagine, from Lord Tenterden's abridgment, that the enactment was meant to give validity to any *bonâ fide* deposit, or pledge of goods by any person possessing those *indicia* of property enumerated at the commencement of the section. He will therefore be a little surprised at finding that in Taylor *v.* Kymer, 3 B. and Adol. 337. it was held by the Court of King's Bench, that a person with whom goods had been pledged as a *security for India warrants*, which he had entrusted to the factor who pledged them with him, was held *not* to be protected by them!—See Leg. Exam. vol. iv. p. 339—340.

fection of reason, requires a constant and serious meditation; and what we apprehend *altius quotidianâ meditatione figendum est*, that being fastened in our minds, and the reason thereof fully considered, *habitus fiat, quod est impetus*—that bringing it within the verge of his own reason, he may, upon the least summons, find the result thereof *."

SECTION VI.

IMPORTANCE OF RETAINING THE NAMES OF LEADING CASES.

A READY recollection of the names of cases is a great object with the practical lawyer. What is meant by this is, not the recollection of the *name*, only, of an important case, and the volume of the Reports where it is to be found—but of the substance of the decision; so that one may be able, at a moment's notice, aptly to cite it in court, or elsewhere. The name of the case and the number of the volume will suffice—as the *page* can of course be easily found, without burthening the memory with it. Suppose the question under consideration is one concerning the distinction between a *penalty, or liquidated damages*—the experienced lawyer instantly thinks of *Kemble* v. *Farren*, 6 Bingham

* Stud. Leg. Ra. pp. 53-54.

—a recent decision, in which all the older ones are discussed, and on the margin of which, perhaps, he discovers his own MS. notes of several approximating and later cases. He thus gets at once to the heart of his subject—*le siège des difficultés*—and speedily and satisfactorily disposes of it.

Readiness in thus recollecting and quoting cases is not a less *showy* than valuable accomplishment—and is therefore sometimes attempted by those who are quite unequal to the task. They can sport, perhaps, the name of the case, and the right volume of the Report; but either wholly forget or misunderstand, and consequently misrepresent, the subject-matter of the decision. An instance of this, equally painful and ludicrous, was given in a previous page*. "And here," says Mr. Raithby, "it must be obvious, that the exercise just now recommended, will be particularly necessary to the legal student, who, in the course of his future practice, cannot but have frequent occasions for the use of his memory in the statement of some case or opinion, recollected at the moment, by which his argument may be supported, or his positions enforced with a peculiar brilliancy of effect and illustration. No after-labour can supply adequately the want of this particular power of memory. A man may fill the back of his brief with extracts, quotations, and cases, and yet may omit one that would be more serviceable than all the

* *Ante*, p. 428.

rest: could he but recollect this at the very moment, it would serve him in a most essential manner—but it is entirely forgotten, or remembered so imperfectly, that the recital of it, should it be attempted, would most probably do his argument mischief, rather than good." Letters, pp. 430, 431. An early and persevering attempt to form this habit will soon repay the young lawyer, by its prodigiously abridging labour and preventing loss of time in subsequent researches. Fifty or sixty leading cases, thoroughly understood and distinctly recollected, will be found of incalculable value in practice—serving as so many sure landmarks placed upon the trackless wilds of law:—and why should not the number be doubled, or even trebled? What pains can be too great, to secure such a result?

The author was standing beside the seat of the King's Counsel, in the Court of King's Bench, on the day after he had entered an Inn of Court—when a young barrister came and asked the opinion of Mr. (now Sir John) Campbell on a somewhat knotty "case" he had to answer that day. Mr. Campbell rose to re-examine a witness, as his young friend concluded his statement; and, in rising hastily whispered, "Your case is that of —— v. ——, 4 Term Reports." The latter called for a copy of the volume referred to—glanced over the marginal abstract of the case quoted—made a minute of it, and left the court—his puzzled countenance cleared up, doubtless to earn his "two guineas in a trice."

Smith's Election of Leading Cases
was published on the above hints of Mr Warren.—
see Smith's Preface.—

SECTION VII.

HOW TO ACQUIRE THE ART OF EFFECTIVELY STATING, *VIVA-VOCE*, FACTS AND ARGUMENTS.

"Now I would give a thousand pounds," said, with a sigh, a very learned and gifted friend to the author, after listening to an harangue at a tavern meeting, delivered by a mediocre mob-orator—"now I would give a thousand pounds to be able to make such a clear and connected extemporary statement of facts as that fellow who has just done speaking. What a farce it was for me to think of going to the Bar!" —The author made no reply, for he was too sensible of the justice of the observation.

Acquire this habit, good student, if you have it not—anxiously cultivate it if you have,—or save the stamps and other expenses of a call to the bar—or sell your wig and gown if you have precipitately purchased them. How lamentable is it to see a man of great talent and learning, unable to acquit himself even creditably in this respect—possibly on the most trivial occasions rising embarrassed—confused—stuttering and stammering, uttering "vain and idle repetitions," with the agonising accompaniments of "a—a—a," and sitting down, bursting with vexation and disappointment! However clear may be a man's conceptions, however consecutive his thoughts, however thorough and extensive his knowledge, he

may yet exhibit the sorry spectacle above described, unless he be either naturally gifted with powers of eloquence, or have struggled early, and successfully to supply his natural deficiencies. "There is an important distinction," remarks Dugald Stewart, "between the intellectual habits of men of speculation, and of action. The latter, who are under a necessity of thinking and deciding on the spur of the occasion, are led to cultivate, as much as possible, a quickness in their mental operations; and sometimes acquire it in so great a degree, that their judgments seem almost intuitive." Bearing in mind, then, this observation, let it be the student's first step towards the attainment of so desirable an object as that now under consideration, to become a practical man—*to accustom himself to the sudden marshalling of his thoughts for action.* Let him often think aloud—often state suddenly the substance of what has been engaging his attention, and under the impression that he is doing it publicly. The more vividly he can imagine himself in such circumstances—can people his room with imaginary auditors—the better, the more vigorous will be his efforts to acquit himself well. Let him imagine his judge severe, his audience learned and critical; this will stimulate him to a rigid adherence to his subject. He will aim at as close and succinct a statement as possible of facts and reasonings, turning not for a moment to the right hand or the left, or encumbering himself with

needless details. Let him resolutely reject all surplusage of thought or expression—keeping his object constantly in view, and going direct to it. Nothing but this will protect him hereafter from the painful and disheartening mischance of *suddenly losing, when engaged in public, the connexion of his thoughts*—or, at all events, put him in the way of quickly recovering it. The student must learn not only to think, but to *express* himself, consecutively. He must not for a moment forget the object with which he set out, or cause his *hearers* to forget it, by wandering into irrelevant matter, or undue amplification. Let him, therefore, in such solitary exercitations as those now recommended, be as much in earnest as though he were actually engaged in public debate—suffering no incident—no sudden suggestion—no momentary interruption to put him off his guard. Having thus, as it were, broken the ice, let him next practise similarly before some judicious friend, who will try him with a few interruptions—press him with questions—check his redundancies, and recal him from digressions. This will be found an invaluable expedient. His next step may be to enter one of the legal debating societies. The name of "Debating Society" is apt to excite a sort of sneer on the part of a few elderly incapables, as calculated merely to foster conceit, and priggish self-sufficiency. Every institution may be abused—and undoubtedly those in question are often so; but they will be found admi-

rably adapted to further the interests of those who resort to them with fitting motives and objects, and in a proper manner. Those of them with which the author has been acquainted have been really miniature sittings in Banco, and excellently calculated to discipline a legal speaker. A legal question is proposed for discussion on a given evening, of which due notice is given; two *affirmantes* and two *negantes* are appointed, who open the discussion—and then any other member of the society may follow that pleases; it being the business of the first speaker to reply generally, and of the president to sum up the arguments of the evening. Some of the most distinguished members of the present bar have been indebted for much of their success, to the instruction derived from these interesting and instructive associations. Of Lord Mansfield, it is said by Mr. Butler, "that, while he was a student in the Temple, he and some other students had regular meetings to discuss legal questions; that they prepared their arguments with great care; and that he afterwards found many of them useful to him not only at the bar, but upon the bench*."

* Hor. Subsec. pp. 201, 2.—"There are many reasons," says Roger North, "that demonstrate the use of society in the study of the law—1st. Regulating mistakes; oftentimes a man shall read and go away with a sense clean contrary to the book, and he shall be as confident as if he were in the right: this his companion shall observe, and sending him to the book rectify his mistake. 2nd. Confirming what he has read; for that which was confused in the memory, by rehearsing will clear up and become distinct, and so more thoroughly

It may have been chiefly owing to the early attention bestowed by Lord Mansfield upon these matters, that he acquired the art which has been so well described by Mr. Butler in a subsequent portion of his Sketch:—

"He excelled in the *statement of a case**. One of the first orators of the present age said of it, that 'it was of itself worth the *argument* of any other man.' He divested it of all unnecessary circumstances; brought together every circumstance of importance; and these he placed in so striking a point of view, and connected them by observations so powerful, but which appeared to arise so naturally from the facts themselves, that frequently the hearer was convinced before the argument was opened. When he came to the *argument* he showed equal ability—but it was a mode of argument almost peculiar to himself. His statement of the case predisposed the hearers to fall into the very train of thought he wished them to take

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understood and remembered. 3rd. Aptness to speak; for a man may be possessed of a book case, and think he has it *ad unguem* throughout, and yet when he offer at it shall find himself at a loss, and his words will not be right and be proper, or perhaps too many, and his expression confused; when he has once talked his case over, and his company have tossed it a little to and fro, then he shall utter it more readily and with fewer words, and much more force. Lastly, the example of others, and learning from them many things which would not have been otherwise known. In fine, the advantages of a fit society are, to a student, superior to all others put together."—Study of the Laws, pp. 30, 31.

* See some excellent observations on this subject in the "Letters and Essays" of Mr. Sharp, just published.

when they should come to consider the argument. Through this he accompanied them, leading them insensibly to every observation favourable to the conclusion he wished them to draw, and diverting every objection to it, but all the while keeping himself concealed; so that the hearers thought they formed their opinions in consequence of the powers and workings of their own minds, when, in fact, it was the effect of the most subtle argumentation and the most refined dialectic*."

We cannot conclude this section better than in the words of those ancient worthies, Coke, Fulbeck and Phillips.

"The next thing to be observed by our student is *conference* about those things that he reads and writes. Reading without hearing is dark and irksome; hearing without reading is slippery and uncertain; neither of them yield seasonable fruit without conference."—"Students," saith Mr. Fulbeck, "should not do amiss, if at certain times they meet amongst themselves, and do propose such things as they have heard or read, by that means to be assured of the opinion of others in those matters. By this means they may be brought better to understand those things—one, perhaps, seeing and giving a reason which the other is not aware of; and, if he misapprehend a point of law, the other may instruct him therein. Hereby are they likewise

* Hor. Subsec. pp. 207, 8.

brought more firmly to retain in memory the things that they have heard or read.

"Often conference, and private debating of points of law, is of great advantage; for thereby are the wit, the memory, and the tongue very much furthered and holpen, and a man is made more ready and bold for public matters; and the truth, which is the work of study, doth more easily appear. And when the mind by long reading is fraught with many thoughts, the wit and the understanding do clarifie and breake up in the communicating and discoursing with another, —he tosseth his thoughts more easily, and marshalleth them more orderly,—he seeth how they look when they are turned into words. Finally, he waxeth wiser than himself, and getteth more by an hour's discourse than a day's reading.—It was well said by Themistocles to the King of Persia, that speech was like cloth of arras, opened and put abroad, whereby the imagery doth appear in figures; whereas in thoughts they be but as in a pack.—Nay, of such exceeding advantage it is, that a man (saith Lord Bacon) had better relate himself to a statue or picture, than to suffer his thoughts to pass in smother; for he learneth of himself, and bringeth his own thoughts to light, and whetteth his wit as against a stone, which itself cuts not *."

* Stu. Leg. Ra. pp. 182—4.

SECTION VIII.

THE REPORTS—READING OF, AND EXERCISES UPON.

Whether a *continuous* perusal of the Reports should be attempted at all—and if so, whether the pupil should commence with the old ones, or read from the *latest* up to the old ones—is a question which need not long occupy our attention. There is such a prodigious amount of intricate and obsolete law in all the old reporters, including even Coke, Plowden, and Saunders, as renders it eminently unadvisable for the student to attempt a continuous perusal of them. It would be calculated only to bewilder, mislead, and distract him from those practical studies to which chamber tuition will incessantly call his attention. There is, besides, something proverbially repulsive in the form and structure of our early reports; which, to say nothing of their dreary black letter, Norman French, and Dog-Latin, are stuffed with all manner of obscure pedantries, scholastic as well as legal, involving the simplest points in endless circumlocutions and useless subtleties*. Perhaps, therefore, the student, if desirous of a systematic study of the reports,

* Dr. Arbuthnot's celebrated and exquisite burlesque of an old "report" (Stradling *v.* Stiles) will be found in the Appendix. Its humour is not greater than its fidelity.

cannot do better than adopt the suggestions of Mr. Raithby, and read from the latest reporters upwards.

"In reading the reports," he observes, "I cannot help thinking you will find it most convenient to begin with the latest, referring, as you read, to the earlier cases, as they are cited and commented upon in the *judgments* of the case you are reading, always making a note of reference from the earlier to the later cases.

"The first thing to attend to in this branch of your reading is, a comprehension of the facts of the case; and I think it may be stated, as a general rule, that any report that does not present a clear and succinct statement of the facts on which the point for decision arises, may be passed over; in the next place, read attentively the judgments of the court; and, lastly, such parts of the arguments of counsel, as are commented upon by the court, and no other, except in a few instances, perhaps, for the sake of elucidation; for you will soon find your reading so voluminous as to demand the greatest attention, not less to the expense of time than of money.

"You will never consider your reading of any particular case complete, until you have also read and understood, and noted in the proper place, not only that particular case, but the statutes and cases referred to by the court in the judgment; and I should think you would find it useful if, after having made yourself thoroughly acquainted with the facts of any given case, and before you proceeded to the judgment,

you were now and then to compose an argument, either extemporaneous or written, and compare it with the arguments advanced by the counsel, but particularly with the judgment of the court. By this method you will have a chance of acquiring legal views, and a course of legal reasoning, which you will find in many instances to be essentially different from the common notions of mankind, and for want of which many men of superior understanding have failed at the bar*."

