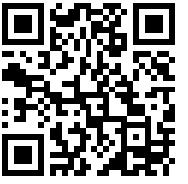

LIVES

OF

EMINENT ENGLISH JUDGES

OF THE

SEVENTEENTH AND EIGHTEENTH CENTURIES.

EDITED BY

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RECORDER OF CHESTER.

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TO

THE RIGHT HONOURABLE BARON PARKE,

IN WHOM

THE LEGAL PROFESSION RECOGNIZES, WITH ONE VOICE,

THE COMBINATION OF THE HIGHEST JUDICIAL QUALITIES,

THESE

MEMOIRS OF EMINENT ENGLISH JUDGES

ARE, WITH HIS PERMISSION,

RESPECTFULLY DEDICATED.

ADVERTISEMENT.

THE Biographies which compose this Volume were originally published in the "Law Magazine," and were read, I believe, with some degree of favour. The Lives of Lords Nottingham, Hardwicke, Mansfield, Thurlow, and Ashburton were from the pen of the late EDMUND PLUNKETT BURKE, afterwards Chief Justice of St. Lucie, whose premature and melancholy death was the occasion of much regret to his friends and the Profession. For the rest I am responsible, with the exception of the memoirs of Hale and Blackstone, which were by other hands. I have the permission of the writers to include them also in this Volume. The whole have been carefully revised, and some inaccuracies, both of fact and of expression, have been corrected.

I did not venture upon the more difficult and delicate task, of pourtraying the lives and characters of any of the distinguished Judges who have adorned the Bench and the Woolsack within the present century. It has, however, been well performed by my friend Mr. TOWNSEND, whose Memoirs are also about to be presented to the public in a collected form.

W. N. WELSBY.

Temple, February, 1846.

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LIVES OF

EMINENT ENGLISH JUDGES, &c.

SIR MATTHEW HALE.

THE life of Sir Matthew Hale is so generally known through the Memoir of Bishop Burnet—one of the most attractive among English biographies—that it is no easy matter to handle the same subject in a more modern fashion, without divesting it of some part of its merited popularity. We are therefore inclined to think that Dr. Williams has acted wisely in taking that Memoir for the nucleus of his own more extended performance*, and adding to it from various sources of information such matter as might give it additional interest, especially with members of the profession to which his hero belonged. But his own words will best convey an idea of the object and contents of his book:

"Upon the Life by Burnet, the Memoir before us, as to its basis, rests; but the arrangement is entirely new: and the whole increased from the 'Notes' of Baxter and Stephens, the judge's own manuscripts, and every other accessible source. The facts have been thoroughly examined, and, as much as possible, attended to chronologically. In addition to this, the labours of others in the same department have been freely

* Memoirs of the Life, Character, and Writings of Sir Matthew Hale, Knight, Lord Chief Justice of England. By J. B. Williams, Esq., LL.D., F.S.A. London. 1835.

used. When anything not noticed by Burnet is introduced, the authority is quoted; but the bishop's work is seldom formally referred to, every circumstance in it connected with the judge being avowedly retained. It is not improbable that some persons may, for a moment, feel surprised, if not offended, that the *style* of that standard book should have been abandoned; and the feeling is entitled to sympathy. At the same time it must be observed, that it appeared impossible to give it entire, and use, as it seemed desirable to use them, the materials which will be found in the present volume. For, had the bishop's narrative been reprinted, the new matter must have been exhibited separately, which would have seriously affected the arrangement; and occasioned, too, in addition to other awkwardnesses, intolerable repetitions. Besides which (to make no allusions, by way of shelter, to the criticisms of Pope or Swift upon Burnet as a writer) . . . . . it may be anticipated that the offence, if it be such, will appear the more venial, when it is recollected that the admirers of the beautiful Memoir alluded to have the easiest possible means of gratification: numerous copies are to be obtained, particularly the one recently edited by Bishop Jebb; and as that edition contains the other 'Lives' Burnet wrote, and wrote so well, the expectation is justified, that the supply will continue to be unfailing."

We feel, too, that some apology is due from ourselves for recapitulating facts so generally known as those which any outline of the life of Sir Matthew Hale can present. It is the fate of lawyers, for the most part, "virûm volitare per ora" during the brief duration of the splendid part of their life, more, perhaps, than any other class of men. The newspapers, the debates, the daily gossip of the streets, are full of their names. Their peculiar talents, their achievements, their public conduct, form the theme of innumerable conversations. The most successful general, in his highest flush of glory, is hardly so much the theme of general discourse, as the successful advocate. But few care to pursue the story of their lives farther than the surface. Their origin, their toils and disappointments, their generally inglorious domestic affairs, furnish little attractive matter for the fancy to dwell on: and, on the whole, we believe that the biography of few men of

note is so little generally known, as that of our ablest legal characters. Sir Matthew Hale forms a splendid exception to this rule: because the singular uprightness and piety of his life, which excited the admiration of his contemporaries no less than of posterity, have rendered interesting to the most ordinary peruser the quaint and sententious record of his thoughts and actions, which have been transmitted to us by himself and by his friendly historian. The times, also, in which he lived, were favourable to the development of those excellences, by affording even an unusual scope for the display of talent and the exercise of integrity. In discussing the character of Hale, we may indeed omit the invidious deduction so commonly made in estimating the rank of eminent men: we are not obliged to say, that his virtues and conduct were distinguished, considering the age in which he lived. In any age or country, such a life would have been no common event, most uncommon in his own. The era of the civil wars was, indeed, favourable to the development of robust virtues: much of generosity and of resolution, much patient endurance and firm religious submission, were drawn forth amid the contests and sacrifices of those days. But these qualities were so rarely united with modesty and humility, and with a charitable spirit of allowance towards the defects of others—the firm adherent of one party could so rarely find room in his heart for the smallest atom of philanthropic feeling towards his opponents —that we scarcely know which circumstance is the most surprising: that a disposition and principles like those of Hale should have been nurtured amid the storms of such a season, or that, being such as he was, he should have been sought after by all parties for such high elevation, and attended there by such universal good opinions.

Sir Matthew Hale was the only son of Robert Hale, Esq., of Alderley, in the county of Gloucester, where he was born on the 1st of November, 1609. His father had been bred to the bar; but, it is said, "early in life was embarrassed by scruples respecting the phraseology used in pleading." Time, however, appears to have reconciled him to the sin of enumerating imaginary enormous wrongs, and setting up supposititious debts to the king's exchequer, since he gave directions by his will that his son should follow the law. Matthew Hale

lost both his parents before attaining his fifth year, and came under the charge of a maternal relation, Anthony Kingscot, of Kingscot, Esq., in Gloucestershire. The family of Kingscot (which, by the way, is one of the oldest in England, and still flourishes, where it has been settled for a long series of centuries, on lands of the same name) was then attached to puritanical principles: and the young lawyer's schoolmaster and college tutor were both inclined to that way of thinking, as we might judge, were there no other evidence of the fact, by the unqualified abuse which Mr. Anthony Wood has lavished on their memories. From the latter of these gentlemen, Mr. Sedgwick, Hale derived not only some tincture of puritanism, but a strong fancy for military pursuits. Sedgwick having been chaplain to the renowned Lord Vere of Tilbury, was engaged to follow his patron into the Low Countries, and Hale, at one time, was on the point of pursuing his fortunes. He then regarded the members of the legal body as "a barbarous race, and as unfit for anything beyond their own profession;" and felt, no doubt, something of the inspiration which dictated the bold captain Alexander Radcliffe's strains:—

"Go tolt your cases at the fire,
From Plowden, Perkins, Rastall, Dyer,
Such heavy stuff does rather tire
Than please us.

Tell not us of issue male,
Of simple fee and special tail,
Of feoffments, judgments, bills of sale,
And leases.

Can you discourse of hand grenadoes,
Of sally-ports and ambuscadoes,
Of counterscarps and palizadoes,
And trenches?

Of bastions, blowing up of mines,
Or of communication lines,
Or can you guess the great designs
The French has?"

But he was won back to the line of life for which his father had destined him, by an event which seldom imbues the sufferer with an extra love of law—the being engaged in a suit

of his own. His counsel, Serjeant Glanville, appears to have directed his attention towards those studies which he was destined so greatly to adorn, and to have thus decided his eventual career. Hale was admitted a student of Lincoln's Inn on the 8th of November, 1629. His application was eager and incessant: at one time, he says, he studied sixteen hours a day; an excess of industry which he afterwards regretted, and dissuaded others from committing. Some such discipline, however, seems always to have been undergone by those who have become, like himself, eminent record lawyers. Noy, Selden, and Vaughan, in his own profession, and Archbishop Usher among divines, were his early friends and patrons. How soon he began to reap the fruit of his diligence we are not informed. Burnet says he was one of the counsel assigned to Lord Strafford, (in 1640). But there is no evidence of the fact in the accounts which we possess of the trial; nor do we quite see on what grounds Dr. Williams would have his readers rely on the bishop's random assertion*. It is certain, however, that by this time he had attained a considerable rank in professional estimation, so much so as to have made his conduct, in the trying times which followed, matter of note and remark. His enemies have exercised on it that perverse ingenuity which labours to discover a fault, for the sake of pulling down, if possible, an exalted character to the ordinary level; while his admirers, we cannot but think, have displayed in his defence a zeal somewhat disproportionate to the nugatory character of the accusations.

The sum of Sir Matthew Hale's conduct during the civil war and under the Commonwealth is briefly this: that he is supposed to have taken the covenant in 1643; that, at all events, he continued to practise in London under the sway of the Long Parliament; that he was employed as counsel, and in other public capacities, in some important transactions on both sides; and that after the king's execution he also took

* The reader is referred to the trial of Love (St. T., vol. ii, p. 160), for some allusions which are said to indicate this fact. But it will only be seen there that the Court reminded Mr. Hale of certain particularities in the trials of Strafford and Laud, "which he very well knew;" and although Hale was certainly engaged in the latter, it is scarcely to be inferred from this hint that he was also employed in the former.

the "engagement," which the new government had substituted for the oaths of allegiance and supremacy, and which bound the taker to be "true and faithful to the Commonwealth of England, without a King or House of Lords." Those who look upon Sir Matthew Hale as a professed loyalist, zealous for the church and monarchy, may have found some difficulty in framing arguments to defend him for these various compromises of principle; while those who see no virtue but in unbending adherence to a party, have naturally condemned and exaggerated them. For ourselves, we cannot but think that the tenor of his behaviour was not only defensible, but, upon the principles he had adopted, strictly right. We do not impeach for a moment the high virtue of many of those who embraced either side with unqualified ardour, and maintained it to the exclusion of all other considerations, in good or ill success. But there will always be a sufficiency of such zealots, whenever the public mind is excited to the true party temperature which renders it fit for all exertion and suffering in a favourite cause. But how greatly would the evils of such times be increased, were there not always some men of honour and principle, who do not feel it a disgrace to keep aloof from all fierce extremes, and to seek to alleviate and calm the excesses of each party when in its turn victorious. It was Hale's deliberate rule, to acquiesce in the government de facto, without servile approbation of its measures, if obnoxious to his sense of right. His notion of the duty of a citizen was the very reverse of that of the nonjurors of every revolution. He proposed the Roman citizen, Atticus, to himself as a model in political conduct; and, of course, he was willing to incur the reproach to which that personage was subject from all classes of partisans in ancient Rome, who treated him as a trimmer and waiter on Providence. By adhering to such resolutions, Hale passed through all the changes of those eventful twenty years in which the period of his middle manhood was spent, without ever quitting his sphere of useful activity, and yet without being betrayed into one act of compliance dishonourable to a private citizen; while many of those who, in later times, have designated him as a time-server, would, in all probability, have disgraced themselves, had they then lived, by the most direct and slavish

acts of apostacy. But the wisdom and maxims of Hale are so singularly applicable to the present, and to all other times of political excitement, that we cannot refrain from citing some of his remarks on men and things at the era of the Restoration, although the extract be somewhat long. He had seen the mischiefs of all parties, and the preposterous judgments which they formed of each other. He had seen Conservatives denounce all classes of Reformers alike in the vehemence of their despite, and refuse the helping hand when extended to them, because it had once been joined in fellowship with that of their enemies; he had seen Reformers, frightened at the march of ultra-reform, turn round upon their former associates, and abuse them with such hearty and vigorous malediction as none but quondam friends are wont to employ towards each other. He had seen these, and all the other extravaganzas of party perversity; and no wonder if the mildness and equity of his judgments was a little mingled, in this instance, with a tone of quiet sarcasm.

"I have observed that many of these men that have been most obnoxious upon the change of times, have been most forward, and foremost and busy, in the precipitating of it; and most impatient of any delay in it; most ambitious in discovering their desires of it. I have seen some that have been as great occasions of advancing our distractions as any have been under Heaven, or at least never contributed to it till they saw it could not be hindered, yet the most importunate, violent, and hasty in the change when it needs them not: like the men of Israel that first entertained a defection from the house of David, upon the return of things, outrunning the fidelity of the men of Judah, that never forsook him entirely. But this violent conversion hath most ordinarily one of these two interpretations, upon which it withereth: either it is construed as a design to mischief and endanger that return of things; . . . . . or it is construed an act constrained by necessity, or of adulation and flattery, or of self-seeking and interest, or of a pitiful and low-flying policy, to cover or obliterate the memory of former demerits, and to scrape a share of interest in the present returns; which, though it be made use of for the present advantage, yet it proves ineffectual for the end designed; and, commonly, such persons lose their interest and

reputation on both sides; and, when turns are served, the memory of their former disservices returns with more acrimony; or, at least, they are laid aside as men that deserve no trust or confidence, by reason of their mutability and unfixedness, and the party which once they were of is sufficiently gratified and pleased with it, and so they become the objects of scorn and neglect to all parties.

"I have seen men who have been *in some degree* obnoxious upon the change of times, who, because they have not been *so* obnoxious as others, fall foul and fiercely upon that party that has been somewhat more obnoxious than themselves; not considering that thereby they give a kind of just occasion to others that are less obnoxious than they to use the same measure of severity towards them in a little while, which either doth or will most certainly happen; and so that rod, whereby they have whipped others, is most effectually and indispensably delivered over from them that used it unto others, for their own correction, which they intended not, till all that have had any concurrence or concomitancy in the change have partaken in the same measure; at least, till it stop in the moderation of some persons; for it is most certain and infallible, that, unless there be a stop, by moderation, in some middle parties, the animadversion against offenders, or such as are so reputed, never ceaseth till it come to the most sublimated, or, as they call it, refined* interest. This was the walk that things had in the late desolations, both in ecclesiastical and civil matters. First, the animadversion began by the presbyterian interest, upon the absolute royalist and episcopal man; the independent interest, that ran along in that severity, and thought the presbyterian not sufficiently contrary to the royal interest, is as severe upon the presbyterian; the anabaptists, and other highflyers, think that went not high enough, but had a secret inclination to monarchy, and, though in another line, fly upon the independent; and when things were at the most refined and sublimed temper, they begin to return again, much by the same steps they went: and every man, though subject to something that another may easily make a guilt, falls sharply upon another, which, it may be, hath

* The "royalistes quand même" of the French Restoration.

exceeded, not considering that his turn may be next. Thus, he that hath sworn fealty to the late Protector falls sharply upon him that abjured: he that took the engagement falls as sharply upon both the former; he that took the covenant only is ready to fall upon the three former; and he that never took any is ready to inveigh as bitterly against the covenanter; he that acted regularly under the Protector or Commonwealth, falls generally upon the high-court-of-justice men; he that acted under the Long Parliament with the same severity inveighs against both the former; and, perchance, invites thereby the spirits of those men that acted purely on the royal account to fall as sharply upon all three; men looking still, generally, upon that whereof they are innocent, and not considering themselves in that whereof they are guilty, are so thought by others."

We must add the following noble consolation, especially applicable to those whose consciences afflict them on account of the ill result of public designs, to which they have contributed with the best and purest intentions.

"Doth thy conscience bear thee witness, that even in the worst of times thy *actions* have been *good*, and for the service of the unquestionable interest of the nation? Be not so vain as to seek thine own applause, lest thou be disappointed; but yet scorn to disown them, notwithstanding they be prejudicated, or misinterpreted. Content thyself with the serenity of thine own conscience, and the testimony it gives to thine integrity; and value not the descants of men. Good actions, happening in a time when there were many evil, may, in the tumult and hurry of a change, undergo the same, or very little better, interpretation than the worst actions. The indignation against the latter, or the times wherein they were acted, may cover the best actious and intentions with prejudice and censure. But when things and persons grow a little calmer, they may be restored to their due estimate. Wait, therefore, with patience, upon the great searcher and judge of hearts, who, in his due time, will 'bring forth thy righteousness as the noon-day;' and, in the meantime, content thyself with the inward serenity of thy own conscience, in the midst of the mistakes and prejudices of others."

At the same time it must be admitted, that, although Hale

was in principle a royalist, and had a strong professional leaning to the established practice of the constitution, he probably had no vehement feelings of loyalty to suppress, when he acquiesced in the sway of the revolutionary party. His early education partook, as we have seen, of a puritanical cast. Although a supporter of episcopacy, he never seems to have been enthusiastic in its cause. Even in the high-flying times of the Restoration, he never assented to the fashionable doctrine, that any form of church or secular government was of divine ordination; although his friend Baxter candidly admits—"I must say that he was of opinion that the wealth and honour of the bishops was convenient, to enable them the better to relieve the poor, and rescue the inferior clergy from oppression, and to keep up the honour of religion in the world." In truth, pious and excellent as he was, his piety was rather of a domestic, than a congregational cast. He seems always to have been rather anxious to exclude, than to dwell upon the consideration of sectarian differences, at least between Protestants. And we may well suppose that, before the overthrow of church and state by the fanatical party, his eyes were less open to the levelling nature of their tenets, than after experience had taught him the close connexion between the two. Hence it is no disparagement to his uprightness, that he took no decided part in favour of royalty in the beginning of the troubles; although it has been constantly thrown in his teeth by Tory writers, who, on other occasions, are accustomed to appeal to his authority against the sweeping innovations of later times.

With respect to the important political causes in which Hale is said to have been engaged during that turbulent era, it is singular how much uncertainty rests on this part of his biography. We have seen that there is no direct evidence of his having been counsel for Lord Strafford. He certainly was assigned to defend Archbishop Laud, and the argument in the State Trials was thought by Lord Chancellor Finch to have been his, and not that of his leader, Mr. Herne—a gentleman whose forte appears rather to have lain in nisi prius repartee than in solemn argument. Hale was retained, as we have said, for the Parliament, in the negotiations for the surrender of Oxford; and again for the University of

Oxford, against the Parliament, on the question of the Visitation. He was also, according to Burnet, assigned counsel to Charles I. on his trial; and the report had passed unquestioned, until the recent editor of his works, Mr. Thirlwall, raised a doubt respecting its authenticity. It is certainly singular enough that there should be no more authentic record of so important an event in his life. Although it is true, that, in consequence of the king's refusal to acknowledge the jurisdiction of the Court, no counsel could be heard in his behalf, yet it seems strange, that, in the great minuteness of detail with which all the circumstance and show of that great tragedy have been transmitted to us, the name of a person selected to play so important a part should have been wholly forgotten, and that the fact should only be known through a memoir written thirty years afterwards. Mr. Serjeant Runnington, however, in the life prefixed to his edition of Hale's History of the Common Law, not only admits the truth of the story, but conjectures it was Hale who furnished his illustrious client with the line of defence which he actually adopted, namely, to deny the jurisdiction of the Court. There is some plausibility in the supposition. Certainly a course more dignified, and at the same time more ingenious, could not have been suggested; for it must be borne in mind, that, as Charles came to the bar knowing his death predetermined, the object of his defence was, not to save his life, but to set himself right in the eyes of the existing generation and of posterity: by debating questions of fact, he would have given too clear an advantage to his opponents. But it seems so bold and uncompromising a line, as no lawyer, with a mind less capacious and free from professional obliquities than that of Hale, would have ventured to mark out for him. All these facts prove the high reputation of Hale, not only in his calling, but in his private character. But, inasmuch as he appears on the most important of these occasions to have acted under the appointment of the judge, i. e. in those times, of the prosecuting party, rather than under the free choice of the defendant, they surely do not shew that he was looked upon by the royalist party as an adherent to their own persuasion, or as a sturdy opponent of the then existing government. But the death of Charles, and the abrogation of

monarchy, undoubtedly weighed heavily on his mind. He is said to have concealed his unfinished manuscripts of the "Pleas of the Crown" behind the wainscoting of his study, with the remark, that "there would be no more occasion for them until the King was restored to his right." He afterwards appeared as counsel for the Duke of Hamilton, Lord Holland, Lords Capel and Craven; and in the last of these cases he drew down on himself the threats of the Attorney-General for the Commonwealth, which he met with becoming resolution. But of all his defences, that of Christopher Love, a young Presbyterian minister, arraigned of high treason by Cromwell's council, in 1651, was the most remarkable; and although his client on that occasion, like all his former distinguished clients, had the misfortune to be executed, he suffered with all the satisfaction of having had his case admirably argued on the question of law.

On the 16th December, 1653, Cromwell was installed Protector. Hale was the only new judge made on his accession to this dignity. But there is some obscurity about the precise time of his elevation to the bench of the Common Pleas, and also of his taking the preceding degree of Serjeant, which must have been after the death of Charles I.; for Siderfin mentions him among the fourteen serjeants to whom fresh patents were granted at the Restoration, their first creation being presumed invalid. They appeared and were sworn on the 22nd June, 1660. "Et le prochein jour," adds the reporter, with perceptible exultation, "ils vient en lour veux serjeants robes, et count en le common Banke en Francois." The twelve years' dream of new institutions had passed away, and the old gowns and Norman French came back in the train of Astræa Redux. According to a well-known anecdote, Hale was for some time reluctant to accept the Protector's commission, and plainly told him that he was not satisfied of his authority: to which Cromwell is said to have replied, "If you will not let me govern by red gowns, I will do it by red coats." Mr. Serjeant Runnington, in recounting this story, adds a truly professional "quære." "I doubt," he says, "whether the army had at this time any regular uniform, and if they had, that it was scarlet." But the learned serjeant's doubt is unfounded. Many of Cromwell's regi-

ments certainly wore red coats; although regular uniform was not introduced into the French army until 1670, nor into the English until a somewhat later period.

Not only did Hale accept his commission with unfeigned reluctance, but, as is well known, after a short time his scruples prevented him from sitting on the crown side of his Court. We are not aware that his writings contain any explanation of the nature of the doubts which beset him on this occasion. If he was convinced that the necessities of his country required men not to shrink from executing justice under an usurped authority, it is difficult to understand why he should have thought that he was not as much called upon to repress offences, as to decide civil suits. On the whole we cannot but think, with Mr. Roscoe, ("Lives of Eminent British Lawyers"), that it would have been a manlier course had he acted otherwise. We can scarcely agree with Dr. Williams in supposing that a few vexatious obstacles, which he is said to have encountered, in administering criminal justice, from military officers and other agents of Cromwell's government, could at all have influenced his decision. Such interruptions could not but have been expected, under a government just formed out of anarchy; and the Protector was far too wise and too high-minded to countenance any material interference with the ordinary course of the law. State offences stood upon a different footing; and with these, after his open avowal of dissatisfaction with the Protector's authority, he could not reasonably be expected to intermeddle.

In 1654 Hale was chosen one of the five knights of the shire for the county of Gloucester in Cromwell's reformed Parliament. This Parliament only sat five months. Hale appears to have taken a part of some consequence in its debates. He opposed, with success, the project of the levellers, to destroy all the records in the Tower, as part of their scheme for settling the affairs of the nation on a new basis. In the great discussion respecting the new constitution he took part by suggesting that the whole military power should be left, for the present, in the Protector's hands, but his legislative powers limited by instructions from Parliament, according to the suggestions of the republican party. It is difficult to see how it could have been expected that an individual, entrusted

with the unlimited power of the sword, should have submitted to such restrictions as his enemies were pleased to impose on his civil authority: but probably the motion was only made as a temporary expedient, to avoid a collision of parties and the consequent dissolution of the assembly. In the next Parliament (summoned Sept. 1656) Hale did not serve; but in the following year he was summoned, as a judge, to sit in Cromwell's new upper house. On the death of the Protector, in 1658, Hale acted definitely on those principles which he had partially adopted before; he refused Richard Cromwell's commission. In the new Parliament of 1658 he represented the University of Oxford, which learned body sought likewise to secure his services in the Convention Parliament of 1660; but he preferred the offered representation of his native county. It is one of the most honourable traits of his public life, that even in the first burst of loyalty, at the period of the Restoration, when the whole nation was hurrying to lay itself and its hard-won liberties at the feet of its recovered monarch, he made a struggle, although without success, to impose conditions on Charles II.; but his motion was rejected, and chiefly through the influence of Monk himself. His first public employment under the restored government was one to which the temper both of his head and heart was admirably adapted, as well as inclined. He was nominated one of the committee on the Act of Indemnity, which was framed and carried through the lower house by him. Charles was, of course, compelled to this act of grace, which was indispensable for the support of his recovered authority. But at a time when the country was possessed with a blind animosity against all parties concerned in the late events, private enmities and public prejudices threw such powerful impediments in the way even of this necessary enactment, that it required both moderation and firmness to undertake the management of its details in such an assembly as the Parliament of 1660. It was not without personal solicitation on the part of the King, that the reluctance of the House of Lords to pass it was vanquished.

Hale was included in the special commission for the trial of the regicides. On the 7th November, 1660, he was created Chief Baron, on the recommendation of Lord Clarendon, suc-

ceeding Sir Orlando Bridgman, who was removed to the Common Pleas. There is a paper in Hargrave's Law Tracts, containing twelve reasons, drawn up by Hale himself, for his unwillingness to accept the proffered dignity. Among these is his poverty;—"my estate not being above 500*l.* per annum, six children unprovided for, and a debt of 1000*l.* lying upon me." The situation of a judge must indeed have afforded much temptation, in those times, to a needy man, to deviate from the path of honesty; the emoluments consisting almost entirely of fees, and large opportunities of increasing them by fraudulent practices being thrown in his way. On this account some of Sir Matthew Hale's scruples, which have been ridiculed as savouring of puritanical rigour, have always appeared to us founded in solid considerations of public advantage. He refused, for example, to try the cause of a country gentleman, who had made him the ordinary circuit present of a buck; and, on the western circuit, made his servant pay for the regular offering of six sugar loaves from the Dean and Chapter of Salisbury, when they were parties to a suit in his court. These punctilios were undoubtedly unnecessary, had the judicial ermine been as unsullied in those days as now: but in times when it was but too notorious that the favour of tribunals might possibly be a purchaseable commodity, a little ostentation of integrity may not have been unserviceable to raise the character of justice in the estimation of the commonalty. The judicial demeanour, like the judicial robe, is not to be estimated merely by its importance in the eyes of intelligent men, or ridiculed because its value is not intrinsic, but adventitious. Both are, in a sense, disguises; but it is of some consequence that both should be worn, until the utilitarian millenium shall arrive at last.