Every case in the current number of the reports must, of course, be read over with care proportioned to its importance; and it would be highly advantageous if the student were to associate with himself, in this task, some steady intelligent friend. Their mutual suggestions would be both interesting and instructive. It is of the utmost importance that he should thus become accurately acquainted with the new decisions, which often effect very serious alterations, and of which it might be very dangerous to remain ignorant. This observation is at present of particular consequence, taken up as the courts are with the construction of many new statutes and rules, entirely remodelling the law of practice, pleading, and evidence. If the student be pressed for time, let him content himself with reading over the statement of facts, the questions arising out of it, and the leading judgment;

* Letters, pp. 442, 443.

but he must not *lightly* omit perusing the arguments of counsel. He must also cast a careful eye over the short abstract of the pleadings, which is often prefixed to the report; and, if he find in them anything worthy of remembrance, let him *make a note of it for future use.* He will often, by these means, find most timely and valuable assistance in his own practice. One hint more may be offered on this part of the subject—that the student should guard against an implicit reliance upon the *marginal abstracts* of the reporters. Learned and experienced though they be, it is not to be expected that in the very difficult task of extracting the essence of a long and intricate case, often with very little time at their disposal, they should escape sometimes very serious errors. The student would find it an admirable exercise to endeavour to frame *his own* marginal extract of a case, and then compare it with that of the reporter. A little practice of this kind would soon enable him to detect the points of a case, to seize upon its true bearings; and this, as we have already seen, is one of the most distinguishing characteristics of what may be termed a judicial mind.—The student should, however, not only thus *read* the reports, but should frame *exercises* upon them. Let him take a particular case, either in the older or more recent reports, and copy out the statement of facts with which it commences; carefully abstaining from reading the marginal abstract, the arguments of counsel, or the judgments. Let him consider this as a case

prepared originally for his own examination, and do his best. Let him rely upon it that his case is admirably stated—not a word wanting or thrown away, not a fact redundant or deficient—in short, there is everything necessary to conduct him to a correct conclusion. If he cannot master it—if he feel himself at sea—that he cannot, after due diligence, discover the authorities, let him, as it were, *take the corks;* that is, let him copy from the bottom of the page the references to the cases cited by counsel *pro* and *con.* Having consulted and carefully considered these, let him read the arguments of the counsel, to see how *they* used the authorities he has been examining. He must then close the book, and, after due consideration, write his opinion upon the whole case. He may then turn to the report, and read the opinions of the judges, where he will observe *their* masterly way of dealing with the case; the brevity, discrimination, acuteness, and learning there exhibited! By these means, our student makes himself the pupil of the judges themselves; the best of their labours, and those of experienced and skilful counsel, are his; he is early accustomed to the best mode of legal investigation, he has ever before his eyes the finest models of legal reasoning. Thus he will see exactly where and how far he strayed—his mischoice and misuse of the authorities. Thus will he be first driven to his own resources; then he may gradually enlighten himself by the hints and arguments of counsel; and, finally,

be corrected or corroborated by judicial wisdom. Surely this is a course worth pursuing! Is it not worth a little labour? Is it not calculated to rouse his attention, and keep up his interest? If he will but give this scheme a fair trial, he will not regret having listened to the suggestion.

SECTION IX.

CONDUCT IN CHAMBERS.

MUCH judgment is necessary in selecting the pleader or barrister in whose chambers the pupil must be introduced to the practical study of the profession. The best person to consult with before taking such a step is some experienced solicitor or barrister, who is familiarly acquainted with the various members of the profession, and can state, or easily ascertain, which of them is the most desirable as a tutor. It must be inquired of such an one, "Is the gentleman you name one of competent learning? accessible? affable? capable of *communicating* his knowledge? Has he business?" And with reference to this last particular, the student should be as careful to avoid engaging with a gentleman who has a very large business, as with one who has none at all. Of the two, indeed, the latter is, *cæteris paribus*, preferable; for legal studies *must* be commenced with a due *leisureliness*. A sprinkling of business is, however, if not absolutely

necessary, eminently desirable.—Observe again, that it is not desirable for the student to *commence* with a pleader whose chambers are crammed with pupils; for there are several who have six, eight, or even twelve pupils. *One* or *two* will be as great an assistance to an industrious student, as more are likely to be a hindrance. It will be extremely difficult to compose his mind to calm study in a crowded pupil room, among, possibly, gay and jovial fellow-pupils, whose intentions and acquirements are very different, and amid the hurry-scurry of great business.

If the student select a pleader who has one or two other pupils, he should by all means encourage the discussion of legal questions with them—an invaluable auxiliary, if it be not pushed to excess so as to interfere with private study, or attention to business,—and do not engender a noisy, captious, disputatious humour, which is, of all things, to be shunned. If the student be fortunate in his companions—if they prove steady and industrious—he will derive the utmost benefit from their co-operation. "The practice of discussing verbally," says Mr. Ritso*, "has its peculiar advantages. The information which is to be had from any written commentary, however explicit or circumstantial, is by no means to be so speedily acquired, nor so likely to be retained in the memory, as that

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* Introd. p. 146. And see *ante*, pp. 440, 441.

which is communicated by word of mouth, and made the subject of discussion between man and man."

Let the student attend carefully to the business that is put into his hands, and on no pretence suffer himself to fall into habits of haste and inattention. Whatever is put into his hands, let him set about instantly and heartily. He must not obstinately attempt to master it without assistance, by poring over it till his patience is exhausted, his mind confused, and himself disheartened. If a reasonable effort fail the student, let him go at once to his pleader, and ask for assistance. Let him not, however, go to the other extreme, and run to ask questions at every trumpery difficulty without having given himself time to *think* on it. What is he to do hereafter in the emergencies of actual business—what will become of his faculties, if every opportunity of exercising them is to be thus shirked? The student must never lose sight of the necessity of cultivating a spirit of *self-reliance.* In a year or two he will be called upon to transact business upon his own account—his own unaided responsibility—when he will have no tutor to run to, but will be in the presence of his eager and anxious client. Let him keep this consideration ever in view; let him imagine himself engaged upon his own account, remembering that his own clients will, in a very short time, commit themselves—their characters and properties, and those of *their* clients—to his management. Considerations of this kind will be

a salutary stimulus to exertion. Sweet, too, is the difficulty that is fairly mastered by a man's own efforts!—Whether, therefore, it be a "case" or a pleading that puzzles him, let the student work it well; look at the facts in every way; turn to his digests; cast about in his mind: and if, after all, compelled to call in the assistance of his pleader, let him *put his questions well to him*. Before he goes, let him arrange, in his own mind, what is the precise difficulty he wishes solved; and let that be put briefly and succinctly. Let it be framed in as abstract terms as possible. Let not the tutor be plagued with a tiresome bungling recital of circumstances—or even forced to read over the whole case, in order to ascertain for his pupil the particular difficulty—except, of course, in cases where that consists wholly in the very combination of the circumstances themselves. The case, for instance, may be of this kind. A tenant, being in arrear with a quarter's rent, applied to his landlord for time to pay it: and, after a good deal of negociation, in the course of which another quarter elapsed, the landlord agreed to take a promissory note for all the rent due, and it was accordingly given. Not being paid when due, the landlord distrained, and the tenant is now anxious to know whether his landlord had a right to distrain for the rent in respect of which he had taken the promissory note, instead of pursuing his remedy on the security he had agreed to take.— Possibly, now, the pleader has to hear the whole case,—mixed

up with much superfluous matter,—stated, or, at most, an imperfect epitome, which makes it necessary for him to cast his eye over the statement. How much better, now, would it be to answer the question, "Well, what's the matter now?" with something which would show that a little reflection had been exercised, as—"Pray, can a landlord distrain for rent in respect of which he has taken a bill or note, if it be dishonoured?"—*Et sic de similibus.* Few things indicate more readily and decisively than these, the knowledge and capacities of pupils. When a question has been thus distinctly put, let the student take care to understand distinctly the *answer.* Do not run off "like a hasty servant, that goes away posting without his errand"—with only half an answer, or none at all—but understand precisely the solution that has been given of the difficulty. Rather than go away without it, put the pleader to the trouble of repeating it even several times.—It is advisable, also, for the pupil to copy into a note-book the chief opinions given by his tutor, prefixing to them a brief summary of the facts of the case—and to make a point of frequently reading them over, and referring to the authorities cited. Merely copying them out, and never again referring to them, is an utter waste of time.—The same observation applies to *pleadings.*

Avoid that bane of business—that curse in chambers—the newspaper. There is nothing that occasions a greater distraction and loss of time. The first

and freshest hour of the day is too often devoted to reading this newspaper; and then ensues a long gossip about its contents, or a fierce discussion upon politics, which quite unhinges and unsettles the mind for several hours to come, if not for the remainder of the day. Many and bitter have been the complaints which the author has heard on this score. Let the pupil remember, that he did not pay his hundred guineas a-year for the privilege of reading and discussing the contents of a newspaper!

The student must not encourage his acquaintance to call upon him during business hours. They are then little else than pestilent gad-flies; tempters, that prevent a goodly day's work, by holding out the bait of visiting or sight-seeing. No pleader or barrister will thank a pupil for filling his rooms with idlers and hangers on.—*Verbum sapienti.*

In short, let the student attend at the place of business, for the purpose of business: bearing in mind the advice given by Lord Chief Justice Wilmot to his son—

"To whatever figure in the dial of business the finger points, you must invariably keep your eye upon it; all your studies, and applications, and habits, must lead towards it."

SECTION X.

GOING DOWN TO COURT.

THE student must not think of going down frequently to the courts, till he is in at least the second or third year of his pupilage; for, every day devoted to this purpose, is lost to all others*. His object in going thither will be, of course, to watch the ultimate working of the principles and practice which

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* "Now I observe two errors," says Roger North, "in the direction of students to this matter,—1st, that they go to the courts too soon; 2nd, that they attend at the wrong place. 1st. What the advantage is by attending at court. It is certain that more law is to be gathered by reading than at court, and if it were not for practice, it were better not to come there, but to take the cases resolved, that are fit to be known, from report of others, and employ the morning, which is the prime of their time, in their chamber, reading and common-placing. Now it is usual, after a year or two's residence in the inns of court, for all students to crowd for places in the King's Bench Court, when they are raw and scarce capable of observing anything materially, for that requires some competent knowledge; and the bad consequence is, that it makes them pert and forward, and apt to press to the bar when they are not half students; and that is the downfal of more young lawyers than all other errors and neglects whatever. For this reason, I would not have any lose time from their studies after this manner, till after four or five years' study, and two years afore they come to the bar, which should not be before seven of study, is more than enough, especially when, to get a place, they must be very early and idle about, or worse, till the court sits, and then with little more profit that such may expect, that come only to hear news."—Study of the Laws, pp. 33, 34.

he is learning in chambers, so that he may *see* the practical commencement, prosecution, and termination of an action, and be thus the better able to apprehend the real scope and tendency of chamber practice. It is a kind of loom; at one part of the machine, the student sees the raw material disposed for the operation of weaving, apparently all disorder and complexity, but making its appearance at the other, woven into uniform and beautiful texture. It is quitting the *process*, to look at the *result*; and by this means will be obtained the distinctest view of the connexion between the parts and the whole of the legal system. As soon, therefore, as the student has gained a pretty extensive insight into the method of transacting chamber-business, the working of pleading, evidence, and practice, let him go down to court, on suitable occasions, either to a trial at Nisi Prius, or an argument in banc, and watch the proceedings with the profoundest attention of which he is capable. "As to attendance in the courts of justice," observes Professor Woodeson, "though the student's time may there be most usefully employed,—for a little practical experience often countervails much reading,—yet his time *may* be there also miserably wasted. An imperfect understanding of the cases there argued, will not only be unattended with improvement, but productive of pernicious errors. On this ground the practice of the learned Plowden is highly deserving of imitation;

who, as he relates by way of useful admonition, acquainted himself beforehand with the subject matters which were to be argued in the courts, and studied the points of law, so that, he says, "I was so ripe in them, that I could have argued them myself." [Rep. Pref. p. vi.]* It would be well, therefore, if the student, in accordance with this suggestion, were to make a point of acquainting himself thoroughly beforehand with any case in his pleader's or barrister's chambers, which he intends to hear tried or argued, and then let nothing distract him from attending to it in court. Thus he will behold the drift and object of many a rule that he had never before distinctly comprehended, however frequently it had come under his notice; he will see the consequences of erroneous pleading, and the fitness of good pleading to develope the real merits of a case. It will, so to speak, stir about and freshen the whole mass of his learning, open to him entirely new views of the legal system, and inspire him with a keener interest in all that appertains to his profession. He will there see the solid superstructures of reasoning — the graceful Corinthian capitals of rhetoric—built upon the foundation he has been so long and anxiously learning how to lay.

In order, however, to do all this advantageously,

* Woodes. Lectures, vol. iii. p. 541; and see Raithby, Letter xlviii. p. 444. (2nd Ed.)

the student must go in an attentive humour, and preserve it throughout. He must endeavour to "keep himself to himself"—not to recognise a single acquaintance, if he can help it, unless that acquaintance be one concerned in the case, or engaged, like himself, in watching it. If he go only to nod to this person, chatter with the other, and scribble notes to a third, he will but disturb the court, distract himself, and cause it to be suspected, that, being too idle to stop at his studies in chambers, he is come to court in order to make others as idle as himself.

He will find no difficulty in getting a good situation for seeing and hearing all that goes on: and should not fail to make notes of whatever strikes him as new or difficult. Let him, then, as he walks home—and he should always prefer walking home from court *alone*—strive to recapitulate all that he has heard; an admirable exercise for his memory:—and at his first vacant moment in the evening, let him strive to draw up a brief and succinct account of what he has heard, referring to the chief authorities that were cited, and especially perusing those portions of Archbold's or Tidd's Practice which prescribe the form of the proceedings he has been witnessing; and the statements in Phillips or Starkie of the rules of evidence which he has just seen exemplified.