A more dignified objection, on Hale's part, to accepting the judicial office, than that of poverty, was his consciousness that his high personal and professional authority might be of still greater service to the public, if unfettered by any employment, however honourable. Some others of his twelve reasons we can scarcely imagine him to have propounded in earnest: as where he says, "I have had the perusal of most of the considerable titles and questions in law that are now

on foot in England, or that are likely to grow into controversy within a short time; and it is not so fit for me, that am pre-engaged in opinion, to have these cases fall under my judgment as a judge, as I need must either upon trials or judgment." Surely he cannot have been of opinion that men in large practice were, from that very circumstance, unfit candidates for the bench. And when he sums up his considerations by wishing that if he is forced to accept an office, "it may be the lowest place that may be, that I may avoid envy: one of his majesty's counsel in ordinary, or, at most, the place of a puisne judge in the Common Pleas, would suit me best"—it is difficult not to suspect that the cloak of affected humility was occasionally assumed even by the most upright and excellent men of his time and order.

In 1644 occurred the famous trial of Rose Cullender and Amy Duny, for witchcraft, before Sir Matthew Hale, at the Suffolk Assizes. Almost every man of public notoriety appears destined, in some one or more acts of his career, to commit such a grand mistake as shall afford a constant subject of ridicule or reproach against him, the memory of which becomes so intimately connected with his name, that it rises up, like an envious accusing spirit, whenever he is mentioned with eulogy. The fate of these victims is, in Sir Matthew Hale's life, what that of André is in the life of Washington, and that of D'Enghien in the life of Buonaparte, — the chapter to which the reader turns with most exultation or with most regret, according as he is in the vein to depreciate or exalt the character of his subject. It is no small praise to say, that Hale's enemies have no more serious ground of accusation than what is afforded by this melancholy error. On the other hand, he must not stand wholly excused, as his biographer seems to expect, on the common argument that he did but act in accordance with the uniform belief of his countrymen. The hateful spirit of witch-persecution was wearing out among the people, and had already lost nearly all sympathy among educated men, when this judgment was pronounced. Although Holt was the first who ventured to direct juries to acquit in charges of witchcraft on the ground of their absurdity, yet there is every reason to suppose that long before his time they were discouraged by enlightened judges:

although some might give way from weakness, others from a sense of the importance of upholding even erroneous law, and others, as Roger North sensibly observes respecting his brother the Lord Keeper, from feeling that in summing up in favour of a prisoner, they frequently caused him to run a greater risk, by running counter to the obstinate prejudices of juries. But Hale reflected with perfect satisfaction on the judgment he had pronounced, which speaks ill for his enlightenment, although well for his honesty. He made it the subject of a written meditation "concerning the mercy of God in preserving us from the malice and power of evil angels." It is going rather too far to say, with Dr. Williams, that his opinions agreed, even then, with those "of the great bulk, not to say the most eminent, learned, and pious of mankind." We should rather attribute this lamentable error in part to his peculiar religious education. For this superstition prevailed with the greatest malignity among the strictest of the sectarians: witness the witch-persecutions under Cromwell, and among the enthusiasts of New England.

The business in the Court of Exchequer increased greatly, and its decisions acquired high authority, under the presidency of Hale. It was while Chief Baron that he sat at Clifford's Inn, under the commission to settle disputes between landlord and tenant, &c. after the Fire of London. In 1671 he was made Lord Chief Justice of the Court of King's Bench, on the death of Sir John Keyling. In this high office his diligence and his intrepid rectitude were even more distinguished than before, and the influence and public authority of his name more widely diffused. His judicial conduct throughout exhibited the same distinctive features. He seems to have acted constantly under the impression that his office was a part to be played not only with integrity, but with minute attention to certain peculiarities which he deemed requisite in conduct and demeanour. Thus his fear lest justice might be thought to favour the rich, sometimes led him to assume a tone and manner which occasioned the report that he was unjustly partial to the poorer suitor. He was accused of courting popularity, by exhibiting a leaning against the Crown in matters wherein it was interested. But when we remember the rampant servility of so many judges

in the reign of Charles the Second, and the voluntary prostration of the manliest intellects on the Bench under Court influence, a little affectation on the other side may surely have been not without use in reconciling the people to the administration of justice. So again, there was a semblance of severity, such as himself would have called "a personated anger," in some of his denunciations from the tribunal, especially against the malversations of persons in office, which may occasionally have appeared almost theatrical in so staid a personage. But in these, as well as the other peculiarities of his judicial demeanour, it is never to be forgotten that the extreme, towards which he appeared to lean, was the very opposite of that towards which his contemporary judges exhibited so manifest an inclination.

In the prejudiced narrative of Roger North, who seems to have been divided between his dislike of Hale's person and politics and his admiration of his high character, this peculiarity of the great judge has been exaggerated into an obstinate partiality towards those opposed to the Court, and a timid subjection to popular clamour. North's observations are very often sensible and judicious in themselves, even when his application of them to individual cases is most distorted by his predilections and animosities. On this occasion they are worth citing. "He put on," he says, "the show of much valour, as if the danger seemed to lie on that side from whence either the loss of his place (of which he really made no great account) or some more violent, or, as they pretended, arbitrary infliction might fall on him. Whereas, in truth, that side was safe, as he must needs know, and that all real danger to a judge was from the impetuous fury of a rabble, who have as little sense or discretion as justice; and from the House of Commons, who seldom want their wills, and, for the most part, with the power of the Crown, obtain them. . . . . But it is pleasant to consider that this man's not fearing the Court was accounted valour; that is, by the populace, who never accounted his fear of themselves to have been mere timidity." There is both shrewdness and truth in the general purport of these remarks, which will apply to many seekers of popularity, not on the Bench only, but in other situations, in times when prerogative is low, and the democratic element flourishes.

But in the age which saw Scroggs, Jefferies, and Saunders on the Bench, it will not be difficult to decide on which side the greatest danger lay; and whether Hale's leaning, if any, was not towards the safer extreme.

In the externals of public life he was perhaps a little too unostentatious; and he hated ostentation in others. He had an aversion, like some judges in our days, towards fashionable novelties of costume, and disliked to see them in his court. "The sight of students in long periwigs, or attornies with swords, was known to be so offensive to him, as to induce those who loved such things to avoid them when they waited upon him, in order to escape reproof." One practice of his, if correctly reported, would scarcely have suited the more earnest character and larger amount of business in modern times. It appears that he used to encourage long arguments on points of law, and hold a kind of debate with counsel, "to all imaginable advantage to the students." His manner on the Bench seems to have been rather easy than dignified on ordinary occasions; and his speech habitually so low and indistinct, as to occasion some difficulty to his hearers. We must add as the only recorded characteristic of his personal demeanour, that his favourite attitude, when delivering one of his brief judicial addresses from the Bench, was that of "putting his thumbs in his girdle."

We have already alluded to that amusing scandal-monger Roger North's charge against him, of subserviency to popular clamour, and partiality shewn towards puritans and non-conformists in the discharge of his high duties. These he has illustrated by remarks on several cases, which he appears to have taken from his brother the Lord Keeper's common-place book, who seems to have indulged his party grudge against the illustrious magistrate by taking notes of all such decisions as displeased him. Many of these, however, cannot well have furnished any weighty imputation against him, inasmuch as North honestly confesses that he cannot find out why the note was taken. Others of these comments, again, reflect upon him for those parts of his conduct which in modern estimation merit the highest eulogy; for example, the unconstitutional practice of fining jurymen for verdicts which the Court held to be against evidence, was effectually checked

by Hale, when Chief Baron, staying process whenever such fines had been estreated into the Exchequer; an innovation which North denounces as against law, and subversive of order. Hale, however, expressly says, that he took this course with the concurrence of his brethren. But the two cases in respect of which North presses his accusation with the greatest zeal, are Cutts v. Pickering, and Soane v. Barnardiston, and the circumstances do appear to give some colour to the suspicion, that the judge's uprightness may have been a little occasionally warped by the aversion which he had certainly conceived to the conduct of the Court and its partisans. In the first of these cases, a Puritan gentleman of the name of Pickering, the defendant, lay under the imputation of having effected an erasure in a will; and although Hale was strong in his favour, the jury by their finding seem to have believed the charge. The latter was an action arising out of the following circumstances. Lord Huntingtower and Sir Samuel Barnardiston were candidates for the representation of Essex; the former a Tory, the latter at that time a zealous Whig. Soane was the sheriff; a weak, good-natured man of small estate, according to North, and a relation of Barnardiston. At the election, a Whig mob of bludgeonmen (according to the impartial Roger) assaulted the innocent Tories, broke open the polling booths, and impeded the election. The sheriff was much perplexed to know how to proceed; at length, by the advice of some of Lord Huntingtower's friends, he resolved "the middle course to steer," and made a double return. Afterwards, Barnardiston, having been seated by a Committee, brought his action on the case against the sheriff for the damage accruing to him by the prosecution of his claim; and took care, according to North, to have it tried by a Middlesex jury, and before Sir Matthew Hale. The correctness of the form of action was much disputed; and, it being adjourned for trial, Hale made of it what the lawyers then called "a table case," that is, he consulted his brethren and the serjeants about it, at dinner in Serjeants' Inn Hall; "and, as his way was, to his questions he annexed his reasons before he took their answers; for his reasons might possibly lead them into his opinion; and then his sentence in Court had been adorned with the adjunct of the opinions of the Ser-

jeants' Bench; . . . but, upon the proof, divers of the other judges and serjeants were of an opinion different from his; and some doubted, and thought it a case that deserved to be better considered; and very few were clear with him. Upon this disappointment he thought fit to slight them all, and made no more words about it; else, their opinions had been quoted in Court, or at least put under a prejudice against a writ of error should come; of which Hale had a prophetic presight." The trial came on; and, exclaims North in a fine fit of enthusiasm, "a stout trial it was: well-feed counsel, willing witnesses, and zeal of parties, failed not to make the most of the pretensions on both sides. The jury, under Hale's direction, found for the plaintiff, and moreover gave 800*l.* damages; a sum reckoned so enormous, that the judge himself who had done the mischief, according to North, looked "pensive" at hearing it announced. However, the cause was brought on error into the Exchequer chamber; and the event was regarded almost as a trial of strength between the parties. The non-conformists mustered strong to hear the judgment. "A strange sort of people came there," says North, "whose like I never saw anywhere else; odd, stiff figures," whose errand was partly to see if their friend was likely to get his money, and partly to observe, and, if possible, overawe the Court; for which purpose Lord Shaftesbury and Lord Wharton, and other chiefs of the Whig party, were also present. The result was that the judges, by a majority of five against three, overruled Hale's judgment. This is North's account of the matter, compiled from his Life of the Lord Keeper and his Examen; it is unnecessary to add, with how much deduction it is to be received on the score of party prejudice. His representations of Hale have been commented on severely, and in some respects justly, by Mr. Hargrave, in his preface to his Collection of Tracts, and to Hale's Jurisdiction of the House of Lords.

In 1676, Hale resigned his office, on account of the sudden failure of his health. It is honourable both to the country and its governors, that the latter did all in their power to induce him to retain it, and to avert what, as Dr. Williams truly says, was regarded almost as a national calamity; so great was the love and veneration in which he was held.

" His voice," says no favourable witness, " was oracular, and his person little less than adored." He surrendered his place by a formal deed of resignation, drawn and written by himself: this step he took in order to obviate the doubt which then existed, whether a chief justice, being placed by writ, was removable at pleasure like other judges. His death followed shortly afterwards, December 25, 1676, at his seat in Gloucestershire.

Neither our limits, nor the character of our work, admit of our entering into those beautiful details of Hale's domestic life, which have rendered his memory even more cherished by the good and pious in all professions, than it is venerated on other grounds by the learned in his own. His piety, among his many virtues, was the most conspicuous and is the best remembered; but, as we have said before, he was rather one of those who have honoured the Church of England by moral and religious excellence at home, than by a zealous advocacy of her cause in her temporal struggles. No pen has given so interesting a description of his habits, with respect to religious observance, as his own: but the letter of Baxter to Mr. Stephens, written after the publication of his life by Bishop Burnet, adds much to our knowledge of his thoughts and familiar conversation on spiritual topics. Baxter became acquainted with him through neighbourhood, at Acton near London, where they both resided, in 1670. Their acquaintance soon ripened into intimacy: and the high mutual respect which they entertained for each other was of service to both; to Baxter especially, whose hostility towards the Church was tempered by intercourse with so excellent a member of it, while Hale, by all his principles as well as the turn of his mind, was inclined towards moderation. The latter was very favourable to the project of a new act of uniformity for the purpose of reconciling the dissenters to the Church; and, at one time, drew up the form of a bill to that effect, with the assistance of some divines of both sides: but the zeal of the then House of Commons prevented it from being ever proposed; and thus was stifled, perhaps, one of the most hopeful of the many schemes which have been framed for that end. Baxter, who evidently wishes to make the judge lean towards his side of the question as far as possible, dwells on some

particularities in his conduct in church*: as, that "to avoid the differencing of the gospels from the epistles, and the bowing at the name of Jesus, from the names Christ, Saviour, God, &c., he would use some equality in his gestures, and stand up at the reading of all God's word alike." At all events, he protected, as far as his office would allow him, the unfortunate non-conformists, who were subjected to persecution under the sweeping enactments of Charles the Second's reign.

Why Sir Matthew Hale should have married two successive wives from Fawley, in Berkshire, his biographers have neglected to inform us; it is fair to suppose, that having found the first commodity of excellent quality, he resorted to the same place on the next occasion; but we are inclined to suspect that there is some mistake in this part of his biography, and that the second lady has been confounded with the first, who was the daughter of Sir Henry Moore, and grand-daughter of Sir Francis, serjeant-at-law. It is rather

* Hale's conscientious observance of the Sabbath is a well-known and admirable trait in his character; in which he has been imitated by but few distinguished legal personages. But Dr. Williams draws rather largely on our admiration of him in such passages as the following:— "As early as the year 1651, when suddenly called upon, in the capacity of counsel for Mr. Love, he shrank not, like a true-hearted follower of Christ, from avowing as the reason of his unpreparedness, that it was Saturday night late before he had notice of the engagement, and that the next day was not a day to think of these things." There can be no doubt of the sincerity of the avowal; but we do not see its boldness. The man who had ventured to avow, in 1651, that he *had* attended to his client's cause on a Sunday, would have been incomparably the bolder of the two. He would have had to put up with the loss of practice and reputation, and, perhaps, with a fine or a month's leisure in prison into the bargain. Surely, too, the reasons which Hale assigned for his strictness in this respect are not all to be cited as evidences of a rational piety: as when he told Baxter of all the "cross accidents" which befel him on a Sunday journey; how "one horse fell lame, another died, and much more; which struck him with such a sense of Divine rebuke as he never forgot;" and many similar passages, in which he asserts that temporal affairs conducted on that day never turned out well. Such notions cannot be less superstitious, when expressed by a learned and religious scholar, than when uttered by an ignorant rustic. At all events, they are not the reasons which should be propounded to induce men to reverence the Lord's Day.

singular, considering Hale's character as a model of domestic virtues, and the author of the famous "Letters of Advice to his Grandchildren," that neither he nor any one else seems to have thought it worth while to leave any mention at all of her, except that she bore him ten children: while they have said very little about her successor. The latter, according to the judge's detractors, was a servant; this his panegyrists deny. It seems certain, however, that she was of low origin, and that he married her for the sake of being tended in his old age. He speaks highly of her in his will: of his children little is known. Roger North says, that his sons all died "in the sink of lewdness and debauchery," and ascribes the catastrophe to the strictness of their education. One only survived him; but, as all were married, it is hardly probable that they were men of very irregular lives.

Dr. Williams's book concludes with a catalogue of Sir Matthew Hale's numerous works, the greater part of which were left by him in MS., and amongst these his most valuable legal treatises. It is singular, although by no means without parallel in the lives of celebrated men, that he should have set so little store by the fruits of his study in the line of his own profession, and applied himself with much more apparent complacency to the production of essays on matters of philosophy, in which his talents are not exhibited to the best advantage. This was certainly the case, although Dr. Williams seems hardly inclined to admit it: and it is the more remarkable, because the judge was not only versed in record law far beyond any man of his time (Prynne, perhaps, excepted), but in reality fondly attached to the pursuit of that and similar abstruse antiquarian studies. One of North's charges against him is, that in the trial of a cause between the lord of the manor and the people of some township in Essex, the former having set up his title by a long deduction from "offices post mortem, charters, pedigrees, and divers matters of record," he was so transported beyond the bounds of judicial reserve, as to call it "a noble evidence;" thereby, in that writer's opinion, prejudicing the opponent's case, which had not yet been heard. To Lord Hale's other merits as a writer two must be added, which have not perhaps been made so frequently the subjects of encomium as the rest: his singular

clearness of arrangement, a virtue by which few writers of that age were distinguished, and his manly, vernacular diction; which his enemy, whom we have been obliged so often to cite against him, calls "a significant English style, better than which no one would desire to meet with as a temptation to read."

We cannot avoid concluding this paper with the following characteristic letter of Lord Erskine, which, although having no reference to his subject, Dr. Williams has printed among his notes as a curiosity. It appears to have been on the occasion of some free-and-easy jest, of which the ex-chancellor had been made the subject.

"Upper Berkeley Street, November 13, 1819.

"Sir,

"Your letter was sent to me from Sussex yesterday. I certainly was appointed chancellor under the administration under which Mr. Fox was secretary of state in 1806, and could have been chancellor under no administration in which he had not had a part; nor would have accepted, without him, any office whatsoever. I believe that administration was said, by all the *blockheads*, to be made up of all the *talent* in the country.

"But you have certainly lost your bet on the subject of my decrees. *None of which*, but one, was appealed against, except one upon a branch of Mr. Thellusson's will; *but it was affirmed* without a dissentient voice, on the motion of Lord Eldon, then, and now, Lord Chancellor. If you think I was no lawyer, you may continue to think so. It is plain you are no lawyer yourself; but I wish every man to retain his opinions, though at the cost of three dozen of port.

"Your humble servant,

"Erskine."

"To save you from spending your money upon bets you are sure to lose, remember that no man can be a great advocate who is no lawyer. The thing is impossible."

LORD KEEPER WHITELOCKE.

IN the sketch we are about to present of the biography of this eminent person, who filled a conspicuous place in public affairs during incomparably the most eventful and interesting period of our history, it is by no means our purpose to engage in the discussion of any of the momentous political questions which then distracted the nation, and still supply materials of eager dispute to the partisans of the two great contending principles in our constitution. The events and characters of the Rebellion and the Protectorate will long continue to furnish subjects of grave discussion to the philosophic historian, and of personal application to the party struggles and party men of the day. Our task is the more humble and limited one of tracing the personal and professional career of one, who, although a prominent actor in the scenes of that tempestuous time, was himself characterised throughout by moderation and candour in his views of public events, and his judgment of political opponents.

Bulstrode Whitelocke—the only son of Sir James Whitelocke, a judge of the Court of King's Bench, by his wife Elizabeth, daughter of Edward Bulstrode, Esq.. of Hedgley Bulstrode, Buckinghamshire, and sister of Bulstrode the reporter—was born on the 6th of August, 1605, in Fleet Street, at the house of his mother's uncle, Sir George Croke, himself a judge successively of the Common Pleas and King's Bench, and the well-known collector of cases decided in the reigns of Elizabeth and her two successors. Sir James, a man of learning and ability, gave proof of another quality much rarer in his times, namely, independence

of character, by his judgment in the important case of Darnell and the other gentlemen committed for their refusal to contribute to the forced loans levied in 1626. He had also, when at the bar, been subjected to a Star Chamber prosecution for a professional opinion given to a client against the legality of the *benevolences* exacted by James I. in 1613. Charles I. himself characterised him as "a stout, wise, and learned man, and one who knew what belonged to uphold magistrates and magistracy in their dignity." The son, after passing with credit through Merchant Taylors' School, was matriculated, in Michaelmas Term, 1620, a gentleman commoner of St. John's College, Oxford, of which Laud was then president; to whose care he was specially recommended, and from whom he received many kindnesses. He quitted the university without taking a degree (for what cause does not appear), entered on the occupation of chambers in the Middle Temple, and commenced the assiduous study of the law, under his father's careful supervision. He informs us that, while a student, "according to the leave he had from his father, and by his means from the several judges, he rode all the circuits of England, to acquaint himself with his native country, and the memorable things therein;" and his speeches and writings sufficiently attest the proficiency he had attained in classical learning, and his acquaintance with the modern literature, such as it was, of that period—the schoolmen and chroniclers of the middle ages. In Michaelmas Term, 1626, he was called to the bar by the society of the Middle Temple, having been a student of that Inn since August, 1619. It would appear that in those days there was a far greater scarcity of elderly gentlemen than at present to fill the offices in the Inns of Court; for, so early as Christmas 1628, Mr. Whitelocke was promoted to be Treasurer and Master of the Revels of the Middle Temple. He gives us, in his Memorials, an amusing account of his introduction, in his capacity of Treasurer, to the Attorney-General Noy. A student of the Inn having died in chambers, the society disbursed money for his funeral, which his father refused to repay: it was thereupon resolved, that a bill should be preferred against him in the Court of Requests, in the name of the Treasurer, "setting forth the customs of the Inns of Court for the solemnities of

Christmas, and the choice of Christmas officers, with the whole matter relating to Mr. Basing, [the party recusant,] and to pray that he might be compelled to pay the money so distributed, with damages. The bill was drawn accordingly, and the honour, customs, and societies of the Inns of Court ingeniously and handsomely at large expressed therein." "Upon my carrying the bill to Mr. Attorney-General Noy, (for his signature with that of other principal members of the Inn), he was pleased," adds Whitelocke, "to advise with me about a patent the king commanded him to draw of association between England and Scotland, concerning the business of fishing; upon which he gave me a fee for it out of his little purse, saying, 'Here, take these single pence,' which amounted to eleven groats, 'and I give you more than an attorney's fee, because you will be a better man than an Attorney-General, and this you will find to be true.' After much other drolling, wherein he delighted, and was very good at it, we parted, abundance of company attending to speak with him all this time." Some years afterwards he was entrusted by the society with a still more distinguished and momentous charge, being nominated one of the managers of the Royal Masque, exhibited by the four inns of Court at Whitehall, before Charles I. and his Court, in 1633, in order "to manifest the difference of their opinions from Mr. Prynne's new learning," and as a confutation of his Histriomastix against interludes. A committee, consisting of two members of each inn, amongst whom are the grave and learned names of Selden, Noy, Hyde, Finch, and Herbert, was appointed to get up and conduct the pageant, each having the management of a particular department. To Whitelocke was committed the "whole care and charge of the music, which was so performed," as he assures us, "that it excelled any music that ever, before that time, had been heard in England." He details, in his Memorials, at much length, and with great self-complacency, all the particulars of this grand gala,—so soon to be succeeded by scenes and sounds with which royalty had been far less familiar.

Whitelocke had already formed opinions strongly adverse to the arbitrary measures of the Court, and the intolerant pretensions of the churchmen. It would appear from the

following passage in his Memorials, under the date of 1635, that he was already in the commission of the peace; it is clear that he had attained considerable professional repute among the gentry of Oxfordshire, notwithstanding the reprehensible innovations he admits himself to have countenanced in the weighty matter of professional costume. "At the quarter sessions at Oxford," he tells us, "I was put into the chair in Court, though I was in coloured clothes, a sword by my side, and a falling band, which was unusual for lawyers in those days, and, in this garb, I gave the charge to the grand jury. I took occasion to enlarge on the point of jurisdiction in the temporal Courts in matters ecclesiastical, and the antiquity thereof, which I did the rather because the spiritual men began in those days to swell higher than ordinary, and to take it as an injury to the Church that any thing savouring of the spirituality should be within the cognizance of ignorant laymen. The gentlemen and freeholders seemed well pleased with my charge, and the management of the business of the sessions; and said that they perceived one might speak as good sense in a falling band as in a ruff." From several other entries in his memoirs, it appears that about the same time he began to grow into considerable employment with the party engaged in resistance to the exactions of the Court. He was retained on behalf of the landholders who claimed rights of chase and pasturage in Whichwood Forest, in Oxfordshire, to defend their franchises against the encroachments of the Earl of Danby, the Lieutenant of the forest under the Crown; and took great pains, both in person, and through the researches of his professional friends, in researches into the forest laws, and in the transcription of records and other documents relating to the subject. He was consulted also by Hampden, whom he terms his countryman and kinsman, on his prosecution for ship-money—apparently, however, rather as a private friend than in his professional capacity; and when, on the rising of the Scottish Covenanters, in 1638, "the gentlemen who had been imprisoned for the loan, or distrained for the ship-money, or otherwise disobliged, had application made to them from the covenanters, and secretly favoured them, and assisted their designs, I wanted not," he says, "solicitations on behalf of the Covenanters; but I per-

suaded my friends not to foment these growing public differences, nor to be any means of encouraging *a foreign nation, proud and subtle,* against our natural prince." Who would have supposed that this "natural prince" himself was a native of the very "foreign nation" whose machinations against his authority were so seriously to be deprecated?

Whitelocke lived at this time, notwithstanding his political impressions, in the most confidential intimacy with Hyde, Palmer, and others of his professional contemporaries of more royalist inclinations. Some interesting specimens of Hyde's correspondence with him are preserved in his Memorials. Under the date of 1636, he writes—"I received from my kind friend, Mr. Edward Hyde, a letter from London, wherein he drolls, and says, our best news is that we have good wine abundantly come over; and the worst that *the plague is in town, and no judges die;* the *old observed baron,* out of mere frowardness, resolving to live." Who would recognise in the gossipping sportiveness of this and the following letters, the hand of the grave and stately Clarendon?—He writes thus to his friend, on the occasion of the birth of his eldest son, and in allusion to a visit he had promised him:—

"To my most honoured friend Bulstrode Whitelocke, Esq., at his house at Fawley Court.

"My dear Sir,

"I am glad you prosper so happily in issue male; God send the good woman well again, which my wife prays for as an encouragement for her journey, which she shall shortly be ready for. You may depend on a doe on Monday, God willing, altho' this weather forbids you to look for a fat one. My pen is deep in a Star Chamber bill, and therefore I have only the leisure and the manners to tell you I am very proud you are a friend to "EDWARD HYDE."

The reader of our day will smile at the difficulty of communication between the metropolis and a gentleman's seat some thirty miles distant, in a time of profound internal peace.