SECTION XI.

COMMON PLACING.

—— Who reads
Incessantly, and to his reading brings not
A spirit and judgment equal or superior,
(And what he brings, what need he elsewhere seek)
Uncertain and unsettled still remains;
Deep versed in books, and shallow in himself,
Crude or intoxicate, collecting toys
And trifles for choice matters, worth a sponge;
As children gathering pebbles on a shore.

MILTON—*Par. Regained.*

THE merits and demerits of the system of *common-placing* have occasioned much contrariety of opinion *.

"The science of law itself," says Sir William Jones, "is, indeed, so complex, that without writing, which is the chain of the memory, it is impossible to remember a thousandth part of what we read or hear. Since it is my wish, therefore, to become, in time, as great a lawyer as Sulpicius, I shall, probably, leave as many volumes of works (180) as he is said to have written."

"Common placing," says Fulbeck, "is a profitable course under titles to digest the cases of the lawe, into which they may transfer such things as they have either heard or read; neither is it safe to trust to other men's abridgments, which are little available to such as have read a little: but that which

* See Stewart's Phil., ch. vi. § 5, pp. 446—454.

we, by our owne sweat and labour do gaine, we do firmly retain, and in it we do principally delight; and I am persuaded that there hath never been any learned in the law and judicial, who hath not made a collection of his own, though he hath not neglected the abridgment of others *."

"It is so necessary," says Roger North, "that without a wonderful—I might say—miraculous felicity of memory, three parts of reading in four shall be utterly lost to one who useth it not †."

"*Whatever* a student shall find in the course of his reading," says Sir Matthew Hale, "he should abstract, and enter the substance of it (and more especially of cases and points resolved) into his common place-book, under their proper titles: and if one case falls aptly under several titles, and it can be conveniently broken, let him enter each part under its proper title: if it cannot be well broken, let him enter the abstract of the entire case, under the title most proper for it, and make references from the other titles unto it. It is true a student will waste much paper this way, and possibly, in two or three years, will see many errors and impertinences in what he hath formerly done, and much irregularity and disorder in the disposing of his matter under improper heads. But he will have these infallible

* Preparative, p. 44.

† Study of the Law, p. 24; and see pp. 25, 29.

advantages attending this course:—1st. In process of time he will be more perfect and dexterous in this business. 2nd. Those first imperfect and disordered essays will, by frequent returns upon them, be intelligible, at least to himself, and refresh his memory. 3dly. He will, by this means, keep together under apt titles whatsoever he hath read. 4thly. By often returning upon every title, as occasion of search or new insertions require, he will strangely revive and imprint in his memory what he hath formerly read. 5thly. He will be able, at one view, to see the substance of whatsoever he hath read concerning any one subject, without turning to every book (only when he hath particular occasion of advice or argument, then it will be necessary to look upon that book at large which he finds useful to his purpose). 6thly. He will be able, upon any occasion, suddenly to find anything he hath read without recoursing to tables or other repertories, which are oftentimes short, and give a lame account of the subject sought for *."

The above authorities in favour of an extended and systematic mode of common-placing, are selected out of very many that could be cited; and it may be safely stated, that many of the most distinguished lawyers have held similar opinions. They are cited—and the last, especially, at length—in order that the student may be apprised of their existence, and of the weight

* Pref. to Rolle's Abridg., p. 8; and see Wynne's Eunom. lxvi. lxvii.

due to their sanction. Nevertheless, the author humbly ventures to suggest that, in his opinion,—not hastily formed, nor without anxious inquiry of those best able to judge rightly upon the matter,—this system of incessant transcription is one of very questionable expediency. He knows one individual who, with prodigious industry, had compiled four thick folio volumes, very closely written, and most systematically distributed; and who subsequently acknowledged to him that he considered it one of the very worst things he ever did;—for his memory sensibly languished for want of food and exercise, till it lost its tone almost irrecoverably. However urgent the occasion, he could do nothing when out of the reach of his Common-Place Book—and that could not be *kept up*, for practical purposes, without the most oppressive labour. He subsequently quitted the profession, and often bitterly regretted the time and pains he had thus thrown away. When pursued to such an extent as this, the student never *reads to recollect*, but only with a view *to insertion in his common-place book:* he is satisfied as soon as what he reads is deposited *there*—and thus, at length, suffers "the hand to engross altogether the business of the head." "Many readers I have found unalterably persuaded," says Dr. Johnson, "that nothing is certainly remembered but what is transcribed; and they have, therefore, passed weeks and months in transferring large quotations to a common-place book.

Yet why any part of a book, which can be consulted at pleasure, should be copied, I was never able to discover. The hand has no closer correspondence with memory than the eye. The act of writing itself distracts the thoughts; and what is twice read is commonly better remembered than what is transcribed*." "Common-placing," says the illustrious Gibbon, "is a practice which I do not strenuously recommend. The action of the pen will, doubtless, imprint an idea on the mind, as well as on the paper; but I much question whether the benefits of this laborious method are adequate to the waste of them; and I must agree with Dr. Johnson, 'that what is twice read is commonly better remembered than what is transcribed†.'" The author knows four instances of gentlemen now eminent at the bar, who never kept a common-place book, or made more than a few occasional memoranda of striking passages, in their lives; and who attribute the present tenacity of their memory, in a great measure, to their *avoidance* of common-placing. It is by no means the author's wish, however, to express an unqualified disapprobation of this system; it is against the *abuse* of it that he would guard his younger readers; against the fatal facility with which they may fall into habits destructive, not to the memory only, but all the other powers

* Idler, No. 74.

† Gibb. Misc. Works, 97. [Ed. 1814.]

of the mind. If a common-place book is to be kept, let it be kept judiciously, and be appropriated only to the reception of passages met with in the course of reading, which are either rare, or very striking in point of argument or expression. Does the student happen to stumble upon a few sentences which in an instant clear up difficulties that have haunted him for months—it may be years?—*They* are worthy of an entry in his common-place book—or at least of a reference; and, if they be altogether passed by, he may not be able to meet with them again, however great may be his emergency. How many choice passages in the judgments of a Hardwicke, a Mansfield, a Kenyon, an Ellenborough, an Eldon, or Tenterden, and other distinguished judges, have charmed him for a moment, and then been lost, for want of being entered or referred to in his common-place book!

The principal use of a common-place book is, to minute down the result of any investigation of more than ordinary difficulty or importance—in which authorities will be brought together which are nowhere else collected, and which will save the labour of research on some future occasion. In it should also be deposited select passages—even mere sentences—containing felicitous illustrations of important points, striking distinctions, &c. &c., to be found either in the arguments of counsel, the decisions and dicta of the judges, or observations of legal writers. A common-place book, in short, should be kept upon

the principle of inserting in it nothing but what is important, and cannot be easily, if at all, found elsewhere when wanted. The moment this principle is lost sight of, a common-place book becomes not only a delusive and pernicious substitute for the exercise of memory, but an unwieldy and embarrassing encumbrance.

SECTION XII.

COPYING PRECEDENTS.

By "copying precedents" is meant, transcribing various forms of pleadings from the collections of a tutor and others,—adding to them, from time to time, the most important of those which occur in actual business, in order that they may thus not only afford assistance in future emergencies, but, in the effort of transcription, familiarise the student with the technicalities of drafting. This, also, is a system which has at once very zealous friends and opponents. Hear the opinion of a practical man:—

"The legal student has at present," says Mr. Lee, the author of the 'Dictionary of Practice,' "so much to learn, that it may seem a waste of the period allotted to him for the purpose of necessary practical acquirement to employ that period in copying matter into a precedent-book, which publications of the highest authority present already much more

perfectly to his hand. Sir Edward Coke, even in his time, does not seem to have thought it essential to a student's advancement in the knowledge of the law that he should copy precedents. The precept of that great lawyer, which is to be found towards the conclusion of the immense body of entries collected and published by him, is—'EVOLVE *ista exemplaria.*' It will be observed that the expression is not '*exscribe*,' or any other synonyme of that signification My own conviction is, that every hour employed in copying precedents elsewhere existing in print, is an hour *lost*—but which might be usefully spent in acquiring the principles on which those precedents were originally framed; but, *to copy*, is the course in a pleader's office—and hence, as I conceive, a radical defect in the system of that part of legal education; a gross and mechanical system, strangely grown out of imputed interest on the one hand, and a total want of any more rational acknowledged system, to which the observation of the student may be directed, on the other *."

These censures are levelled, it will be observed, at the practice of transcribing precedents "already existing in print"—one, however, which the author cannot believe to be prevalent at the present day. They are, at the same time, equally applicable to the custom which *does* prevail of copying, by wholesale,

* Precedents in Assumpsit. See also Ritso's Introd., pp. 27, 29.

manuscript precedents—a shocking waste of time and industry. Some students sit down to this task with all the energy of infatuation: every thing else must give way to it: nothing seems to them so desirable, so advantageous, so creditable, as to be able to exhibit, at the end of their pupilage, four or five closely-copied quarto volumes of these "Precedents"—precedents which are copied out mechanically, and the structure and properties of which are, therefore, nearly altogether overlooked! Nothing can be more desirable than for the student to copy out *good* precedents, judiciously selected—with due reflection upon what he is doing, and constant reference to the rules and principles on which they are framed*. Three or four precedents a week, *thus* copied, will be of great service to the student; not only as tending to fix in his mind the rules of law, but to assist him in the construction of pleadings in the course of business. He cannot go to a greater extent in copying precedents than this, without uselessly encroaching on his valuable time, and degrading himself into a kind of copying clerk. But he "wants these precedents for future practice." Then let him hire a boy to copy them for him—asking his tutor to point out those which are peculiarly worthy of transcription. He must, also, bear in mind that the recent extensive alterations which have been effected in the system of

* See Mr. Preston's remarks in the preface to his Conveyancing.

pleading, have rendered great portions of the precedents now copied utterly useless, and misleading: and should not, therefore, think of copying precedents, till he has become tolerably familiar with the existing system of drafting. Why should he not aim at the formation of declarations and pleas himself, rather than be thus for ever relying upon the wits of *others*—a mere drudge, and "gatherer of other men's stuff?"

SECTION XIII.

CIVIL AND INTERNATIONAL LAW.

"INASMUCH as the laws of all nations are doubtless raised out of the civil law, as all governments are sprung out of the ruins of the Roman Empire, it must be owned that the principles of our law are borrowed from the civil law; therefore, in many things, grounded upon the same reason." Such are the sentiments of the great Lord Holt*; and they are sufficient to turn the student's attention to the august system of which they are spoken, provided he be desirous of acquiring a liberal and profound knowledge of the science of his profession. It is not, to be sure, practically speaking, *necessary* for any but those who practise in the ecclesiastical and maritime

* Lane *v.* Cotton, 12 Mod. 482. And see Wynne's Eunomus, *sub voce*.

courts * to be thoroughly acquainted with the civil law; but it would be easy to point out numerous instances, in the Reports, of the extent to which its principles are recognised in the common law of England. [See *Twaites* v. *Smith*, 1 P. Wms. 10, 267, 104, 405, 441, 542; Precedents in Chancery, 694; *Wallis* v. *Hodson*, 2 Atkins, 118; *Wheeler* v. *Bingham*, 3 Atkins, 364, S. C.; 1 Wils. 135; and Com. 738; 1 Burr. 1623; and 1 Vesey, 86.] Our own common maxim, for instance, that "no man shall take advantage of his own wrong"—(Nul prendra benefit de son tort demesne)—is simply a translation of that of Ulpian—"*Nemo ex suo delicto meliorem suam conditionem facere potest.*"

Some of the most eminent of our judges—Lord Mansfield among the number †—have laid great stress upon the necessity of acquiring a knowledge of this branch of legal science.

* In England, the operation of the civil law is confined to the maritime, the military, and the ecclesiastical courts, as also those of the two universities; or it is used merely in argument to illustrate doctrines, or delineate the principles of natural justice, independent of all positive institutions.—Millar's Hist. View of the English Government, vol. ii, p. 322.

† "Sir Matthew Hale set himself to the study of the Roman Law; and though he liked the way of judicature in England by juries much better than that of the civil law, where so much was entrusted to the judge, yet he often said that the true grounds and reasons of law were so well delivered in the *Digest*, that a man could never understand law as a science, so well as by seeking it there: and therefore he lamented that it was little studied in England."—Burnett's Life of Hale, p. 24.

"I have not the smallest scruple to assert," says a very learned writer, "that the student who confines himself to the institutions of his own country, without joining to them any acquaintance with those of imperial Rome, will never arrive at any considerable skill in the GROUNDS and THEORY of his profession; though he may, perhaps, attain to a certain practical and mechanical readiness in the forms and practice of the law, he will not be able to comprehend that enlarged and general idea of it, by which it is connected with the great system of universal jurisprudence, by the knowledge of which alone he will be qualified to become a master in this art, and be capable of applying it, as an honourable means of subsistence to himself, and credit to his country *." The celebrated Leibnitz has pronounced a very striking panegyric upon the civil law, declaring that "he knew nothing that approached so near the method and precision of geometry †."

"It is admirably calculated," says Lord Mansfield, "to furnish the minds of youth with universal and leading notions relating to natural and positive, to written and unwritten, law; it instructs them in the various rights of persons, whether in a natural or civil capacity; the origin and rights of property; the grounds and reasons of testamentary and legal succession; the obligations arising from proper and im-

* Dr. Hallifax, Analysis of the Civil Law, pref. 22.

† Opera, tom. iv., p. 254. See Will. Stu. of the Law, 81.

proper contracts; the several species of civil injuries and crimes, together with the means of applying for and obtaining redress, and of bringing the guilty to condign punishment. It will be to entertain a very mean and disparaging opinion of the venerable monuments of ancient wisdom, contained in the body of the Roman law, to regard the rules there laid down for the decision of controverted points, whether of a public or private nature, as the maxims of mere lawyers. These great masters of legislature were as eminent for their skill in moral as in legal knowledge; and the sublimest notions, both in philosophy and religion, are inculcated in their writings. Accordingly we find them frequently called, among their other titles, '*Juris divini et humani periti;*' and the very definition of jurisprudence given by Ulpian (Dig. I., 10), like that of '*sapientia,*' by Cicero (De Off. I., c. 43), is—'*Divinarum atque humanarum rerum notitia.*' This affinity between the study of the law and of philosophy has impressed a remarkably scientific cast upon the responses of the Roman sages; and a competent knowledge of their tenets and principles is absolutely necessary in order to understand with exactness and taste the allusions to Roman customs and manners which abound in the Latin classic authors; to which must be added—what will still more recommend the science to the polite scholar—the purity of the language in which the Pandects, in particular, are composed,—which are

held to be so perfect and elegant in point of style, that the Latin tongue might be retrieved from them, were all other Latin authors lost."