"Sir,

"Next your letter, I thank you for your messenger, by

whom you enable me to return [reply] to you, for I was mourning you had gotten so far beforehand with me, while I knew no conveyance might reach you: your vicar sent me your first by a porter, but no instruction to find you out. I will not so far lessen my devotion to Fawley, to tell you 'tis fit I breathe the country air; indeed, this *beloved town is to me all health;* yet I intend nothing more than to visit you this Lent, and be so merry with you that you shall perceive you have much of my heart in your keeping. The time exactly I dare not promise: however, it shall not be the 29th, for I am in Dr. Moor's disposal for one week's physic, which should have been dispatched ere this, but that my Lord Treasurer's* sickness confined him solely there, and he would not undertake two persons of such quality together; but he is as dead as you could wish, if he recover not again as he did yesterday, when he was left by all.

"Your pilot calls for my despatch, and will allow me no more time than to tell you I wish you all the contents of your own prayers, and am

"Your most humble and affectionate servant,

"EDWARD HYDE."

"My little wench desires you to accept her humble service: mine to my little friend."

On the assembling of the Long Parliament in 1640, Whitelocke, having first sustained an unsuccessful contest for the borough of Great Marlow, succeeded, on a petition, in dislodging the sitting members on the ground of insufficient notice of the election, and was returned on a new writ being issued. His first appearance as a speaker was in defence at once of his father's memory and his own patrimony, in the debate which arose upon the motion, that Selden and the other members of the House who were illegally imprisoned in 1629, should receive indemnification out of the estates of the judges who had been parties to the judgment in the Court of King's Bench, when that Court refused to bail them. He affirmed

* This Lord Treasurer was Juxon, Bishop of London, who survived, as is well known, to render the last offices to his royal master. His promotion had been very distasteful to the popular party.

that his father had entertained the same sentiments with Mr. Justice Croke, that the defendants were entitled to be admitted to bail; and having appealed to his former services, and his persecution in behalf of the liberty of the subject, in proof of the liberality of his opinions, succeeded in obtaining for him the same immunity with his learned kinsman. His own adhesion to the popular party must have been early and decidedly manifested, and his reputation as a member of that party no less strongly recognised; since he was not only named on the committee appointed to draw up the impeachment against Strafford, but elected its chairman. On the trial, he was nominated to manage the seven last articles of the impeachment; but declined to appear in support of one of them—that which charged the earl with a design of bringing over the army of Ireland, for the purpose of reducing England to subjection—as not being supported by sufficient evidence; thinking it, as he informs us, "not honourable for the House of Commons to proceed upon an article whereof they could not make a clear proof." He proposed accordingly to the committee that this article should be omitted in the proceedings; the majority were of the same opinion, but on Sir Walter Earle's undertaking to manage it, it was ultimately retained, and assigned to him. The worthy knight, however, broke down so deplorably in the conduct and proof of his case, that the Queen, who was present during the proceedings, having inquired and being told his name, said, "That water-dog did bark, but not bite; but the rest did bite close." Strafford himself bore testimony to the candour and fairness, as well as talent, with which Whitelocke discharged his part in the prosecution. Glynne and Maynard, he said, used him like advocates, but Palmer and Whitelocke like gentlemen, and yet left out nothing that was material to be urged against him. Whitelocke, indeed, it is pretty evident, notwithstanding the prominent part assigned him in the proceedings, regarded the result with regret rather than triumph. "Certainly," says he, in closing his touching narrative of the trial and execution of the illustrious delinquent, "never any man acted such a part, on such a theatre, with more wisdom, constancy, and eloquence, with greater reason, judgment, and temper, and with a better grace in all his words and gestures,

than this great and excellent person did; and he moved the hearts of all his auditors, some few excepted, to remorse and pity."

A circumstance occurred in the course of the proceedings which subjected Whitelocke himself to no slight suspicion of political duplicity. An important document, which the younger Vane had possessed himself of, and had produced before the committee, in proof of Strafford's design of employing the army for the consolidation of the royal authority, was found to be missing from among the papers which, on Whitelocke's nomination as chairman, had been committed to his custody, and the heaviest suspicion of being privy to its abstraction naturally rested upon him. He was cleared, however, from all public censure, after making, in common with the other members of the committee, a solemn protestation before the House of his innocence in the matter; and after the battle of Naseby, when the King's cabinet fell into the hands of the conquerors, a copy of the paper was found in it, in the handwriting of Lord Digby, who, as a member of the committee, had bound himself to the same solemn protest with the rest, although he had doubtless been for some time in secret correspondence with the royalist party, his open defection to which very shortly followed.

On the impeachment of Laud, Whitelocke was again named on the committee appointed to draw up the articles, but obtained with considerable difficulty, and not until after an earnest remonstrance to the whole House, a remission from the employment, on the ground of the kindnesses shewn him by the archbishop when at college. At this period, when the heat of civil discord was just kindling into the flame of open war, his parliamentary efforts were directed—with no great vigour, indeed, and we need not say with how little success, but yet, so far as we can discover, with full sincerity of purpose—to the encouraging of pacific dispositions, and to preventing the concentration of power in the hands of the parties disposed to extreme measures. In the debate on the bill for arming the militia, he supported, in a speech of considerable length, the opinion of those members of the moderate party who urged that the King should be again petitioned to place the command of the internal force of the kingdom in such

hands as he and the parliament should jointly nominate, and who, the speaker expressed his hope, "would be more careful to keep it sheathed than to draw it." On the passing of that bill—the virtual commencement of an armed rebellion—Hyde, and other lawyers of the same party, withdrew finally from the House. It is plain that Whitelocke underwent some conflict of opinion whether he should not follow the same course; the arguments, however, of the Lord Keeper Littleton (what an authority!) and other lawyers, and the protestations of the most powerful and active members of the popular party, that they had no purpose or intention of war with the King, but to arm themselves for their necessary defence, prevailed upon him, as he informs us, to keep his station, and to accept commissions of deputy lieutenancy in the force about to be organised. He was accordingly named a deputy-lieutenant for Bucks and Oxfordshire, in which two counties his family property and connexions chiefly lay. But he still continued earnestly to advocate a pacific adjustment of the quarrel. In a speech in the course of the debate on the resolutions for organising the army, in the session of 1642, he strongly urged the House to make the experiment of further overtures of peace, and to name a committee to review the former unsuccessful propositions. He drew a lively picture of the silent yet rapid strides of civil war:—"We scarce know how, but from paper combats by declarations, remonstrances, protestations, votes, messages, answers, and replies, we are now come to the question of raising forces, and naming a general and officers of an army. But what may be the progress hereof, the poet tells you—

> 'Jusque datum sceleri canimus, populumque potentem
> In sua victrici conversum viscera dextrâ!' "

Notwithstanding his pacific dispositions, however, and perhaps also some qualms of conscience as to the justifiableness of the armed resistance he was engaging in, he accepted the command of a company of horse in Hampden's regiment, composed chiefly of his own Oxfordshire neighbours, with whom he marched against Sir John Biron, and took possession of Oxford—"being welcomed by the townsmen," as he tells us with much naïveté, "more than by the scholars." During

the short campaign in that part of the kingdom, in this year (1642), a regiment of horse of Prince Rupert's brigade quartered themselves in his house of Fawley Court, near Henley-upon-Thames, and, in spite of their commanding officer's directions to respect his property, indulged in excess and rapine of every kind—destroyed his deeds, books, and manuscripts, cut open his bedding, carried away his "coach and four horses, and all his saddle-horses;" killed his hounds, of which he boasts that he had a pack of peculiar excellence, and destroyed or let out all his deer. These outrages, as he assures us, he remembered only to deplore the national discords of which they were the consequence; it appears, however, by no means improbable that they contributed to confirm him in his adhesion to the party in whose cause his property had sustained such ravage. His own share in the actual business of war was brief enough; we shortly find him sitting as one of the lay members of the Assembly of Divines, in which he distinguished himself, in common with Selden and other anti-Presbyterian members, by a stout opposition to the claims of the Presbyteries to ecclesiastical government *jure divino;* and it was mainly by his means that the resolution, passed in the Assembly and proposed to the House of Commons, in affirmance of their divine right, was there negatived, by dint of speaking against time until a sufficient number of anti-Presbyterian members had been got together.

In the same year (January 1642-3), he was named one of the commissioners to carry propositions of peace to the king at Oxford. The worthy delegates were treated on the road with no great consideration, and were received in the loyal city itself with incivility and abuse almost amounting to actual violence. At their inn at Oxford, "a great bustle being heard in the hall," it appeared that some officers of the royal army had fallen foul of the commissioners' servants, calling them and their masters, and the parliament who had dispatched them, rogues, rebels, and traitors, and shutting them out, right royally, from the fire. The commissioners, civilians though they were, manifested a full share of military spirit on the occasion. Holles and Whitelocke having come out to ascertain the cause of the clamour, the former, as his colleague relates, "went presently to one of the king's officers,

a tall big black man, and taking him by the collar, shook him, and told him it was basely and unworthily done of them to abuse their servants in their own quarters, and contrary to the king's safe conduct; and took away his sword from him. I did the same," adds Whitelocke, "to another great mastiff fellow, an officer also of the king's army, and took his sword from him." Both Holles and Whitelocke fell, on this occasion, under a lively suspicion of a secret understanding with the royalists. Having obtained permission from their brother commissioners to visit the Earl of Lindsey, who lay at the royal quarters ill of his wounds, the King and Prince Rupert, as if by chance, came into his chamber during their visit; and the former, according to Whitelocke's account, after many professions of esteem for their persons and characters, requested their advice as to the answer he should give to the propositions of the parliament, and desired them to confer together, and "set down something in writing that might be fit for him to return in answer." They retired, accordingly, into another room, and having agreed on such a declaration as they thought might best tend to a pacific issue of the negotiation, Whitelocke wrote it out, as he ells us himself, without his name and in a feigned hand, and left it on the table of the room. Among the king's attendants was the Lord Saville, who shortly afterwards revolted to the parliament, and who, when the Presbyterian party, yet struggling for ascendancy, were desirous of getting rid by any means of the opposition of Holles and Whitelocke, accused them to the House of being secretly well affected to the king's party, and having held intelligence with the court at Oxford, both during and after their mission thither. After a long series of examinations by a committee appointed to inquire into the charge, resolutions were passed exculpatory of both the accused parties; but they certainly owed their acquittal fully as much to the infamous character of their accuser, as to any proofs they furnished of their innocence. Clarendon asserts positively, that both during the negotiations at Oxford, and at the treaty of Uxbridge in the following year—where also Whitelocke was one of the parliamentary commissioners, and, according to his own statement, was in daily intercourse with his former friends, Hyde, Palmer, and other commissioners

for the king—he used with them "his old openness, and professed his detestation of all the proceedings of his party, yet could not leave them." It is certain that he hung back as long as he safely could from committing himself to any concert with the Cromwellian party. He was one of those who were summoned by the Lord General Essex to a conference with the Scottish commissioners, in 1644, on the question whether Cromwell might not be proceeded against as an *incendiary*—whom he defines to be "one that raiseth up the fire of contention—that kindleth the burning hot flames of contention between the two countries." Whitelocke, however (by much too cautious a politician to commit himself by any violent counsels, and probably not without his suspicions of the presence of some of those "false brethren," who, as he informs us, forthwith carried the result of the conference to Cromwell), contented himself with advising the commissioners to wait for better proofs, before they ventured to attack a person of such quick and subtle parts, and who had secured so strong an interest in the House of Commons.

From this time, Whitelocke tells us, Cromwell treated him with more consideration and kindness than hitherto; and from this time also, he appears to have detached himself gradually from the party of Essex, and to have viewed with a more tolerant eye the successive strides of his rival towards supremacy. He still, however, lent his strenuous opposition to the intolerant claims of the Presbyterians in matters of Church government and discipline, and for his resistance to their demand of a power of excommunication and suspension from the sacraments, was complimented by the rigid Presbyterians with the appellation of "an Erastian," and, what they probably deemed even more opprobrious, a disciple of Selden. He spoke and voted also against the self-denying ordinance, which he did not hesitate to designate as a mere device for throwing all the power into the hands of the same intolerant party. They at length endeavoured to rid themselves of his opposition by a motion to send him Lord Justice into Ireland, to exercise the civil government there. But Cromwell, who was doubtless sufficiently aware that he had now little to apprehend from his presence in parliament, "was against his going away, and more than formerly desired his company, and began to use

his advice in many things." About the same time (Sept. 1647), the city of London offered him their recordership, which also he declined; whether from a natural reluctance to accept an office, so large a part of whose duties consisted in the trial of state offences,—an employment no less difficult and delicate than odious,—or from a scent of better things at hand, we will not determine. A few months afterwards (March 1647-8) he was nominated, in conjunction with the Earl of Kent, Lord Grey of Werk, and Sir Thomas Widdrington, one of the Commissioners for the custody of the Great Seal for a year; the two Houses having, after long and jealous deliberations, agreed that it should be entrusted for that period to the charge of two peers and two commoners.

Whitelocke received the news of his appointment on the circuit at Gloucester, where, as he informs us, he was "in great practice, wherein none of his profession had a greater share than himself;" and is at great pains to assure us that the intelligence was wholly a surprise upon him. It appears, indeed, from many notices in his Memorials, which for several years before this date had assumed the form of a Diary, that he had for some time been in full and regular business, both in the Court of Chancery and at the bar of the House of Lords. By his own account, he was a loser to a very considerable amount by his advancement; the whole annual emoluments of the office being no more than 1500*l.*, whereas his professional income had been at least 2000*l.*

He continued, it appears, so obnoxious to the Presbyterian party, that a few months after his appointment a new self-denying ordinance was proposed, to deprive members of the House of all offices conferred upon them during the sitting of that parliament, with the sole design, as he alleges, of removing him from his office. He refused to be nominated on the commission for the trial of the king, or to be in any way party to the proceedings, and accordingly went out of town before the commencement of the trial; resolving, as he declares, to hazard or lay down all, rather than do any thing contrary to his judgment and conscience. He returned, however, before the termination of the proceedings; and, after some internal conflict, came to the determination to accept, at the hands of the council of state, the custody of the new Great Seal of the Commonwealth.

"The most considerable particulars," he says, which influenced him in this determination, "were, that I was already very deeply engaged with this party; that the business to be undertaken by me was the execution of law and justice, without which men could not live one by another, a thing of absolute necessity to be done." Under the guidance of these discreet considerations, he found no difficulty in subscribing the required acknowledgment of the supreme authority of the Commons, and resumed his seat on the Chancery Bench. His colleague, Sir Thomas Widdrington, whose judgment was less easily convinced, or his conscience less elastic, threw up his appointment; and it being no longer considered necessary that any members of the Upper House—already under sentence of extinction—should be associated in the office, Serjeant Keble and Mr. De Lisle were named as Whitelocke's colleagues in dignity, receiving their appointments no longer for a limited period, but quamdiu se bene gesserint, with the title of *Lords* Commissioners—it having first been matter of grave debate whether the former word, which smacked to republican ears of too direct an acknowledgment of aristocratical distinctions should not be dispensed with. "The burthen of the business," says Whitelocke, "lay heavy on me, being ancient [senior] in commission, and my brother Keble of little experience in practice, my brother Lisle of less, but very opinionative." The worthy functionaries, indeed, appear, from divers hints which Whitelocke lets fall, to have been, not unfrequently, openly by the ears together; and between the difficulties arising from their incompetency and mutual animosities, and from the unsettled state of public affairs, the business of the Court was probably performed in a manner little likely to reconcile the suitors and the public to the continuance of so crying a grievance as it was represented to them to be, in parliament and by the press.

The abuses of the Court of Chancery are indeed described by the pamphleteers of those days, in terms, beside which the complaints of later times seem "fond and trivial." "The Chancery," says one of them, "was looked on as a great grievance, one of the greatest in the nation. For delatories, chargeableness, and a faculty of letting blood the people in the purse vein, even to their utter perishing and undoing, that Court may

compare, if not surpass, any court in the world. It was confidently affirmed by knowing gentlemen of worth, that there were depending in that Court twenty-three thousand causes; that some of them had been depending five, some ten, some twenty, some thirty years and more; that there had been spent in causes, many hundreds, nay thousands of pounds, to the ruin, nay utter undoing of many families; that no ship, almost (to wit, cause) that sailed in the sea of the law, but first or last putting into that port; and if they made any considerable stay there, they suffered so much loss, as the remedy was worse than the disease; that what was ordered one day was contradicted the next, so as in some causes there had been five hundred orders, and far more, as some affirmed." Whitelocke himself admits the universal dissatisfaction of the suitors, though he ascribes it, complacently enough, to a general conspiracy of ignorance and obstinacy:—"The business of the Chancery was full of trouble this Michaelmas term (1652), and no man's cause came to a determination, how just soever, without the clamour of the party against whom judgment was given; they being stark blind in their own causes, and resolved not to be convinced by reason or law." It was not for want of corporal labour in their vocation that the judges of those days failed to satisfy the requirements of the public. Whitelocke records an instance, in which, shortly before his own appointment, coming into court at seven in the morning, he found the commissioners had been sitting an hour before; and he more than once states himself and his brothers on the bench to have sat from five in the morning until the same hour in the evening. Yet, notwithstanding all this laudible assiduity, one common cry of reproach pursued their labours. The House of Commons projected, for the redress of grievances so loudly complained of, remedies no less vigorous than the case seemed to be urgent. After passing several strong resolutions condemnatory of the delays, abuses, and extortions practised in the Court, they came at last, in the year 1653, to a vote for abolishing altogether the equity jurisdiction as it existed, and for the erection of an entirely new tribunal for the determination of the suits then pending, and for the administration of future relief in equity. The plan of this new jurisdiction had not been matured, when the proceedings of the parliament were cut short by

Cromwell's celebrated dissolution. "How did good people rejoice," exclaims the author of the tract before quoted, "when they heard of that vote, and how sad and sorrowful were the lawyers and clerks for the loss of their great Diana, may be remembered; with their great joy and making of bonfires, and drinking of sack, when they were delivered from their fears by the dissolution of the late Parliament." *Laws* were now replaced by *ordinances*; and the Protector accordingly issued, in the following year, an ordinance "for regulating the jurisdiction of the Chancery," many of whose provisions were doubtless calculated to introduce considerable amendments in its constitution and practice, while others were no less ill-timed or ill-considered. The Commissioners protested against the ordinance altogether, as proceeding from an authority which had no legislative power, and drew up moreover a statement of their objections to its details. After some ineffectual attempts to persuade them into a compliance with his views*, Cromwell required them to surrender the seals; but meantime complimented Whitelocke, whose independent conduct on the occasion he probably viewed rather with respect than displeasure, with the appointment of ambassador to the Court of Sweden. But before pursuing his personal history from this point, we must return to notice briefly the political and legislative measures in which he bore a part during this his first occupation of the judicial seat.

Notwithstanding his adhesion to the Cromwellian party—although, as Clarendon phrases it, he had at last bowed the knee to Baal—he still refused to concur in the more extreme manifestations of republican supremacy. He spoke and voted against the abolition of the House of Lords; although, being unable to get himself excused, the task of drawing the act for its extinction was imposed on him. Still more vigorously did he stand forward in defence of his own order, when the proposition was made to prohibit lawyers, while members of the House, from the practice of their profession. He replied with much spirit to the invective which had been levelled against the law

* Lenthall, the notable Speaker of the Long Parliament, then Master of the Rolls, vowed that he would rather be hanged at the Rolls gate than submit to the ordinance; yet, Whitelocke informs us, rather than put his place in peril, he wheeled about, and was the first to execute it.

and its professors; referred, with considerable effect, and not without humour, to the history and proceedings of the *parliamentum indoctum*, which that very exclusion of lawyers had made a passive tool in the hands of the Crown; and suggested to the author of the motion, "that in the act which he might be pleased to bring in for this purpose, it might likewise be inserted, that merchants should forbear their trading, physicians from visiting their patients, and country gentlemen should give up selling their corn and wool, whilst they sat as members of the House." It is worthy of notice, that in this speech he advocated in strong terms one amendment, the delay of which had been urged as a heavy reproach to the law and lawyers—the admission of counsel on behalf of prisoners accused of treason and felony. It affords, indeed, a curious demonstration of the inconsistency with which an assembly, so purely democratic as the Long Parliament had now become, pursued its schemes of legal reform, in other respects so extensive and so vigorous, and comprising amendments more numerous and important than have ever since been contemplated as parts of one general plan of legislative improvement, that it should never have made any effort for the removal of a distinction whose apparently harsh character, one would have thought, would have peculiarly excited the jealousy of a body so impatient of inequality. But the necessity of a two-edged sword in the hands of the state prosecutor was not found less urgent by a Protector than by a King.

Another legal amendment, in the discussion of which Whitelocke took a prominent part, was the proposition for conducting law proceedings in the English language—an innovation which appears to have been contemplated by some of the ancient worthies of our profession with even more dismay than the dissolution of the House of Lords, or the abolition of kingship itself. Whitelocke's speech on the occasion, though tinctured by a considerable infusion of legal pedantry, was sensible enough in the main; he admitted that it was unreasonable to require the community to "depend, by an implicit faith, upon the knowledge of others in that which concerned them most of all;" and fortified by the example of Moses, and a host of other legislators and philosophers, whom he cited as having expounded their laws to the people in the vernacular, he submitted with a good grace

to the alteration. But it was not so complacently received by his brethren; the reporters, in especial, were deep in their lamentation of the sacrilege. Bulstrode tells us, in his preface to the second part of his Reports, "that he had many years since perfected the work in French, in which language he desired it might have seen the light, being most proper for it, and *most convenient for the professors of the law*, who indeed were the only competent judges thereof." Nay, he had almost determined rather to stifle his labours in the birth, than that any other editor should bring them forth in a shape of such deformity. "When I considered," he says, "the sad fate which hath befel many posthumous reports, through their unskilful translating, being very much corrupted and altered, I resolved with myself either to commit *parricide*, and, as the Lamiæ, to smother mine own creatures in their cradle, or else to give being and life to them myself, whereby I might in some measure prevent the deformities which usually happen to posthumous issues." "I have made these reports speak English," says Styles, "not that I believe they will be thereby more generally useful, for I have been always and yet am of opinion that that part of the common law which is in English hath only occasioned the making of unquiet spirits contentiously knowing, and more apt to offend others than to defend themselves; but I have done it in obedience to authority, and to stop the mouths of such of this English age, who, though they be confessedly different in their minds and judgments as the builders of Babel were in their language, yet do think it vain, if not impious, to speak or understand more than their own mother tongue." But with the restitution of the other blessings of the monarchy, came also the re-establishment of the venerable compound in which the law was promulgated, and which maintained its pre-eminence almost for another century. The reporter Siderfin, in his account of the first call of serjeants made on the Restoration, records exultingly that "le prochein jour ils vient en leur veux robes"—for the old gowns as well as the old language had disappeared before the barbarous tide of innovation—"et count en le Common Banke *en François.*"

While such were the revolutionary assaults which menaced the dignity and gravity of the law, the political movement was tending no less decidedly towards the erection of an uncontrolled

despotism. At the celebrated conferences at the Speaker's house, in December 1651, Whitelocke ventured advice little palatable to the aspirations of the future dictator. He strongly recommended, as he tells us, a monarchical infusion into the government, and suggested that there might be a day given for the king's eldest son, or for the Duke of York, to come into the parliament, and that, upon such terms as might be thought fit, and sufficient to secure the civil and religious liberties of the nation, a settlement might be made with them. "That," said the wily General, "will be a business of more than ordinary difficulty: but really I think, if it may be done with safety and preservation of our rights, both as Englishmen and as Christians, a settlement with *somewhat* of monarchical power in it would be very effectual." The lawyers, our author informs us, were generally for a mixed monarchical government, and many were for the Duke of Gloucester to be made king; "but Cromwell still put off that debate, and came off to some other point; and after a long debate, the company parted," as well they might, "without any result at all; only Cromwell discovered by this meeting the inclination of the persons that spoke, for which he fished, and made use of what he then discerned." One of the first uses he made of his experience was to promote as strongly as he could a fresh design of despatching Whitelocke to Ireland, as chief commissioner for exercising the civil government. He hints that a non-compliance with the General's pleasure "in some Chancery causes," as well as in the matter of a monarchical settlement, contributed to excite his discontent. Whitelocke, however, stoutly resisted this scheme for his relegation into a dignified exile, and with some difficulty succeeded in maintaining his post. He records, not long after this date, an account of a highly amusing conversation which took place between Cromwell and himself, when taking the air in St. James's Park, on a fine November evening, after the labours of his Court were over, wherein the Protector, with numberless professions of his profound respect for his lordship's integrity, fidelity, and learning, and his usual interminable protestations of his own devout attachment to liberty, religion, and the laws, besought the commissioner's valuable counsel on the expediency of his assuming the kingly title, as the means of composing the unhappy dissensions of the

parliament and the kingdom. Whitelocke, with no less devoted assurances of his entire affection to the interests of the Protector, and his appreciation of his highness's disinterested and magnanimous intentions for his country's good, nevertheless dissuaded him from the design, on the score of the prejudice it would excite among the pure republicans, still so formidable a party. "From that time," says Whitelocke, "his carriage towards me was altered, and he found not long after an occasion, by an honourable employment," namely, the embassy before mentioned, "to send me out of the way." He had ventured also a strong remonstrance against the dissolution of the parliament; and after the execution of that noted *coup d'état*, declined to proceed with the business of the Court of Chancery until after the publication of Cromwell's declaration of the grounds of the dissolution, and the issuing of the writs for the "little parliament;" in which, in consequence of all this recusancy, Whitelocke's name was not included.

In November, 1653, he set out "with a gallant retinue" on his embassy, of the proceedings of which he afterwards published a detailed account. The eccentric pedant, Christina of Sweden, to whom his mission was directed, instead of attending to his diplomacy, entertained him with long metaphysical disquisitions, and involved him in a continual succession of balls and entertainments. She created him, moreover, a knight of the "order of Amarantha," of the decorations and investments of which he gives a glowing account; and in virtue whereof he appears afterwards to have assumed, or to have been complimented with, the knightly prefix of *Sir* Bulstrode Whitelocke. He succeeded, however, in bringing his negotiations to a successful issue just time enough to obtain the ratification of a treaty before her deposition of the crown, and returned with much credit from his mission. He resumed the duties of first Commissioner of the Great Seal, and was also nominated one of the Commissioners of the Exchequer. In Cromwell's second parliament he was returned for the county of Bucks, for the city of Oxford, and the borough of Bedford; one of his sons being elected also for the county of Oxford.