"A man of the law," says Roger North, "would not be willing to stand mute to the question—'What is the difference between the Civil and the Common Law? What is the Imperial Law? What the Canon, what the Pandects, Codes,' &c.?—It is not at all needful to study questions in these laws; but the rise and progress of them, in gross, is but a necessary knowledge, and so far taking up but little time, and had by mere inspection of some books, and perusing their introductions. It may with ease and pleasure be interlaced with the common law *."

The author need add no observations of his own in order to satisfy the student of the importance and advantage of acquiring at least a general knowledge of this great system of jurisprudence. A sketch of the civil law—in Lord Mansfield's opinion "beautiful and spirited"—certainly one of the most luminous and masterly extant, will be found in Gibbon's Decline and Fall of the Roman Empire, chapter xliv. See also the 1st vol. of Blackstone's Commentaries, *passim;* Dr. Hallifax's "Analysis" and Dr. Taylor's "Elements" of the Civil Law; Mr. Butler's "Horæ Subsecivæ;" and Reeve's "History of the English Law," *passim.*

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* Study of the Law, pp. 8—9.

INTERNATIONAL LAW has also serious claims upon the student's attention.—"The law of nations," says Blackstone," in the course of a concise and comprehensive sketch of this branch of jurisprudence, "is a system of rules deducible by natural reason, and established by universal consent, among the civilised inhabitants of the world; in order to decide all disputes, to regulate all ceremonies and civilities, and to ensure the observance of justice and good faith in that intercourse which must frequently occur between two or more independent states, and the individuals belonging to each. This general law is founded on the principle—that different nations ought, in time of peace, to do one another all the good they can; and, in time of war, as little harm as possible, without injury to their own real interests. And as none of these states will allow a superiority in the other, therefore neither can dictate or prescribe the rules of this law to the rest; but such rules must necessarily result from those principles of natural justice, in which all the learned of every nation agree; or they depend upon mutual compacts or treaties between the respective communities; in the construction of which there is also no judge to resort to, but the law of nature and reason, being the only one in which all the contracting parties are equally conversant, and to which they are equally subject *."

* 4 Bla. Com. 66, 67. See, also, the instructive judgment of Sir William Scott (now Lord Stowell), in the case of the ship *Flad Oyen*,

Sir James Mackintosh's "Discourse on the Study of the Law of Nature and Nations," will give the reader a very elegant and comprehensive sketch of the subject, and of the respective characters and pretensions of the leading writers upon it.—Puffendorf, Grotius, Wolf, Vattel, Heineccius, and Burlamaqui. Vattel, the abridger of Wolf, has been very recently edited, with considerable care and ability, by Mr. Chitty, and will certainly prove a useful addition to the student's library. The notes, which are very copious, will serve to show him the practical connexion between the international and our own common law;—and the whole work is calculated to give him correct and enlarged views of one of the most important departments of jurisprudence.

SECTION XIV.

AGE OF BEING CALLED TO THE BAR.

CERTAIN writers have very confidently named the particular ages which are most suitable for a man to be called to the bar*: the author is, however, of opinion, that the only considerations proper to determine this very important point are, the student's

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1 Robs. Rep. 115;—and the valuable note of Mr. Chitty to his edition of Vattel, pp. liii. lvi (1), where will be found collected the various authorities on the subject.

* See Raithby's Letters.—Lett. xxxv.

attainments, and the probabilities he may have of securing permanent employment. Let any one go into any of the courts, and after casting his eye over the fearful throng of the unemployed—the "great briefless"—judge of the extent to which such considerations have been disregarded, and the unfortunate result. He sees some three or four hundred young men, all of whom went to the bar filled with eager hopes of success, yet who never are, and probably never will be, employed to the amount of twenty pounds a year! How many of these might have secured to themselves a respectable business, had they been contented to "bide their time" under the bar,—acquiring, either as students, sound learning, or, as practising pleaders, employment, experience, and connexion! In the present fierce competition for business, when almost every attorney has either a son, other relative, or a friend at the bar, what madness is it for young men, not so favoured—possessing, neither, the requisite ability—to rush into court the moment they are legally qualified to appear there! How absurd to complain of the want of employment! How dreary the prospect before them!—Supposing, even, that some lucky accident should bring such a man business—should give him an opportunity of showing himself, and so of securing further employment—but that he proves utterly unequal to the "*occasion sudden*"—and consequently exhibits a lamentable specimen of incompetence! His

fate is sealed.—'But by going early to the bar, a man "gains standing."' Granted—that at length he is entitled to lead every man in court; but what if he is never called upon to do so! If a man is possessed of an independent fortune, and chooses to be called early to the bar, and frequent the courts, and go the circuits, for the purpose of learning his profession, and is not anxious for immediate employment—well and good; but for those otherwise situated—who expect early to gain a livelihood by their professional exertions—and yet are destitute both of connexions and learning, is short-sighted indeed. It should be remembered that it is a very expensive thing to be called to the bar. Think, for instance, of the cost of going circuit!—Whereas, if a man of limited means would but content himself with chamber practice for a few years, he might live at very little cost, perfect himself in professional knowledge, obtain, probably, a pupil or two, together with business, and be followed at length by his clients, to the bar. What if he should by that time have reached his twenty-eighth, thirtieth, or even thirty-second year! He will soon outstrip those who are in mere 'standing' twenty years his seniors. This is the course that has been taken by very many who are now among the most distinguished and successful members of the legal profession: the other—a premature *call*—is one which the author has heard very many bitterly regret having adopted. *Moniti meliora sequamur!*

CHAPTER XIII.

HINTS ON THE EDUCATION OF ATTORNEYS AND SOLICITORS.

VERY various, honourable, arduous, and responsible, are the duties of an attorney and solicitor *. Generally speaking, he is required to possess a competent *practical* acquaintance with every department of the profession; to advise a client on the most important and embarrassing occasions—often at a moment's notice; to decide *and act* in very difficult

* There is occasionally exhibited, by junior practitioners, an unaccountable preference for the appellation of 'solicitor' over that of 'attorney'—as if the one implied a higher degree of respectability than the other. "It is a vulgar error," says Mr. Chitty, "that the term *solicitor* is more honourable than, or superior to, that of *attorney*. Lord Tenterden repeatedly animadverted upon the absurdity of using the former term, or name, when applied to any one conducting an *action*, or other proceedings in courts of *law*. There is no distinction in the degree of respectability, any more than there is between *barristers* practising in one court or the other."—2 Gen. Prac. p. 2 (c), 2nd ed.

and delicate matters, before he has an opportunity either of referring to his books, or consulting counsel. These observations apply with peculiar force to the *country attorney*. In his private professional capacity, and as agent, steward, under-sheriff, &c. &c. &c., he is perpetually called upon to advise his clients—often very distinguished persons, who entrust him with the entire management of their estates, and of their affairs generally—to advise *them*, and *act himself*, where an error would be attended with most serious consequences,—proving injurious alike to his client's interests and his own reputation. Then, again, he is called upon to fill certain public offices—as coroner, clerk to a magistrate, clerk of the peace, town-clerk, &c. &c., the duties of which are frequently very arduous, requiring much judgment and legal knowledge, as well as the power of *applying* that knowledge promptly and accurately. Those, again, who practise in great towns, and in the metropolis, though certainly more within the reach of counsel's assistance in their emergencies, are called upon, nevertheless, to exercise constant vigilance and industry, if they wish to advance any pretensions to the character of able and conscientious men. The great variety of objects to which their attention has to be directed, in rapid succession,—the complicated nature of the commercial transactions which are entrusted to their care, and the difficulties attending the intricate *practice* of the courts, all these are sufficient to show that pro-

fessional eminence is to be gained in this department, as well as in the others, only by well-directed energy and application. No abilities, however—no acquirements or accomplishments can supply the place of strict INTEGRITY. Innumerable are the opportunities which an attorney has, if so minded, of playing the rogue with impunity. Nothing is concealed from him; his clients' fortunes—and often their characters—are placed completely within his controul. The very nature of his employment, in short, is such as to surround him with facilities for committing fraud; and there have been only lately some very grievous instances of persons who have yielded, in an evil hour, to temptation;—inflicting ruin upon those who reposed in them the most generous and implicit confidence; who, breaking their sacred obligations alike to the living and the dying, have ruthlessly robbed even the widow and the fatherless of their all upon earth! There *have* been such cases: but one can ask with glorious confidence, 'what are *they* among so many' that stand—

> 'unmoved in their integrity,
> Immoveable!'

Let him who is destined to fill this honourable and responsible station in society be taught to reflect early upon the incalculable danger of permitting even the slightest deviations from upright and conscientious conduct—of suffering himself for a moment—even on

the most trivial occasions—to lose sight of TRUTH and HONOUR.—

> —— "Ever by these bright stars
> Steer thou thy course!"

Let him cherish liberal and generous feelings, and spurn those of envy and sordid self-interest. Against these he must be constantly on his guard—for he is about to adopt a profession that is peculiarly calculated to foster them. Entering the profession with these views of feelings, let him beware of counteracting them by an improper choice of companions, and by indulging those habits and frequenting those scenes of irregularity and dissipation, for which his profession unfortunately affords him, if so disposed, but too many opportunities. It is possible for a youth of the best feelings and education, and of the highest respectability, to fall among a "bad set" in the very first fortnight of his articles, which may lead him fatally astray,—distracting his attention from the real business of his profession, and engendering tastes and habits utterly inconsistent with the duties he has taken upon himself, and the station he hopes hereafter to occupy. To resort even to no higher consideration—the attorney's clerk should be most anxious to preserve—to cultivate, not only the feelings, but the *manners* of a gentleman; for the course of his profession will bring him, probably, into perpetual contact with clients, of both sexes, to whom coarse-

ness and grossness of manners will be intolerable—in whose estimation these bad qualities will outweigh all his good ones. It is not desired that he should sink into sickly dandyism and affectation—which is the other extreme—but that he should preserve that modest, manly, sober, and thoughtful conduct and deportment which should ever characterise the member of a grave and confidential profession. Let him be perpetually on his guard against contracting that odious priggishness—that vulgar flippancy and self-sufficiency which characterise many of the *inferior* members of his profession, and which justly excite the disgust of all right-minded persons. He should never suffer himself to descend from that superior station in society in which his connexions, education, and profession entitle him to move. He must ever bear in mind that many of his clients may be persons of distinction and refinement—and will reasonably require, in some measure, corresponding qualities in their legal adviser. *Verbum sat.*—So much for morals and manners.

The age at which a youth should be articled, is generally said to be his sixteenth year: but the author has always been of opinion that this is too early; that if parents would continue to their sons, for *at least* a year longer, the advantages of a superior education, carefully shaping and inclining it towards the studies on which they are so soon to enter—it would be attended with the happiest consequences. The character would become even in that

brief interval, not a little sobered and invigorated; and the mind, accustomed to serious exercise upon preparatory and somewhat similar pursuits, would easily settle into the modes and habits of the profession. If a parent has determined long beforehand, as is often the case, upon educating his son as an attorney and solicitor, he should be very careful to secure to him the incalculable advantages of a *substantial* education. In addition to other ordinary acquirements, that of the Latin—and, perhaps, the French—language, and arithmetic—especially with reference to merchants' accounts and book-keeping, are of very great importance to the future legal tyro. Euclid's elements will also be found useful in habituating him to the close and patient exercise of his reasoning faculties. Blackstone's Commentaries should be early laid before him, in order that he may gradually familiarise himself with, at least, the great outlines of our legal system; and his teachers should be instructed to enforce the regular perusal of some of the more easy and popular portions of it, and examine him in them from week to week. It is, indeed, surprising that a work so celebrated as this for its pure and beautiful language, lucid arrangement, and universally interesting and important topics, should not have been long ago adopted as a school-book,—at least for the senior classes of scholars;—especially when it is recollected how considerable a proportion of youths are destined for the various departments of the legal profession. Would

it not be highly advantageous for parents in such cases to propose prizes to their sons for superior proficiency in Blackstone's Commentaries?

It is needless here to enter into any detail as to the proper mode of studying the law—as it is believed that many of the previous portions of the work are as applicable to those who are educating for attorneys and solicitors, as to those who are preparing for the bar. If law is to be studied at all, it must be studied deeply and perseveringly—and the author knows of no better method than that which he has already endeavoured to explain. A few brief practical suggestions are therefore all that will be here added on this subject.

If a youth be desirous of passing through the period of his clerkship with pleasure and advantage to himself and his tutor, let him *begin well*, by bestowing great attention upon all that goes on in the office, however small and apparently unimportant. Let him learn early how to go about business calmly, thoroughly, and methodically; doing nothing *without inquiring and reflecting upon the reasons of it.* If he have the good fortune to be articled to a kind and intelligent master, nothing will give the latter so much satisfaction as to see his clerk manifest such an inquiring spirit. He will readily refer him to the books of practice, and give him all the *vivâ voce* information that is requisite. If he will go on thus but for six months, he will soon find that he has entered an interesting profession, and be conscious of

making a rapid progress in it. He must not be reluctant to do the common drudgery, as it is called, of the office. There are some sublime young gentlemen who cannot bear the idea of "tramping" day after day to the courts, public offices, judges' and counsels' chambers, &c. &c., or of copying out and engrossing drafts of bonds, agreements, leases, &c.; which is exactly the reason why they turn out such sublime dunces. More information as to the practical course of business is to be learnt from a day or two spent in serving notices, process, &c., signing judgment, obtaining and opposing the various rules, orders, summonses, &c., making up issues, attending the master, getting instruments executed and stamped, &c. &c. &c., than is to be obtained in many months by the most careful perusal of books of practice. Let the young clerk have his wits about him, wherever he is; whatever he is doing, let him never *hurry*, in however great *haste* he may be; let him not do anything superficially, in a slovenly inattentive manner. Bad habits of this—indeed of any kind—are easily formed, though not easily got rid of; their tendency is to increase and multiply, and they very soon incapacitate him who has contracted them for the proper transaction of any kind of business. Then it is, indeed, that an attorney's office becomes odious, and that a relief from its monotony is sought in the theatre, the tavern, the parks, and parties!