On his dismissal from the seals, upon the occasion we have before adverted to, he was advised and encouraged, as he

informs us, to fall again into his profession; upon which he received many fees. After the lapse of a few months, however, he was made a Commissioner of the Treasury, with a salary nearly equal to that of the office he had relinquished, and also named a member of the committee of Council of Trade. He was now again, it appears, frequently consulted by Cromwell, and particularly in relation to foreign affairs —a branch of political knowledge upon which, like Lord Hardwicke, he seems to have held it peculiarly flattering to be considered well informed. In the parliament summoned in 1656, he was again elected, "first and unanimously," as he records with much exultation, knight of the shire for Buckinghamshire. He had now, it appears, although the state of parties seems to have afforded little reason for the change, considerably improved his opinions as to the expediency of the Protector's investing himself with the kingly title; and at the celebrated conference of the commissioners deputed by the House of Commons to debate the matter with his highness, concurred with the rest of them in strongly urging upon him the assumption of the crown he longed, yet feared, to wear. His zeal in this matter was shortly afterwards rewarded by a summons to Cromwell's Upper House of sixty members; a patent was signed also for his advancement to the dignity of a viscount, but he declined an honour which promised to be of so uncertain tenure.

The death of Cromwell presently dissolved the dangerous fabric of power, which his talents and vigilance had alone prevented from falling to pieces and burying him in its ruins. On Richard's accession to the protectorship, Whitelocke, whom he appears to have considered one of those on whom he might depend most securely for disinterested counsel in his difficult position, was appointed chief Lord Keeper of the Great Seal. In the anarchical confusion of parties which succeeded Richard's abandonment of his office, the Lord Keeper was evidently much perplexed what part to take. It seems that he was, so early as the spring of 1659, in correspondence with Monk, who, learning that the conduct of the bill for the union of England with Scotland was entrusted to his hands, pressed him strongly to visit him at Edinburgh. The nature of their conferences, had this invitation been accepted, may

be readily divined. He considered it safest, however, to remain where he was, and continued in the exercise of his judicial functions, so long as the disjointed and fluctuating state of public affairs permitted. On the passing of the act for a new great seal (May, 1659), by which the offices of the existing commissioners determined, he was appointed one of the Council of State to whom the conduct of the government was committed by the Rump Parliament, and for some time sat and acted as its president. Ludlow (a prejudiced authority enough no doubt) affirms that he was all the while leagued in a corrupt and interested alliance with the faction of Wallingford House. "The clergy and lawyers, in order to save tithes, and perpetuate abuses of their professions, became equally sensible of their common danger; and in order to prevent it, Whitelocke and St. John for the lawyers, and Dr. Owen and Dr. Nye for the clergy, had at this time frequent meetings at the Savoy, and entered into a private treaty with the Wallingford House party, to raise £100,000 for the use of the army, upon assurance of being protected by them in the full enjoyment of their respective advantages and profits; whereby we were left destitute of hope to see any other reformation of the clergy than what they themselves would consent to, any other regulation of the law than the Chief Justice and the Commissioner of the Seal would permit." Whatever truth there may be in this representation, it is certain that when the balance of power fell into the hands of the army, Whitelocke was considered so far deserving of confidence as to be nominated one of the select Council of Ten, to whom the executive authority was entrusted. This effigy of power was speadily pulled down, to make way for the still more direct emanation of military sovereignty, in the persons of the Committee of Safety. He received a summons to act as a member of this body also; but he had evidently begun to find his position, between the two conflicting parties, a questionable and perilous one. "I had resolved in my own mind," he says, "the present posture of affairs; that there was no visible authority or power for government at this time but that of the army; that if some legal authority were not agreed upon and settled, the army would probably take it into their own hands, and govern by the sword, or set up

some form prejudicial to the rights and liberties of the people, and for the particular advantage and interest of the soldiery . . . Upon these and the like grounds, as also by the engagement of divers of the committee to join with me therein, I was persuaded to undertake it, and did meet with them at the place appointed." He persuaded himself also to take stronger and more decisive steps against the proceedings of Monk, who was then on his triumphant march from Scotland, than we should have supposed him likely to be a party to. He went with Fleetwood, Desborough, and other principal officers, to the common council of London, and, as the spokesman of the deputation, "represented to them that the bottom of his (Monk's) design was to bring in the king upon a new civil war. I shewed the danger of it to the city and nation, and counselled them to provide for their own safety, and to join for the safety of the whole nation, and for preservation of the peace. The common council," says he, "returned thanks to us, *and promised to follow our advice.*" He advised also that Monk should be fallen upon before his soldiers were more confirmed by success, and Fleetwood's party discouraged. But the interested and discordant counsals of the miserable factions contending for ascendancy, availed little against the unity of purpose of the cautious and persevering soldier. Yet, strangely enough, it was only by the merest chance that he was not anticipated in the consummation of his plans by Whitelocke himself. In a conference which he states himself to have held with Fleetwood, shortly before Monk's arrival in London, he strongly urged him either to go into the field and declare for a free parliament, or to send to the king. Fleetwood inquired of him, whether he would go into the field with him; to which he replied that he would do so if it became necessary. Fleetwood suggested that he, Whitelocke, should go to the king with the great seal; this, however, he refused to do, and again urged the former to take some decided step in anticipation of Monk's design. Fleetwood, half inclined to fall in with the scheme, was dissuaded by Vane and Lambert from entertaining it, and Whitelocke did not venture to broach it further. During the short-lived predominance of the Rump which succeeded, so hostile a demonstration was made against him and other members who had acted on the Committee of

Safety, that he became alarmed for his personal security, and retreated to a friend's house in the country. While he remained there, the Restoration was consummated.

Notwithstanding the general moderation of his political sentiments, and his recent disposition in favour of the settlement of affairs by the same means, he found himself in still greater peril at the hands of the royalists than of the Rump; for it was only by a majority of 175 votes over 134, that a motion to except his name out of the act of general pardon and oblivion was negatived. It is told of him, that, when he waited on the king to entreat his pardon for the part he had taken against him, all that his humorous majesty required of him was, that he should "go and live quietly in the country, and take care of his wife and one-and-thirty children;" an exaggeration of number truly royal, since (as he himself thankfully acknowledges, in a dedication to the king of a legal work, written during his subsequent retirement) all that the royal clemency did for him was to bestow upon him "his small fortune, liberty, and life, and to restore him to a wife and *sixteen* children." With them he continued to live in privacy for about fifteen years. He died at his seat of Chilton Park, in the seventieth year of his age.

Lord Keeper Whitelocke was thrice married; first, to a lady of the name of Bennet, the daughter of an alderman of London; secondly, to Frances, daughter of Lord Willoughby of Parham; lastly, to a widow lady of the name of Wilson, of the Carleton family. By all these ladies he had a numerous issue, of whom, as we have seen, no fewer than sixteen children were surviving at the period of the Restoration.

Besides the "Memorials of English Affairs during the reign of Charles I. and the Commonwealth," from which we have so largely quoted, he compiled also an abridgment of the earlier English history, under the title of "Memorials of English Affairs from the supposed Expedition of Brute to this Island, to the End of the Reign of James I." Six small MS. volumes of "Notes on the King's Writ for choosing Members of Parliament," from his pen, are also extant in the British Museum. (Ayscough's Catal., 4749—4754).

In reviewing the character and conduct of the Lord Keeper Whitelocke, while it is impossible to ascribe to him very

high praise for consistency or magnanimity of purpose, we are yet not disposed to agree in the condemnation of those who have represented him as a merely interested and unconscientious politician. Holding in the outset strong opinions against the arbitrary proceedings of Charles I. and his government, he undoubtedly appears to have been insensibly drawn on, by his party connections, into a concurrence in measures to many of which his judgment yielded a doubtful assent. But we all know how often, in times of violent political conflict, this has been the case with public men of the most acknowledged good intentions; and on occasions when he had to determine for himself upon a specific line of conduct, in relation to matters appealing directly to his private judgment, he did not hesitate to prefer a conscientious adherence to his principles to the preservation of his office. That he acquiesced, like Hale, in the government *de facto* established and acknowledged by the general submission of the kingdom, we deem no ground of reproach to him, even had his opinions been less in actual consonance with those on which the republican establishment was founded; and it may be truly alleged in his behalf, that he was ever the uniform advocate of a tolerant and humane administration of the executive authority. Many instances are mentioned in his Memorials, in which he contended, and not seldom successfully, for the extension of clemency towards state offenders, or for protection to oppressed communities. He was a warm friend of literature, and was more than once associated with Selden in the execution of plans for its advancement. Clarendon, while he depreciates his character as a politician, admits him to have possessed a large share as well of general as of professional learning. His judicial reputation is not indeed of the highest order; but some deduction must be made for the unpropitious times in which he lived, and for the associations which deprived him of the power to act on his own principles, or to rely on his own strength. On the whole, though many of the public characters of that age are marked by infinitely brighter points of lustre, few, perhaps, have descended to us with less of actual or positive stain than that of Whitelocke.

LORD NOTTINGHAM.

THE ancient and wealthy house of Finch traces its origin to Henry Fitzherbert, who was Chamberlain to king Henry the First; the more modern surname having been assumed on the acquisition of the manor of Finches in Kent, in the time of Edward the First. In the sixteenth century, the possessions of this family were greatly enlarged by the marriage of its head, Sir Thomas Finch, with the daughter of Sir Thomas Moyle, Chancellor of the Court of Augmentations in the reign of Henry the Eighth. Among several other manors and estates acquired by the match was that of Eastwell in Kent. Sir Moyle Finch of Eastwell, his eldest son, who was the first Kentish baronet, and the twenty-fifth in the general list of English Baronets, was high sheriff of Kent in the 38th of Queen Elizabeth, and also in the 4th of James I. He married Elizabeth, only daughter and heiress of Sir Thomas Heneage, of Copped Hall in Essex, Chancellor of the Duchy of Lancaster, vice-chamberlain to Queen Elizabeth, and a member of the privy council. After the death of her husband, this lady was created Viscountess of Maidstone by James I., and Countess of Winchelsea by his successor: which dignities, together with the greater part of the united possessions of the houses of Finch and Heneage, including the manor of Eastwell, descended to her eldest son, Sir Thomas Finch, first Earl of Winchelsea.

Sir Henry Finch, knight, of the Mote, near Canterbury, and twice representative of that city in parliament during the reign of Elizabeth, second brother to Sir Moyle Finch of Eastwell, was, in point of date, the first of the five celebrated lawyers

of this family who flourished in the course of the seventeenth century. He was of Gray's Inn; became autumn reader of the society in the second of James I., took the coif in 1614, and was made king's serjeant on the eleventh of June, 1616. (14 James I.) The work usually known by the name of Finch's Law, of which the first edition, written in French,* was published in 1613, was his composition. It was afterwards translated into English by the author himself, and in this form was long considered the most fitting elementary text book to place in the hands of students. Since the publication of Blackstone's Commentaries, it is very rarely, we should think, disturbed from its repose on the shelf, except for curiosity; but it still deserves to be remembered, as one of the very few attempts that have been made to reduce the body of English law into any thing like a system. How novel an undertaking this was in his time, and how successfully he considered himself to have achieved it, may be inferred from such sentences as the two following, in the Latin dedication to James I. which is prefixed to the original edition:—"Inter innumeros tam augustæ disciplinæ alumnos, surrexit adhuc nemo, qui in eo elaboravit, ut rerum præstantiam methodi præstantiâ consequatur." . . . . "Aut ego vehementer fallor, aut superavi rei vix credendæ difficultatem maximam; syrtesque et scopulos, Scyllam et Charybdin præternavigavi." Besides this work, Sir Henry Finch composed another on a very different subject, which is mentioned by Fuller in his Worthies, when summing up his performances as an author: "He wrote a booke of the law, in great esteem with men of his own profession; yet were not his studies confined thereunto. Witness his booke of the Calling of the Jews."

* "Nomotechnia, cest a sçavoir un description del common leys d'Angleterre solonque les rules del Art. Parallelees ove les Prerogatives le Roy. Ovesque auxy le substance & effect de les Estatutes (disposes en lour proper lieux) per lequels le common ley est abridge, enlarge, ou ascunment alter, del commencement de Magna Charta, fait 9. H. 3. tanque a cest jour. Per Henrie Finch de Grayes Inne, Apprentice del ley." (Small folio). There is another work, entitled "Law, a discourse thereof in four books, by Sir Henry Finch, Knt. his Majesty's Serjeant at Law" (1627); but we believe Sir Henry was only so far the author of it that it is almost entirely borrowed from his "Nomotechnia."