The pupil should make constant efforts to acquire

early a knowledge of the structure and uses of the ordinary instruments upon which he is employed—as bonds, leases, assignments, mortgages, &c., making a point of reading every evening some practical work upon the subjects that have chiefly occupied his attention during the day. Take a common money bond, for instance: nothing can be shorter and simpler in form than this instrument, and yet a vast deal of interesting and important information concerning it may be acquired by an industrious pupil in a very short time. Has he any idea of the origin of the *penalty* of a bond? Is he aware that it was originally contrived "to evade the absurdity of those monkish constitutions which prohibited taking interest for money *?" What will be the consequence of a party's taking a bond, with reference to other previous securities? Will it abridge or extend his former rights? What effect will the death or bankruptcy of either party have upon it? What are the general advantages of taking a bond? &c. &c. &c. Information on these and similar questions can always be easily obtained by the pupil; and when obtained will very much enhance the interest of business, and the facility with which he can despatch it. The practice of the Courts should also constantly command a prominent share of his attention; he should endeavour to acquaint himself with the *reason* of the various rules upon which he is perpetually acting, or he will never become a

* 3 Bla. Comm., 434-5.

really skilful and enlightened practitioner *. This is, at the present time—when practice is in such an unsettled state—an observation that should never be lost sight of by the pupil, in order that he may be able from time to time fully to comprehend the *grounds* for the alterations that are taking place, and the precise effects of them †.

If it be settled before-hand whether the young attorney is to practise in town or in the country, that should be a leading consideration in determining to what branch of legal studies he should devote his chief attention. If, for instance, he intend to settle in London he must bend his best energies to the acquisition of the practice of the various courts of common law, equity, and bankruptcy, and to the leading branches of commercial law. If he intend to practise out of London, he should be guided by the circumstance of his residing in one of the great manufacturing towns, or in the *country*, properly so called. In the former instance, he will direct his chief attention to learning the laws regulating manufactures and commerce,—patents, machinery, bills, notes, bankruptcy, and insolvency; in the latter, to what may perhaps be termed agricultural law,—that of real property, copyholds, landlord and tenant, farming leases,

* See *ante*, 81 (n.)

† A very useful little elementary summary of the present law of practice has just made its appearance; and will be found an excellent clerk's *first book*. It is entitled "An Elementary View of the Proceedings in an Action at Law," by J. W. Smith, Esq. pp. 174.

distresses, notices to quit, &c. &c., and to justice-of-the-peace and criminal law generally. Here also it is of special importance that the practitioner should be well acquainted with the law of wills, executors, &c., called on as he often is to frame the former and advise the latter on the spur of the moment, before he can himself obtain assistance from town or elsewhere. In fact, one of this last class of practitioners is thrown more upon his own resources than the other two put together; and it is therefore incumbent upon him to devote his best energies during his clerkship to the acquisition of a thorough knowledge of his profession. When he comes to London to spend half a year with his master's agent, or with a conveyancer, he should pay almost undivided attention to real property law. This will be a most important period of his life, and very much of his future happiness and success will depend upon the manner in which he employs it. Always considering how short is his time, and how much to be done in it, he must avoid forming a numerous acquaintance, and squandering away his days or nights in visiting scenes of amusement. If he be not wise in time, in this respect, he will assuredly find out his folly, and bitterly regret it hereafter.

"Byles on Bills of Exchange," mentioned in a former page, is the best book extant for those to whom an early knowledge of that very important and intricate subject is necessary. The clerk should keep it ever on his desk, and refer to it in all the little exi-

gencies of business. He may thus often be able to discover a decision that renders it unnecessary to draw up a case for the pleader or barrister, and gains him signal credit in the eyes of his master. Mr. Sturgeon's "Practice of the Bankruptcy Court," should also be purchased by the student. It is the briefest, clearest, most accurate, and conveniently-arranged practical book for a solicitor that is extant upon the subject. "Smith's Compendium of Commercial Law," of which, too, mention has been already made, will also prove a valuable acquisition to the attorney's clerk. Perhaps the best book on general law that can be placed in his hands—next to some *recent* edition of Blackstone—is Mr. Chitty's "General Practice," a work which he should make a point of looking into every evening. Professor Woodeson's "Lectures" also—of which a new edition has been just published, in three neat volumes, and at a reasonable price—are admirably adapted for the purpose of consecutive reading. The young reader is, however, referred to the previous portions of this work for a particular account of most of the books which he may purchase and study advantageously*. He should by all means, during some—perhaps the latter—period of his clerkship, attend a course of lectures, and attend it regularly and thoughtfully. He must not be too anxious about taking copious notes; his main object should be to follow the lecturer closely *in his mind*, and note down only a

* See also the list of books recommended, *post*, pp. 489—496.

few memoranda, to aid his recollection on returning home; when he should make a point of writing out what he has heard, but not too fully, and *consulting the authorities cited.*

He is also earnestly recommended to lose no opportunity of studying carefully the opinions and drafts of pleaders, conveyancers, and barristers; and, where they are of more than usual interest or importance, of copying them out: he cannot hit upon any readier method than this of improving himself in legal knowledge.

Whenever he has occasion to go to the Courts he should attend to what is going on, and make a note of anything that strikes him as new, or of importance. It is astonishing how much valuable information he may collect in this way, and how advantageous such efforts will prove to his mind.

The clerk must also, equally with the student for the bar, lose no opportunity of acquiring polite and general knowledge—unless he mean to settle down into a mere drudge. Perhaps he cannot do better than adopt the course of general reading pointed out in a previous part of the work.

It would be well, also, for the clerk to bear in mind the necessity of acquiring a good *style of composition*, for which purpose he should familiarise himself with the writings of the best English authors, and frequently exercise himself in original composition. He should constantly aim at the attainment of a plain, nervous, perspicuous style; which, added to a methodical arrangement of his thoughts, will enable

him to acquit himself creditably in correspondence, and drawing up cases and briefs—matters which soon evidence, even to non-professional persons, whether their author is a man of general ability—a competent member of a liberal and learned profession. The author has frequently seen briefs, both in Chancery and common law causes, drawn up in a most lucid and masterly style,—calculated to leave counsel little else to do than present them to the Court.

A clerkship thus well spent will entitle the young lawyer to look for early success in his profession. If, instead of entering into business on his own account, he should prefer engaging with an attorney for a while, as managing clerk, his abilities and good conduct will speedily attract the notice of his employers, and induce them not only to give him a handsome salary, but possibly to take him into partnership on very advantageous terms. If, on the other hand, he enter into business on his own account, he will discharge all the duties of it with comfort to himself and advantage to his clients—who will not fail to give him substantial evidence of their increasing confidence in his skill and integrity.

What, on the contrary, is to become of the idle, ignorant, and dissolute attorney's clerk? Who will employ *him*, either as master or client? His expensive education has been utterly thrown away upon him; and he rapidly sinks from the sphere of respectable society, amid the grief and indignation of his friends, into roguery and ruin.

CHAPTER XIV.

HINTS TO YOUNG ATTORNEYS AND SOLICITORS FOR LAYING IN A LAW LIBRARY.

THE formation of a law library is rather a formidable task to the young practitioner, on account of its expense, and the difficulty of selection. This is chiefly the case with those who are setting out as attorneys and solicitors; to whom, therefore, it is thought that the few following suggestions will not prove unacceptable.

The very great changes which have been effected in the law within the last year or two, have made sad havoc with law-books. They have rendered large and expensive editions of some of the best standard works almost useless. The purchaser must, therefore, with reference to all text-books and digests, be now more particular than ever about ordering none but the very latest editions. Every one must, at least, for the present, look chiefly, if not altogether, to the Reports, for an accurate and authoritative statement of the law.

These remarks, though partially applicable to works upon conveyancing and chancery, are made principally with reference to the common law.

It is conceived, then, that an attorney or solicitor should, on commencing business, purchase the following works, or such of them as experienced friends may point out to him :—

ARCHBOLD'S PRACTICE, with the Forms. In all, 3 vols. 12mo, 2nd edition. 1835. By Mr. T. CHITTY. *Ante*, 326-7.

Tidd's Practice is, in its present form, too cumbrous and difficult of access. It will be both troublesome and dangerous for the young practitioner to have to pick his way, in the emergencies of business, through three or four *supplements*. When a new edition of this truly admirable work shall make its appearance, no lawyer's library should be long without it.

GRANT'S PRACTICE OF THE COURTS OF CHANCERY. 2 vols. 12mo, 3rd edition. 1833.

BACON'S ABRIDGMENT. 7 vols. 8vo. Very ably edited by Mr. Dodd, and published in 1832.

This is the favourite with the conveyancers, as Comyn's Digest with the common lawyers. Both of them are very valuable and authoritative works. A new edition of the latter has been for some time announced as in preparation. It is to be hoped that it will be carefully executed. A new edition, the fourth of that admirable work, CRUISE'S DIGEST of the Law of Real Property, in 7 vols. 8vo, has just been pub-

lished, and, it need hardly be said, will prove eminently useful, especially to the country practitioner.

COKE UPON LITTLETON. 2 vols, royal 8vo. By HARGRAVE and BUTLER. 19th Edition. 1832.

CHITTY'S [E.] EQUITY INDEX. In 2 vols. royal 8vo. A second edition of this elaborate and useful work is announced to be forthcoming.

HARRISON'S DIGEST. 3 vols. 8vo, 2nd edition. 1835. This edition comprises all the alterations in the law that have been effected down to the period of its publication, stated with great care and perspicuity. *Ante*, 365 (n).

EVANS' STATUTES. 8 vols. 8vo, 3rd edition. 1829. These are continued down to the 10th Geo. IV., and with themshould be purchased the *octavo* edition of the statutes from that year, published annually. Mr. Chitty (sen.) has also published a very valuable "*Collection of Statutes of Practical Utility*, with notes," in 2 vols. royal 8vo, 1829. Either of these two works may be purchased by the young practitioner, with great advantage, in lieu of the unwieldy and very expensive Statutes at large.

PHILLIPS, STARKIE, ROSCOE ON EVIDENCE. A new edition (being the eighth) of the first of these important works, is announced to be in the press; and a second edition of Starkie, and a third of Roscoe, were published in 1833. Perhaps the first of these works is best calculated for the young attorney.

SUGDEN'S VENDORS AND PURCHASERS. 2 vols. royal 8vo, 9th edition. 1834.

SUGDEN ON POWERS. 1 vol. royal 8vo, 5th edition. 1831.

WOODFALL'S LANDLORD AND TENANT. By HARRISON. 1 vol. royal 8vo, 2nd edition. 1834.

This will be found a most useful book, containing a copious and well-arranged statement of this very extensive branch of law. It will be invaluable to the country practitioner.

EDEN, DEACON, ARCHBOLD (by Flather), ON THE BANKRUPT LAW.

The first of these is in 1 vol. royal 8vo, 3rd edition, 1832; the second, a most able work, in 2 vols. 8vo, 1827; the third is in 1 thick vol. 12mo, 1834, and comprising the latest changes in the bankruptcy practice. All of them are excellent works; but the *latter* is, upon the whole, preferable for the practitioner, on account of its late date. Mr. Sturgeon, also, has published a very useful, brief, and accurate work, on the Law and Practice of Bankruptcy.

J. CHITTY, SEN., J. CHITTY, JUN., BAYLEY, AND ROSCOE, ON BILLS OF EXCHANGE.

The *first* of these, in 1 vol. royal 8vo, 8th edition, 1833, will be found incomparably the most useful for the practitioner.

WILLIAMS ON THE LAW OF EXECUTORS AND ADMINISTRATORS. 2 vols. 8vo. 1833. See *ante*, p. 364.

COLLYERON PARTNERSHIP. 1 vol. 8vo. 1832. See *ante*, pp. 355-6.

RAM ON ASSETS, &c. 1 vol. 8vo. 1832.

A most carefully written and practically useful book.

BYTHEWOOD'S PRECEDENTS IN CONVEYANCING. By JARMAN. "Selected from the best modern MS. collections and draughts of actual practice, with general common forms and variations, adapted to all the circumstances usually occurring, forming a system of conveyancing, with dissertations and practical notes." In 10 vols. 8vo.

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A very useful book to those who are employed in parliamentary business.

WORDSWORTH'S LAW AND PRACTICE OF ELECTIONS, as altered by the Reform Act, including the Law and Practice relating to Election Petitions. 1 vol. 8vo. 1834.

This is a very complete, accurate, and well-arranged book. A third edition of Mr. ROGERS' able Treatise on the same subject has also been just published in 1 vol. 12mo. 1834.

SMITH'S COMPENDIUM OF COMMERCIAL LAW. 1 vol. 8vo. 1834.

For an account of this work, see *ante*, pp. 349-351.

CHITTY'S GENERAL PRACTICE OF THE LAW. See *ante*, pp. 366-7.

The above works* may be purchased for about fifty pounds, and will form the basis of an excellent library. But the REPORTS!—That is a fearful matter. It will cost 60*l.* 14*s.* for a set, *in boards*, of the King's Bench Reports, from 1785; and 40*l.* for those of the Common Pleas; to say nothing of the Exchequer, Nisi Prius, Chancery, and Bankruptcy Reports! And then these Reports must be kept up—a yearly burthen! Unless, therefore, the young practitioner can devote, in the first instance, 150*l.* or 200*l.* to the purchase of his law library, he must be content for a while, as well he may, with the very able digests of the Common Law and Equity Reports by Messrs. Harrison and Chitty; and if any case should require particular examination, he can never be at a loss for the loan of a volume or number of the Reports. The other older Reports, such as Levinz, Croke, Burrows, Salkeld, Strange, Cowper, Coke, Wilson, Raymond, &c., he may often meet with at a reasonable price. There is, however, one new series of Reports, which it is very desirable, in the present state of practice, that he should take in—

* It will be of course understood, in saying this, that *only one work on the same subject*, is meant to be included in the above estimate.

Mr. Dowling's Practice Reports. They are published very soon after each term, and consequently enable the practitioner to become acquainted with each decision, almost as soon as made.

The increasing voluminousness and expensiveness of the Reports are a source of constant and vehement complaint. The author is not, however, among those who murmur at the bulk of the modern Reports, except in some few instances; considering of how very great importance it is that those cases which are to be our guides for future emergencies, should be as perfect and as *ample* as possible. Who is not delighted at discovering in the Reports a full statement of the pleadings and evidence of a case which thereby affords him a clew to find his way out of the perplexities of the one he is considering;—which is so decisive, both in point of *reasoning* and decision, as to satisfy the most captious and bigoted? How much litigation might have been spared, had the *grounds* of particular decisions been more distinctly stated!—It is true that there is a fearful disparity in point of size between Strange, or Douglas, or Cowper, and Barnewell and Alderson, Cresswell, Adolphus, Bingham, and their contemporaries—between Peere Williams and Vesey, jun.; but it should, at the same time, be remembered, that the transactions which now lead to litigation, especially those of a commercial kind, are themselves of a very complicated, novel, and difficult character, and

not susceptible of the compression of former times. It should also be borne in mind that the Reports of the present day are published, not as heretofore, often after a very considerable interval, during which important particulars were forgotten,—but almost immediately after each term, while the reporter's recollection of facts and arguments is fresh, and the law is in an extremely unsettled state. The competition existing between the reporters is doubtless, also a reason why each inserts more than he otherwise would, for fear of being accused of meagreness and imperfection. No one can read our current Reports without acknowledging the very great learning and ability with which they are prepared. Were they thrice as numerous as they are, a good *Digest* would always enable one readily to find what one wanted; and if we tremble for our successors, on contemplating the prodigious accumulations of a few years—say twenty or thirty—with which they will be overwhelmed, we may be relieved by the assurance that a whole series of Reports, if of inconvenient bulk, may,—having assisted in establishing the law on such a sure and solid basis as will exclude the necessity for such copious Reports as are now requisite, while new principles are in a process of rapid development,—be easily and advantageously abridged, perhaps by authority, and so brought into a reasonable compass.

CHAPTER XV.

METHOD OF ENTERING AN INN OF COURT, AND KEEPING TERMS.

THE following brief and accurate account of the present method of entering the four inns of court —the Inner and Middle Temple, Lincoln's-Inn, and Gray's-Inn—has been abstracted from the Sixth Report of the Common Law Commissioners, delivered the 13th March, 1834. It is expected that considerable alterations will be effected in the economy of these inns, in consequence of the recommendations of the commissioners, the chief of which will be here noticed in the form of notes. Such other information will be added to the existing practice, as the author has been able to collect; and it may be stated that the under-treasurers of the respective inns are always ready to afford full information on these points.

"With respect to the regulations and practice now in force in the different inns of court, relative to the subjects referred to us under the present inquiry, we find them to be as follows:—

I.—AS TO THE ADMISSION OF STUDENTS *.

The following rules appear to have been adopted by all the four societies:—

Before any person can be admitted a member, he must furnish a statement in writing, describing his

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* The following interesting observations upon the origin of the power of the inns of Court to call to the bar, are contained in the introductory part of the Report:—

"The four inns of court,—the Inner Temple, the Middle Temple, Lincoln's Inn, and Gray's Inn, severally enjoy the privilege of conferring the rank of barrister at law,—a rank which constitutes an indispensable qualification for practice in the superior courts.

"No other means of obtaining that rank exist, but that of becoming inrolled as a student in one or other of these inns, and afterwards applying to its principal officers (or benchers) for a call to the bar.

"The origin of this privilege of the inns of court appears to be involved in considerable obscurity.

"It was observed by Lord Mansfield, in the case of *The King* v. *Gray's Inn*, Doug. 354, that the original institution of the inns of court nowhere precisely appears; but it is certain that they are not corporations, and have no charter from the crown. They are voluntary societies, which, for ages, have submitted to government analogous to that of other seminaries of learning; but all the power they have concerning the admission to the bar is delegated to them from the judges; and in every instance their conduct is subject to their control as visitors.

"In support of these positions, a variety of passages are cited from Dugdale's *Origines Juridicales*, which clearly show that, in former times, the judges and the benchers made regulations to be observed by the inns of court, not only respecting the admission to the bar, but generally regarding the conduct of the members of the inn, and the admission of students.

"Many instances will be found in the appendix of such orders, sometimes made by advice of the privy council and judges, and sometimes by the judges only, and sometimes by the benchers, by

age, residence, and condition in life, and comprising a certificate of his respectability and fitness to be admitted, which must be signed by the party, and a bencher of the society, or two barristers *. No person

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advice and direction of the judges, and proceeding from the king's suggestion.

" There does not appear to be an instance in modern times in which the judges have interfered with the internal regulations of the different societies, though there are several in which they have acted as visitors, upon appeals to them from the decisions of the benchers respecting calls to the bar.

" In the late case of Mr. Wooler, reported as the case of *The King v. the Benchers of Lincoln's Inn*, 4 B. & C. 855, it was held, that the judges had no power, as visitors, to interfere with the regulations of the inns of court respecting the *admission* of students ; and also that the Court of King's Bench could not, in such case, interfere by *mandamus*. It was observed by Mr. Justice Littledale, ' that the Court was called upon to control the society in the admission of their members ; but that, as far as the admission of members is concerned, those are voluntary societies, not submitting to any government. They may in their discretion admit or not, as they please ; and the Court of King's Bench has no power to compel them to admit any individual.' He added, that ' the interference of the judges at the instance of those members of the societies whom the benchers had refused to call to the bar, was perfectly right ; because a member who had been suffered to incur expense with a view to being called to the bar, thereby acquires an inchoate right to be called ; and if the benchers refuse to call him, they ought to assign a reason for so doing ; and if there be no reason, or an insufficient one, then the member who has acquired such an inchoate right is entitled to have that right perfected.' "

* This rule, the commissioners are of opinion, " operates with considerable hardship ;" and they suggest in lieu of it, that, as a young man, however respectable, may be unacquainted with any members of the profession, it shall be sufficient for him to produce the certificate of " two graduated members of any of the Universities, or of two respectable housekeepers."

is admitted without the approbation of a bencher, or of the benchers in council assembled.

The applicant must, before he can enter into commons *, (and, in some societies, on admission,) sign a bond with surety conditioned to pay the dues. Every person applying to be admitted a member of any of the inns must sign a declaration that he is desirous of being admitted for the purpose of being called to the bar; and it is required by all the societies that he shall not, without the special permission of the society, take out any certificate as a special pleader, conveyancer, &c., under 44 Geo. III. c. 98†; and such

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* "We conceive," say the commissioners, "that that part of the present system of all the societies by which students, in whatever part of the kingdom they may be resident, are required to dine in the common hall a few days in the course of every term, is founded on just views, and attended with beneficial effects. Amongst these may be noticed, that of its making known the person of the student, and exposing him, if his character be disreputable, to more easy detection by the society before the period of his application to be called to the bar. It also gives an opportunity of attending the courts, and of associating with students and other members of the profession."

† This regulation is disapproved of by the commissioners:—"With respect to the regulation which relates to practising as *special pleaders* or *conveyancers*, and the necessity for obtaining, for that purpose, the permission of the societies, it appears to us to be objectionable. Its apparent object is to prevent uneducated and incompetent persons from practising in those capacities; but its effect is to make all persons, however well qualified, hold their profession of special pleader or conveyancer, by the precarious tenure of the pleasure of the benchers, and to vest in those gentlemen a discretion very liable to abuse. To subject special pleaders, in

permission is not granted until the applicant has kept such commons as are necessary to qualify him to be called to the bar, and it is given for one year only at a time.

Besides these regulations, we are informed, that, at the Inner Temple and at Gray's Inn, no person is admissible while engaged in trade. It has also been a rule at the Inner Temple, since the year 1829, that no person shall be admitted without a previous examination (by a barrister appointed by the bench for that purpose) in classical attainments, and the general subjects of a liberal education. Such examination is to include the Greek and Latin languages, or one of them, and such subjects of history and general literature as the examiners may think suited to the age of the applicant.

II.—AS TO THE CALL TO THE BAR.

The following regulations appear to be in force in all the societies:—No person in priest's or deacon's orders can be called to the bar;—no person can be called to the bar while he is on the roll of attorneys, solicitors, or proctors;—before a person can be called to the bar he must keep commons for three years,

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particular, to a regulation so arbitrary, is to expose to inconvenience and disadvantage, a body of persons whose prosperity is of great importance to the general interests of the profession, and to the science of the law itself."

that is, twelve terms, by dining in the hall at least three times in each term. He must have been a member of the inn for five years *, unless he has taken the degree of Master of Arts or Bachelor of Law at the Universities of Oxford, Cambridge, or Dublin, or (at Lincoln's Inn) is a member of the Faculty of Advocates in Scotland, in which case he may be called after he has been a member of the inn for three years; but this exception does not extend to honorary degrees.

A student, previously to his keeping any of the terms requisite for his call, must deposit with the treasurer of the society 100*l.*, to be returned, without interest, on his being called to the bar; or, in case of death, to his personal representatives: but this rule does not apply to any person who shall produce a certificate of his having kept two years' terms in any of the Universities of Oxford, Cambridge, or Dublin, or (at Lincoln's Inn) of his being a member of the Faculty of Advocates in Scotland †. No person can be called to the bar until he is twenty-one years of age. The call to the bar is by an act of the benchers in council or parliament, &c. assembled. The name and

* After Easter term next, however, (1835) persons *may* be called to the bar, at all the Inns of Court, if they have had their names upon the books for *three* years, and kept twelve terms, provided they are *twenty-three* years of age.

† After Michaelmas term next (1835,) this deposit must be made by *all* applicants for admission, without distinction.

description of every candidate for being called to the bar must be hung up in the hall for a fortnight before he is to be called. Any person applying to be called to the bar must make application to a master of the bench to move for the same: and the list of applicants to be called to the bar at any society is always transmitted, before the call takes place, to the other societies. At the Inner Temple, Middle Temple, and Lincoln's Inn, no attorney, solicitor, or proctor can be admitted to commons for the purpose of being called to the bar, until his name shall have been struck off the roll.

In Lincoln's Inn, a person wishing to be called to the bar must read his exercises at the bar-table, and the barristers at that table have a power of rejection, subject to an appeal to the benchers *. If not rejected by the bar-table, it is still necessary that he should be approved by the bench. At Lincoln's Inn it is a rule, that no person in trade is permitted to do exercises to enable him to be called to the bar; and there is the same prohibition as to any person who has been in the situation of clerk to a barrister, convey-

* This is strongly, and with reason, disapproved of by the commissioners. "The candidate is thus made liable to the danger of rejection by either of the two bodies exercising a veto in succession; a strictness for which we see no sufficient reason, and which is not practised by any other of the law societies." They recommend, therefore, that the power of admission or rejection should in future be vested "in the benchers only, to the exclusion of the bar-table."

ancer, special pleader, or chancery draftsman, and has done the offices and received the perquisites of such clerk.

III.—AS TO THE CASE OF REJECTION UPON AN APPLICATION TO BE ADMITTED STUDENT, OR TO BE CALLED TO THE BAR.

The general state of practice, in all the societies, appears to be as follows:—If a person be refused admission, as a student, by any of the societies, he has no means, either by appeal to the judges or otherwise, of bringing under revision the propriety of the rejection, and a certificate of the rejection is transmitted to all the other societies *.

Where any of the societies refuse to call a person to the bar the benchers will hear him personally, or by counsel, and allow him to give evidence to rebut the charges made against him; and, if he be dis-

* The commissioners express their disapprobation of the absolute and irresponsible power at present possessed by the benchers, and recommend that "either by Act of Parliament or by authority of his Majesty in Council, the society be enjoined to allow, and the judge to receive, an appeal from any act of the benchers of any inn of court rejecting an application for *admission* into their society:"—and that where such an application is rejected, whether it relates to *admission* as a student, or to the *call* to the bar, the party applying shall have notice in writing of the cause of objection, may defend himself, either personally or by counsel, and produce evidence; and that a full report of the proceedings shall, in case of an appeal, be laid before the judges.

satisfied with their decision, he may appeal to the judges. On such appeal, the benchers send to the judges a certificate, stating the reasons of their refusal to call such persons to the bar.

It may, however, be right to remark, that we are not informed of any positive rule or order regulating the mode of proceeding in cases of appeal; and it deserves particular notice, that there is not any specific regulation to insure a full and correct report of the evidence, as taken before the benchers, for the information of the judges *."

The mode of applying for admission into any of the inns of court is very simple. You go to the Treasurer's Office, state that you intend to become a member, and all necessary information will be instantly afforded.

The entrance expenses are as follow:—

	£	s.	d.
At the Inner Temple . . .	37	0	2†
Middle Temple . . .	30	4	6
Lincoln's Inn . . .	31	13	0
Gray's Inn . . .	32	5	0

The great bulk of each of the above sums is for stamps (*i. e.* 25*l.* for admission, and 1*l.* 15*s.* ‡ for a bond).

The expenses of a call to the bar are also very heavy on account of the stamp, which is 50*l.* The additional charges amount to between 20*l.* and 30*l.*

Every student may, if he choose, dine in the hall

* See the Sixth Report of the Common Law Commissioners.

† This sum includes 7*l.* 17*s.* for the expenses of entry into Commons, &c.

‡ At Gray's Inn, 1*l.* only.

every day during term, where he will find, especially in the Inner Temple, very comfortable and substantial dinners *. A bottle of port is allowed to each mess of four. His commons' bill, if he dine the whole of each term—and he can dine nowhere else, by the way, so cheaply and so well—will be about 10*l.* or 12*l.* annually. He need not, however, incur more expense than 5*l.* or 6*l.* a year.

Those who intend to be called to the Irish bar must keep nine terms in the King's Inns in Dublin, and eight terms in one of the Inns of Court in London. The sum required on admission to the former is 45*l.* Terms may be kept in London and Dublin alternately, or otherwise, as the student may find it convenient. If a gentleman who enters any of the inns of court as a student for the Irish bar subsequently resolves to be called to the bar in England, he may petition the benchers, setting forth the circumstances of the case, who will allow him—provided he be a fit person—the advantage of standing he may have acquired as an Irish student: and if he produces a certificate of having kept two years' terms at any of the privileged universities, he will be allowed the advantage of them; otherwise he must keep twelve terms, after having made a deposit of 100*l.*, as required of English students, before he can be called to the English bar †.

* The students dine in black gowns, which are provided in the Hall.

† Law Student's Guide, pp. 107—110.

Gray's Inn is frequently selected by Irish students, on account of its greater facility of admission, and convenience of keeping terms. It is also considerably less expensive than the other inns *.

CONCLUSION.

THUS, at length, has the author brought his humble labours to a close; thus has he endeavoured to hold up, as it were, a little torch, to light the adventurer through the dusky porch of the law; and he wishes, in parting with him, to adopt the quaint but hearty and affectionate expressions with which our great Lord Coke closes his commentary upon Littleton:—

"And for a farewell to our jurisprudent, I wish unto him the gladsome light of jurisprudence, the lovelinesse of temperance, the stabilitie of fortitude, and the soliditie of justice!"

* There are eight minor inns, or "inns of chancery," which are appendages to the inns of court: Clement's, Clifford's, and Lyon's Inns belong to the INNER TEMPLE; Furnival's and Thavies' Inns to LINCOLN'S INN; New Inn to the MIDDLE TEMPLE; and Barnard's and Staple Inns to GRAY'S INN. These minor inns afford very cheap and convenient residences to students, if unable or indisposed to take the more expensive chambers of the superior inns of court.

APPENDIX.

SPECIMEN OF SCRIBLERUS'S REPORTS*.

STRADLING *versus* STILES.

Le report del case argue en le commen banke devant touts les justices de le mesme banke, en le quart. An. du raygne de roy *Jaques*, entre *Matthew Stradling*, plant. & *Peter Stiles*, def. en un action propter certos equos coloratos, *Anglicè*, pyed horses, post. per le dit *Matthew* vers le dit *Peter*.

Le recitel del Case. SIR John Swale, of Swale-Hall in Swale-Dale fast by the River Swale, kt. made his last Will and Testament: in which, among other Bequests was this, *viz.* Out of the kind love and respect that I bear unto my much honoured and good friend Mr. *Matthew Stradling*, gent. I do bequeath unto the said *Matthew Stradling, all my black and white horses.* The Testator had six black horses, six white horses, and six pyed horses.

Le point. The Debate therefore was, Whether or no the said Matthew Stradling should have the said pyed horses by virtue of the said Bequest.

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* See *ante*, page 442.

Pour le pl. Atkins apprentice pour le pl. moy semble que le pl. recovera.

And first of all it seemeth expedient to consider what is the nature of horses, and also what is the nature of colours; and so the argument will consequently divide itself in a twofold way, that is to say, the formal part, and substantial part. Horses are the substantial part, or thing bequeathed: black and white the formal or descriptive part.

Horse, in a physical sense, doth import a certain quadrupede or four-footed animal, which, by the apt and regular disposition of certain proper and convenient parts, is adapted, fitted and constituted for the use and need of man. Yea so necessary and conducive was this animal conceived to be to the behoof of the commonweal, that sundry and divers acts of parliament have from time to time been made in favour of horses.

1st. Edw. VI. Makes the transporting of horses out of the kingdom no less a penalty than the forfeiture of 40*l.*

2nd and 3rd Edward VI. Takes from horse-stealers the benefit of their clergy.

And the statutes of the 27th and 32nd of Hen. VIII. condescend so far as to take care of their very breed: These our wise ancestors prudently foreseeing, that they could not better take care of their own posterity, than by also taking care of that of their horses.

And of so great esteem are horses in the eye of the common law, that when a Knight of the Bath committeth any great and enormous crime, his punishment is to have his spurs chopt off with a cleaver, being, as master Bracton well observeth, unworthy to ride on a horse.

Littleton, Sect. 315. saith, If tenants in common make a lease reserving for rent a horse, they shall have but one assize, because, saith the book, the law will not suffer a horse to be severed. Another argument of what high estimation the law maketh of an horse.

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

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

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

But the present case is still stronger, coming not only within the intendment, but also the very letter of the words.

By the word black, all the horses that are black are devised; by the word white are devised those that are white; and by the same word, with the conjunction copulative, and, between them, the horses that are black and white, that is to say, pyed, are devised also.

Whatever is black and white is pyed, and whatever is pyed is black and white; *ergo*, black and white is pyed, and *vice versa*, pyed is black and white.

If therefore black and white horses are devised, pyed horses shall pass by such devise; but black and white horses are devised; *ergo*, the pl. shall have the pyed horses.

Catlyne Serjeant: mov semble al' contrary, the plaintiff shall not have the pyed horses by intendment; for if by the devise of black and white horses, not only black and white horses, but horses of any colour between these two extremes may pass, then not only pyed and grey horses, but also red and bay horses would pass likewise, which would be absurd, and against reason. And this is another strong argument in law, *Nihil, quod est contra rationem est licitum*; for reason is the life of the law, nay the common law is nothing but reason; which is to be understood of artificial perfection and reason gotten by long study, and not of man's natural reason; for *nemo nascitur artifex*, and legal reason *est summa ratio*; and therefore if all the reason that is dispersed into so many different heads, were united into one, he could

Pour le Defend.

not make such a law as the law of England; because by many successions of ages it has been fixed and refixed by grave and learned men; so that the old rule may be verified in it, *Neminem oportet esse legibus sapientiorem.*

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

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

Besides, where custom hath adapted a certain determinate name to any one thing, in all devises, feoffments and grants, that certain name shall be made use of, and no uncertain circumlocutory descriptions shall be allowed; for certainty is the father of right and the mother of justice.

Le reste del argument jeo ne pouvois oyer, car jeo fui disturb en mon place.

Le court fuit longement en doubt' de c'est matter; et apres grand deliberation eu,

Judgment fuit donne pour le pl. nisi causa.

Motion in arrest of judgment, that the pyed horses were mares; and thereupon an inspection was prayed.

Et sur ceo le court advisare vult.

CURIOUS SPECIMEN OF *VIVA VOCE* PLEADINGS IN THE ENGLISH COURTS, IN THE REIGN OF EDWARD II.*

"The case was this: *Aleyne de Newton* brought his writ of annuity against the abbot of Burton upon Trent, and demanded 30*l.* arrears of an annual rent of 45*l.* per annum, and he declared that one John, abbot of Burton, and predecessor of the present abbot, did, by assent of the convent, grant an annuity to *Aleyne*, payable twice in the year, till he was advanced to a convenable benefice; and he exhibited a specialty containing, that the abbot by assent, &c., did grant an annuity to *Aleyne de Newton, Clerk*, in the above manner, as he had declared. Upon this *Willuby* (as counsel for the defendant) prayed judgment of the writ, because of the variance between the writ and the specialty; for in the writ, he was named *Aleyne de Newton*, but in the specialty, *Aleyne de Newton Clerk*. *Ward* said, that it was no variance; yet *Willuby* maintained, that as he might have a writ agreeable to the specialty, if he varied in his own purchase of it, the writ would be ill; but he could in this case have a writ agreeable to his specialty. *Ergo*, &c. And again, as far as appeared by the specialty, it was made to some one else, and not to the person named in the writ. *Stonore*, one of the justices, said, 'Then you may plead so if you will, but the writ is good,' therefore *respondeas ouster*.

Then said *Willuby*, He cannot demand this annuity, because we say, that John our predecessor on such a day,

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* See *ante*, page 271.

&c. tendered him the vicarage of, &c. which was void, and in his gift, in the presence of such and such persons, which vicarage he refused; wherefore we do not understand that he can any longer demand this annuity. *Shard*—We say this vicarage was not worth 100 shillings; therefore we do not understand it to be a *convenable* benefice, so as to extinguish an annuity of 40*l*. *Willuby*—Then you admit that we tendered you the vicarage, and that you refused it, &c.? *Shard*—As to the tender of a benefice which was not convenable, I have no business to make any answer at all. Then *Mutford*, one of the justices, asked, What sort of benefice they considered as *convenable*, so as to extinguish the annuity? *Shard*—We mean one of ten marks at least. Then *Stonore* said, Do you admit that the vicarage was not worth 100 shillings? *Willuby*—We will aver that the vicarage was worth ten marks, *prest*, &c.; and he has admitted that one of that value should extinguish the annuity. *Shard*—And we will aver that it was not worth ten marks, *prest*, &c.

After this issue, *Willuby* was desirous of recurring back to his first plea, and said, As you declare that the vicarage was not worth 100 shillings, we will aver that it was worth 100 shillings, &c. But *Stonore* interposed, and said, He declares that the vicarage is worth ten marks; and after that there is nothing to be done, but that the issue should be taken on your declaration or his: now it seems that it should rather be taken on yours; for, by your plea, you make that a convenable benefice which is worth ten marks, and such a declaration you ought to maintain, &c. *Willuby*—The mention of the value came first from him, when he said it was not worth 100 shillings; so that it will be sufficient

for me to traverse what he had said. But *Stonore* pressing him whether he would maintain his plea, *Willuby* said he would, and acccordingly pleaded that the vicarage was worth ten marks, *prest*, &c. *et alii*, that it was not worth ten marks, *prest*, &c. and so issue was joined.

The pleadings upon the record in the above case must then have stood thus: The defendant said, a vicarage had been tendered and refused, and so the annuity should cease, judgment of the action. To this the replication was, The vicarage tendered was not worth ten marks, and so not a convenable benefice to extinguish the annuity: rejoinder, it was worth ten marks: surrejoinder, it was not.

These instances, without troubling the reader with more, will serve to show the manner of pleading *vivâ voce* at the bar: every thing there advanced was treated as a matter only *in fieri*, which upon discussion and consideration might be amended, or wholly abandoned, and then other matter resorted to, till at length the counsel felt himself on such grounds as he could trust. Where he finally rested his cause, that was the plea which was entered upon the roll, and abided the judgment of an inquest, or of the court, according as it was a point of law or of fact *."

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* Reeve's Hist. of Eng. Law, vol. ii. pp. 347—349.

I.

Declaration in Covenant *.

On an Indenture of Lease for not repairing.

In the King's Bench.

The 1st day of January, 1835.

Middlesex to wit. A. B. (the plaintiff in this suit), by E. F. his attorney [*or*, in his own proper person], complains of C. D. (the defendant in this suit), who has been summoned to answer the said plaintiff [*or*, who has been arrested at the suit of the said plaintiff], in an action of covenant: For that whereas heretofore, to wit, on the 10th day of March, in the year of our Lord 1826, by a certain indenture then made between the said plaintiff of the one part and the said defendant of the other part (one part of which said indenture, sealed with the seal of the said defendant, the said plaintiff now brings here into court, the date whereof is the day and year aforesaid), the said plaintiff, for the consideration therein mentioned, did demise, lease, set, and to farm let unto the said defendant a certain messuage, or tenement, and other premises, in the said indenture particularly specified, to hold the same, with the appurtenances, to the said defendant, his executors, administrators, and assigns, from the twenty-fifth day of March then next ensuing the date of the said indenture, for and during, and unto the full end and term of seven years from thence next ensuing, and fully to be complete and ended, at a certain rent payable by the said defendant to the said plaintiff, as in the said indenture is mentioned.

* See page 284.

And the said defendant, for himself, his executors, administrators, and assigns, did thereby covenant, promise, and agree, to and with the said plaintiff, his heirs and assigns (amongst other things), that he, the said defendant, his executors, administrators, and assigns, should and would, at all times during the continuance of the said demise, at his and their own costs and charges, support, uphold, maintain, and keep the said messuage, or tenement, and premises in good and tenantable repair, order, and condition; and the same messuage, or tenement and premises, and every part thereof, should and would leave in such good repair, order, and condition, at the end, or other sooner determination of the said term, as by the said indenture, reference being thereunto had, will, among other things, fully appear. By virtue of which said indenture, the said defendant afterwards, to wit, on the twenty-fifth day of March, in the year aforesaid, entered into the said premises, with the appurtenances, and became and was possessed thereof, and so continued until the end of the said term. And although the said plaintiff hath always, from the time of the making of the said indenture, hitherto done, performed, and fulfilled all things in the said indenture contained on his part to be performed and fulfilled, yet the plaintiff saith, that the said defendant did not, during the continuance of the said demise, support, uphold, maintain, and keep the said messuage, or tenement and premises in good and tenantable repair, order, and condition, and leave the same in such repair, order, and condition, at the end of the said term; but for a long time, to wit, for the last three years of the said term, did permit all the windows of the said messuage

or tenement to be, and the same during all that time were, in every part thereof, ruinous, in decay, and out of repair, for want of necessary reparation and amendment. And the said defendant left the same, being so ruinous, in decay, and out of repair as aforesaid, at the end of the said term, contrary to the form and effect of the said covenant so made as aforesaid. And so the said plaintiff saith, that the said defendant (although often requested) hath not kept the said covenant so by him made as aforesaid, but hath broken the same; and to keep the same with the said plaintiff hath hitherto wholly refused, and still refuses, to the damage of the said plaintiff of £50, and therefore he brings his suit, &c.

II.

Plea in Bar.

1. *By way of Traverse.*

In the King's Bench.

The 8th day of January, 1835.

C. D. ats * A. B. } And the said defendant by G. H., his attorney [*or*, in person], says that the windows of the said messuage or tenement were not in any part thereof ruinous, in decay, or out of repair, in manner and form as the said plaintiff hath above complained against him, the said defendant. And of this he puts himself upon the country.

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* "ats"—*i. e.* "at the suit of."

2. *By way of Confession and Avoidance.*

In the King's Bench.

On the 8th day of January, 1835.

C. D. ats. A. B. } And the said defendant, by G. H., his attorney [*or*, in person], says that, after the said breach of covenant, and before the commencement of this suit, to wit, on the 3rd day of June, in the year of our Lord 1834, the said plaintiff, by his certain deed of release, sealed with his seal, and now shown to the court here (the date whereof is the day and year last aforesaid), did remise, release, and for ever quit claim to the said defendant, his heirs, executors, and administrators, all damages, cause and causes of action, breaches of covenant, debts and demands whatsoever, which had then accrued to the said plaintiff, or which the said plaintiff then had against the defendant; as by the said deed of release, reference being thereto had, will fully appear. And this the said defendant is ready to verify.

III.

Replication.

By way of Confession and Avoidance.

In the King's Bench.

On the 12th day of January, 1835.

A. B. agst. C. D. } And the said plaintiff says that the said plaintiff at the time of the making of the said supposed deed of release was unlawfully im-

prisoned, and detained in prison by the said defendant, until by force and duress of that imprisonment, the said plaintiff made the said supposed deed of release as in the said plea mentioned. And this the said plaintiff is ready to verify.

IV.

REJOINDER.

By way of Traverse.

In the King's Bench.

On the 15th day of January, 1835.

C. D. ats. A. B. } And the said defendant says, that the said plaintiff freely and voluntarily made the said deed of release, and not by force and duress of imprisonment, in manner and form as by the said replication alleged. And of this the said defendant puts himself upon the country.

AND the said plaintiff does the like *. Therefore the Sheriff is commanded that he cause to come † here on the first day of February, in the year of our Lord, 1835, twelve good and lawful men of the body of his county, qualified according to law, by whom the truth of the matter may be better known, and who are in no wise of kin, either to A. B., the plaintiff, or to C. D., the defendant, to make a certain jury of the county between the parties aforesaid, in an action of covenant, because as well the said C. D. as the said A. B., between whom the matter in variance is, have

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* This is called the "*Similiter.*" † The "*Venire Facias.*"

put themselves upon that jury, and have there the names of the jurors, and this writ: Witness, Sir Thomas Denman, &c.

DEMURRER.

To the Declaration.

1. For matter of *Substance.*

In the King's Bench.

The 7th day of January, 1835.

C. D. ats. A. B. } And the said defendant, by G. H. his attorney, says that the declaration is not sufficient in law *.

2. For matter of *Form.*

The 7th day of January, 1835.

C. D. ats. A. B. } And the said defendant, by G. H. his attorney, says, that the declaration is not sufficient in law. And the said defendant,

* The following, which was the form used till that above was given by the new rules, will serve as a specimen of the verbosity and useless circumlocution exhibited by the old system.

"And the said defendant, by G. H. his attorney, comes and defends the wrong and injury when, &c. and saith that the said declaration and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said defendant, and that the said defendant is not bound by law to answer the same, and this he is ready to verify—wherefore for want of a sufficient declaration in this behalf the said defendant prays judgment, and that the said plaintiff may be barred from having and maintaining his aforesaid action thereof against him," &c.

according to the form of the statute in such case made and provided, shows to the court here the following causes of demurrer to the said declaration: that is to say, that no day or time is alleged in the said declaration, at which the said causes of action, or any of them, are supposed to have accrued. And also that the said declaration is in other respects uncertain, informal, and insufficient, &c.

Pleas in Abatement.

1. *To the Jurisdiction.*

In the King's Bench.

The 7th day of January, 1835.

C. D. ats. A. B. } And the said defendant, in his proper person, says, that the said county of Durham is, and, from time whereof the memory of man is not to the contrary, hath been a county palatine; and there now are, and for all the time aforesaid have been justices there; and that all and singular pleas for the recovery of manors, messuages, and tenements, lying and being within the said county, have been for all the time aforesaid, and still are, pleaded and pleadable within the said county of Durham, before the justices there for the time being, and not here in the court of our Lord the King, before the King himself. And this he is ready to verify. Wherefore, since the plea aforesaid is brought for recovery of the possession of the manors, messuages, lands, and hereditaments aforesaid, within the said county palatine, the said defendant prays judgment if the Court of our Lord the King here will or ought to have further cognizance of the plea aforesaid.

2. *Alien Plaintiff.*

In the King's Bench.

The 7th day of January, 1835.

C. D. ats. A. B. } And the said defendant, by G. H. his attorney [or, in person], says, that the said plaintiff ought not to be answered to his declaration aforesaid, because, he says, that the said plaintiff is an alien born, to wit, at Calais, in the Kingdom of France, in parts beyound the seas under the allegiance of the King of France, an enemy of our Lord the now King, born of father and mother adhering to the said enemy; and that the said plaintiff entered this kingdom without the safe conduct of our said Lord the King. And this the said defendant is ready to verify. Wherefore he prays judgment, if the said plaintiff ought to be answered to his declaration aforesaid.

3. *Non-joinder of a co-Defendant.*

In the King's Bench.

The 7th day of January, 1835.

C. D. ats. A. B. } said. And the defendant, by his attorney [or, in person], prays judgment of the said declaration, because he says that the said several supposed promises and undertakings in the said declaration mentioned (if any such were made), were made jointly with one G. H., who is still living, and at the commencement of this suit was and still is resident within the jurisdiction of this court, to wit, at , and not by the said defendant alone. And this the said defendant is ready

to verify. Wherefore inasmuch as the said G. H. is not named in the said declaration, together with the said defendant, he the said defendant, prays judgment of the said declaration, and that the same may be quashed *.

SPECIAL COUNTS IN ASSUMPSIT †.

1.—*On the Breach of a Promise of Marriage.*

In the King's Bench.

The 1st day of February, 1835.

Yorkshire to wit. Mary Jones (the plaintiff in this suit), by James White, her attorney, complains of Solomon Swallowfield (the defendant in this suit), who has been summoned to answer the said plaintiff in an action on promises. For that whereas heretofore, to wit, on the 21st day of May, in the year of our Lord 1834, in consideration that the said plaintiff, being then sole and unmarried, at the special instance and request of the said defendant, had then undertaken, and faithfully promised the said defendant to marry the said defendant, *when the said plaintiff should be thereunto afterwards requested* ‡, the said defendant under-

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* To this must now be added an affidavit, stating that the plea is true 'in substance and fact,' and also containing the place of residence of the party not joined. See Stat. 3 & 4 Will. 4. c. 42, § 8, and Newton *v.* Verbeke, 1 Y. & J. 352.

† See *ante*, page 399.

‡ This allegation must, of course, be according to the fact. If the promise was, to marry at a particular day, &c. &c. it must be so stated.

took, and then faithfully promised the said plaintiff to marry the said plaintiff, when the said defendant should be thereunto afterwards requested. And the said plaintiff avers, that confiding in the said promise and undertaking of the said defendant, she hath always from thence hitherto remained and continued, and still is, sole and unmarried, and hath been, for and during all the time aforesaid, and still is, ready and willing to marry the said defendant, whereof the said defendant hath always had notice. And although the said plaintiff, after the making of the said promise and undertaking of the said defendant, to wit, on the day and year aforesaid, requested the said defendant to marry the said plaintiff, yet the said defendant, not regarding his said promise and undertaking, but contriving and intending to deceive and injure the said plaintiff in this respect, did not nor would, at the said time when he was so requested as aforesaid, or at any time before or afterwards, marry the said plaintiff, but hath hitherto wholly neglected and refused, and still doth neglect and refuse so to do, to the damage of the said plaintiff of 3,000*l.*, and therefore she brings her suit, &c.

2. *On a Wager on a Horse-race for a Hunter's Sweepstakes* *.

In the Common Pleas.

The 1st day of February, 1835.

Nottinghamshire to wit. Timothy Trickery (the plaintiff in this suit), by John Wragg, his attorney, complains of

* A wager on a horse-race is legal, if the sum betted do not exceed 10*l.*, and provided the race, which is the subject of the bet,

John Scott (the defendant in this suit), who has been summoned to answer the said plaintiff in an action on promises. For that whereas, before and at the time of the making of the agreement, and the promise and undertaking of the said defendant, hereinafter next mentioned, a certain race for hunter's sweepstakes, amounting to a large sum of money, to wit, the sum of 200*l.*, was about to be run over the Nottingham course, and it was then expected that a certain horse, called Zebra, and also certain other horses, would run the said race over the said course, for the said stakes; and thereupon, heretofore, to wit, on the first day of May, in the year of our Lord 1834, it was agreed by and between the said plaintiff and the said defendant, that if the said horse called Zebra, in running the said race, should beat the said other horses which should run the said race over the said course, for the said stake, he, the said defendant, should pay to the said plaintiff the sum of 10*l.*, of lawful money of Great Britain, but that if the said horse called Zebra should be beaten by any or either of the said other horses which should run as aforesaid, he, the said plaintiff should pay to the said defendant the sum of 10*l.* of like lawful money. And the said agreement being so made as aforesaid, afterwards, to wit, on the day and year aforesaid, in consideration thereof, and that the said plaintiff, at the

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is run for the sum of 50*l.*, or upwards, or 25*l.* deposited by each party. But horse-races against time on a highway, or for a stake of less value than 50*l.*, are illegal; and when the game itself is illegal, then no action can be maintained for a wager respecting it, however small the bet.—See 2 Chitt. Pl. 226. c. (5th ed.) and cases and statutes cited in note (*a*). See also Shillito *v.* Teed, 7 Bing. 405.

special instance and request of the defendant, had then undertaken, and faithfully promised the said defendant to perform and fulfil the said agreement in all things, on the said plaintiff's part and behalf to be performed and fulfilled; he the said defendant undertook and then faithfully promised the said plaintiff to perform and fulfil the said agreement in all things, on the said defendant's part and behalf to be performed and fulfilled. And the said plaintiff, in fact, saith, that after the making of the said agreement, to wit, on the day and year aforesaid, at the Nottingham course aforesaid, the said race for the said stakes was run between the said horse called Zebra and divers, to wit, twelve other horses; and that in running the said race, the said horse called Zebra did beat the said other horses so running as aforesaid, whereof the said defendant afterwards, to wit, on the day and year aforesaid, had notice; yet the said defendant, not regarding the said agreement, nor his said promise and undertaking so by him made as aforesaid, but contriving and fraudulently intending, craftily and subtly to deceive and defraud the said plaintiff in this behalf, hath not as yet paid the said sum of 10*l.*, or any part thereof, to the said plaintiff, although often requested so to do, but hath hitherto wholly neglected and refused, and still neglects and refuses so to do, to the damage of the said plaintiff of 50*l.*, and therefore he brings his suit, &c.

3.—*For Recovery of Money lost at the Game of Cribbage.*

In the Exchequer of Pleas.

The 7th day of February, 1835.

Lincolnshire to wit. Thomas Trump (the plaintiff in this suit), by Isaac Tims, his attorney, complains of Simon Spade (the defendant in this suit), who has been summoned to answer the said plaintiff in an action on promises. For that whereas heretofore, to wit, on the 1st day of December, in the year of our Lord 1834, in consideration that the said plaintiff, at the special instance and request of the said defendant, had then agreed with, and undertaken, and faithfully promised the said defendant, to play at a certain game, that is to say, at a certain game called cribbage, with the said defendant, and to pay him all such sum and sums of money as he, the said plaintiff, should lose to the said defendant, by means of his said playing with the said defendant, he, the said defendant then agreed with, and undertook, and faithfully promised the said plaintiff to play at the said game with the said plaintiff, and to pay the said plaintiff all such sum and sums of money as he, the said defendant, should lose to the said plaintiff, by means of his so playing with the said plaintiff, when he, the said defendant, should be thereunto afterwards requested; and the said plaintiff avers, that he, confiding in the said promise and undertaking, and agreement of the said defendant, did afterwards, to wit, on the day and year aforesaid, play at the said game with the said defendant, who did also then play at the said game with the said plaintiff;

and also the said defendant, by means of his so playing with the said plaintiff as aforesaid, did then lose to the said plaintiff, who did then win of the said defendant, divers sums of money, amounting to a large sum of money, to wit, the sum of 10*l.*; yet the said defendant, although he was then and oftentimes afterwards requested by the said plaintiff to pay him the said sum of money, so by him lost to the said plaintiff in manner aforesaid, did not, nor would, when he was so requested as aforesaid, pay, nor hath he, at any time before or since, hitherto paid, or cause to be paid, the sum of money so by him lost to the said plaintiff as aforesaid, or any part thereof, to the said plaintiff, but hath hitherto wholly refused, and still refuses to do, to the damage of the said plaintiff of 20*l.*, and therefore he brings suit, &c.

COMMON COUNT IN ASSUMPSIT.

For Goods sold and delivered.

In the King's Bench.

The 12th day of February, 1835.

Somersetshire to wit. Jonathan Gregory (the plaintiff in this suit), by Abraham Elliott, his attorney, complains of James Johnson (the defendant in this suit), who has been arrested at the suit of the said plaintiff in an action on promises. For that whereas the said defendant heretofore,

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(See *ante*, p. 398).

to wit, on the 1st day of December, in the year of our Lord 1834, was indebted to the said plaintiff in 500*l.* for goods then sold and delivered by the said plaintiff to the said defendant at his request. And whereas the said defendant afterwards in consideration of the promises, then promised to pay the said sum of money to the said plaintiff, on request. Yet he hath disregarded his promise, and hath not paid the said money or any part thereof to the plaintiff's damages of 500*l.*, and thereupon he brings suit, &c.

COMMON COUNT IN DEBT.

In Goods sold and delivered.

In the Common Pleas.

The 12th day of February, 1835.

Somersetshire to wit. Jonathan Gregory (the plaintiff in this suit), by Abraham Elliott, his attorney, complains of James Johnson (the defendant in this suit), who has been arrested at the suit of the said plaintiff in an action of debt—and he demands of him the sum of 500*l.*, which he owes to and unjustly detains from the said plaintiff. For that whereas the said defendant heretofore, to wit, on the 1st day of December, in the year of our Lord 1834, was indebted to the said plaintiff in 500*l.* for goods then sold and delivered by the said plaintiff to the said defendant, at his request, to be paid by the said defendant to the said

plaintiff on request. Yet the said defendant, although often requested, hath not paid the said sum of 500*l.*, above demanded, or any part thereof, as yet, to the said plaintiff; but so to do hath hitherto publicly refused, and still refuses, to the damage of the said plaintiff, of 10*l.*, and therefore he brings his suit, &c.

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