John, the son of this Sir Henry Finch, is almost equally celebrated for his talents as a lawyer, and notorious for his profligacy as a judge. The date of his birth is the 17th of September 1584. We find his name on the books of Gray's Inn, as autumn reader, in the sixteenth of James I., and treasurer in the second of Charles the First. He was also one of the two members deputed by that society to arrange the preparations for the splendid pageant presented by the four inns of court to the king and queen at Whitehall, in 1633, of which so full and elaborate an account is given by Whitelocke (himself one of the managers on behalf of the Middle Temple) in his Memorials.* Finch was at that time attorney-general to the Queen, and had previously (1627) been elected Speaker of the House of Commons. He was appointed a puisne judge of the Common Pleas (14th October 1634, 10 Ch. 1.), became Chief Justice of the same court in the following year (21st January), and finally, on the death of Sir Thomas Coventry, received the great seal (23d January 1639), with the title of Lord Keeper. Shortly afterwards he was created Baron Finch, of Fordwich in Kent, which was a manor he purchased about the same time from his first cousin, Sir Thomas Finch of Eastwell, subsequently Earl of Winchelsea. He did not, however, enjoy the honours of his high station very long. In December following, a committee of the house of commons was appointed to prepare articles of high treason against him, on account of many attacks which he was charged with having made upon the liberties of the people; but chiefly of his corrupt and arbitrary conduct in the case of the ship money, which he had not only himself pronounced to be a legal tax, but by dint of threats and persuasion had prevailed on all the other judges, with the exception of Hutton and Croke, to sanction with their authority. "He pursued his hatred to the fountain of justice," Lord Falkland said of him in the course of the proceedings, "by corrupting the streams of it, the laws: and perverting and corrupting the judges who administered it. He endeavoured to annihilate the ancient and notorious perambulations of particular forests, the better to prepare himself for annihilating the ancient and notorious perambulation of the whole kingdom, the metes and

* See ante, p. 28.

boundaries between the liberties of the subject and sovereign power, to bring all laws from his majesty's courts into his majesty's breast. He gave our goods to the king, our lands to the deer, and our liberties to the sheriffs: so that there was no way by which we had not been oppressed and destroyed, if his power had been equal to his will, or his majesty's will had been equal to his power." Before the house proceeded to any resolutions against him, Lord Finch procured the favour of being heard in explanation or extenuation of what he had done; but neither his eloquence nor his shew of humility before the representatives of the people availed him; and immediately after he had withdrawn they pronounced him a traitor. The next day (22d December), Lord Falkland was sent with a message to the house of lords to impeach him; but in the mean time he had quitted the country in disguise; or as Whitelocke phrases it, " he got up earlier, gave them the slip, and escaped into Holland." He remained in exile about eight years, when, by sacrificing a large sum of money, as a composition for his estate, he procured permission to return to England, and spent the remainder of his life in retirement. He died on the 30th of November, 1660 (the year of the restoration), at the house he inherited from his father, and is buried in the church of St. Martin at Canterbury, in which parish the Mote is situated. As he left no issue, this branch of the family of Finch became extinct, and with it the barony of Finch of Fordwich.

Sir Henedge Finch, Recorder of the city of London in the time of James the First, was the fourth son of Sir Moyle Finch of Eastwell, and consequently first cousin to this lord keeper. He was autumn reader of the Inner Temple in 1620, and the year afterwards took the degree of serjeant-at-law. In 1626, he was elected Speaker of the second parliament of Charles I. (he had also sat in the previous one, as well as during the reign of James), and in that capacity presented the petition of the house of commons to the king for the removal of the Duke of Buckingham. The fact of his having occupied two such offices as those of recorder of London, and speaker of the house of commons, is quite sufficient proof that he enjoyed considerable reputation in his day as a lawyer; for neither office was conferred in those times, but on those who had attained celebrity

in the legal profession, a practice first broken in upon with regard to the speakership during the reign of Charles the Second, in the case of Sir Edward Seymour. From the warmth with which Sir Heneage Finch pleaded in behalf of Bacon, when the proceedings were instituted against him for bribery (1620), denying both the competency and the credibility of the testimony that went to criminate the Chancellor, and strongly endeavouring to dissuade the house from prosecuting the charges they had preferred, we are inclined to think he must have been his personal friend. The principal speech he made on this occasion was answered by Sir Edward Coke. We have nothing further to say of this Sir Heneage Finch, than that he appears to have been a man of considerable wealth, as well as learning and station; for one of his residences was Kensington Palace, which was afterwards sold by his grandson to William the Third. We now pass on to his son, Heneage, Earl of Nottingham, and Lord Chancellor of England, of whose history we purpose to give a somewhat more detailed account.

We have not been able to ascertain the place of this great man's birth; but in the absence of precise information we are willing to adopt the supposition of Anthony Wood, that it was Eastwell, in Kent, if indeed it be not more probable that London may claim him as a native. He was born on the 23rd of December, 1621. Of his education we learn nothing more than what is recorded in the Athenæ Oxonienses, that he had it first at Westminster school, and that he entered as a gentleman commoner at Christ Church, Oxford, in Lent term, 1635; a year, by the way, memorable in the annals of the University, as the one in which John Milton and Jeremy Taylor, both Cambridge men, were incorporated masters of arts in it. At Christ Church he remained either two or three years, but it does not appear that he took any degree there. The death of his father, the recorder of London, had by this time left him not only his own master, but master of the paternal property; so that having become in every sense an independent man, except in so far as he was held in thraldom by the fetters of academical discipline, he may have been impatient to emancipate himself from this restraint, and to enter at once upon the world. But if this natural eagerness to begin life, as it were, upon his

own account, was in reality his motive for quitting college before the usual time, it is evident he did not look forward to the course of mere idleness and dissipation which had so many charms for the wealthy young cavaliers of his day; for he entered of the Inner Temple as early as the year 1638 (Nov. 26th).

It seemed not unlikely that his thus embarking in the profession of the law was a step recommended to him by his cousin, who was at that time chief justice of the Common Pleas; and we may also fairly presume that at the beginning of his new career he received advice and assistance in his studies from the same quarter. But unfortunately we have little better authority than surmise for this or any other particular connected with his reading, or his mode of life, either as a student, or even during the period he was practising outside the bar. It is not until after the time when he took office, and became in some sort a public man, that we can find any notices of him in the various memoirs and diaries which his contemporaries have produced in such abundance; and even then, although, either as regards the private character of individuals, or the manners and habits of particular classes of society, no period of our history has been better and more fully illustrated than that during which he flourished, there are scarcely any accounts extant concerning him which throw a light on his private history. Frequently and much have we had occasion to regret that he had no gossiping brother at hand, to give us, in the inimitable manner of Roger North, all the minute details of his every day existence, which impart such an interest and such a charm to that most amusing (and therefore best) of all biographies we have any knowledge of, the life of Lord Guildford. We should then, no doubt, have known what chamber he tenanted; whether he used the commons in hall morning and evening, or whether, having the means of indulging his tastes, without restraint, a petit supper and a bottle always pleased him; with what degree of diligence, and after what method, he pursued his studies; how his hours of relaxation were disposed of; whether he was a "clubster listed among good fellows," or passed his spare time in a solitary walk; whether he dressed after the fashion of the courtiers, "topping the mode," as some of his fellow Templars were wont to

do, or contented himself with the more grave and beseeming apparel enjoined by the rules of his society, or like Hale, paid so little attention to his outward appearance as to be held a fit subject for capture by a roving press-gang. As the case stands at present, we must make up our minds to remain in ignorance of such matters as these. All we can tell of the most important of them, namely, his habits of study, is, that he adopted the practice which was common in his day among the students in the Temple, of assembling towards evening in the cloisters, to exercise themselves in putting and answering cases. Of this mode of legal discipline, he seems to have had as high an opinion as Lord Guildford, who used to say, no man could be a good lawyer, that was not a good put-case; but from all we can gather, Finch considered it chiefly valuable, inasmuch as it tended to promote fluency of speech, and especially readiness of reply. It was a common maxim of his uncle Sir Henry Finch, and there is reason to believe he adopted it himself, that a lawyer ought to read all the morning, and talk all the afternoon. He probably looked upon these public disputations as having the same kind and the same degree of advantage that may be derived from attendance on the various legal debating societies which, in our day, have superseded the daily case-puttings in the Temple cloisters. Be this as it may, it is certain that he considered such meetings as productive of great benefit to the students; and when, upon the destruction of the old cloister walks, as they were then called, by the fire of London (1666), the benchers of the Middle Temple made application to him to procure the assent of his own society, the Inner Temple, to a plan they had designed for building chambers upon the same site, he gave them a peremptory refusal, solely because he would not be accessory to throwing any impediment in the way of the ancient and useful practice of putting cases. Upon this, the project was relinquished; and Sir Christopher Wren, being employed to re-construct the buildings consumed by the fire, contrived to accommodate all parties, by replacing the old cloisters with the addition of the upper stories, as they remain to this day.

There was another mode of legal study, much in use in those days, and one which was commonly resorted to within the recollection of many persons now living; namely, a fre-

quent attendance upon the courts of law, for the purpose of noting down any cases of importance that might occur. Of such means of acquiring information Finch did not fail to avail himself, and he continued to do so during the period, which is now the only one generally so employed; that is, for some time after his call to the bar. Many years afterwards, when he had become lord chancellor, he himself informed one of his acquaintance that he had been present at the trial of Archbishop Laud, before the House of Peers, which took place while he remained a student; and it is from him we learn, that the argument delivered upon that occasion by Mr. Herne, behind whom he took up his place at the bar of the house, was drawn up by Hale. We also find in a manuscript work of his (which we shall have more to say of hereafter) a reference to a case, heard in Michaelmas term, 1656, and reported among his notes of that time; which shews that he continued the practice of drawing up reports for his own use, at least till very near the Restoration. The reference is in these words: "*Vide mes notes, in diebus illis.*" Were any other proofs wanting of the fact, that he was all along a diligent student, a fact some may think sufficiently attested by his subsequent celebrity as a lawyer, we should find one in the date of his call to the bar, which was the 30th of January, 1645. At this time he was of very little more than six years' standing on the books of the Inner Temple, and as seven years was the regular period of probation then allotted, it is to be presumed that the shortening this term in his case, or calling him *ex gratiâ*, as it was then called, was a favour conceded to him only on account of his proficiency in knowledge of the law; which proficiency, be it remarked, this society had full means of appreciating, by the examination which candidates for the bar were then required to pass through. In the same manner, Coke, who was entered of the Inner Temple very shortly after this rule of the house as to examination had been made (the order is dated 2nd May, 6 Eliz.), was called at the expiration of six years after his admission, though at that time the regular term of studentship was eight years.

Much about the same time, as nearly as we can calculate, that Finch first put on his bar gown, he took to himself a wife. She was the daughter of Mr. William Harvey, a

merchant of London, whom we suspect to have been related to the Daniel Harvey, also a London merchant, who first introduced Lord Clarendon, then Mr. Edward Hyde, a young lawyer, to the notice of Archbishop Laud, as may be seen in Clarendon's Life. What became of Finch immediately after this double change of his situation, we have not been able to ascertain. We have no better ground for conjecture as to whether he joined the king and the royalists, or remained in London without taking any active part in the great struggle then pending, than the simple circumstance of not meeting with any mention of his name in the records of those troublous times; from which we draw the inference that he was probably at that time wholly occupied by the peaceful duties of his profession. It is certain, at all events, that in politics he was a royalist, if not a very zealous one; and it is therefore to be supposed, that while first the Long Parliament, and then Cromwell, were rulers of the nation, he would rather avoid than court such opportunities of entering upon public life as might have brought him forward into much notice, and consequently made him a person of sufficient importance to find a place in the histories of that time. As soon, however, as there appeared a reasonable prospect of a restoration, the case was entirely changed. Upon the assembling of the Convention Parliament, he became a candidate for a seat, and was returned at the same time for two places, the borough of Michael in Cornwall, and the city of Canterbury. As the representative of the latter, for which he made his election, he was called upon to express the sentiments afterwards set forth (May 11th, 1660) in the address entitled "A declaration and vindication of the loyal-hearted nobility, gentry, and others of the county of Kent and city of Canterbury, that they had no hand in the murther of the king;" wherein it is set forth, that "the generality, and as for the number, much the greater, so also for the quality, much the better part of this famous and populous county and city, hath, from the alpha to the omega, from the first to the last, of these distracted, distempered, and unhappy times, been truly cordial, constant, and steady, in the matter of their fidelity and loyalty to their prince and sovereign; without the least

thought or desire to deviate, apostatise, or turn out of the good old way of due allegiance." That the temper, indeed, of this parliament was altogether such as we find throughout the whole of this loyal effusion, is proved by the headlong zeal with which they rejected Hale's proposal, of recalling the king under conditions.

Immediately after the return of Charles the Second, Clarendon, who had been previously in correspondence with most of the leading men concerned in bringing about the restoration, was deputed by the king to fill up the legal appointments. Finch had a triple recommendation to the chancellor's notice, his ability as a lawyer, his zeal as a royalist, and his influence as member of a noble and powerful family; to which we have some reason to think may be added the further motive of a former friendship, or at least acquaintance. Accordingly, in consequence of some or all these qualifications, he was singled out to fill the office of Solicitor-General. His appointment took place on the sixth of June, 1660, at which time he received the customary honour of knighthood; and on the following day he was created a baronet. The next year he was autumn reader of the Inner Temple. The entertainment he gave in commemoration of this latter solemnity stands upon record as one of the most magnificent that was ever furnished forth even in the Inns of Court, which in days of yore held no mean or inconsiderable station among the high places wherein the deities that preside over good cheer were wont to be most worthily and most sedulously worshipped. The feast lasted several days. The prolongation of the festivities, however, was by no means an uncommon circumstance, nor indeed can we consider the number of guests entertained to be unprecedentedly great, since we find it recorded in Hall's Chronicle, that at the serjeants' banquet given on St. Peter's eve, in the year 1540, not only the mayor and aldermen and a great number of the commons of the city of London were present, but also all the Lords and Commons of Parliament. But what distinguished this festival from all others that had been held in honour of any legal appointments since the time of Henry VIII. (whose attendance with his Queen Catherine, at the serjeants' feast kept in Ely-house, is

especially commemorated by Stow, as that of Henry VII. upon two similar occasions is recorded by Holinshed *) was the presence of the King, who, to the honour, as we are told, of Sir Heneage Finch and the whole society of the Inner Temple, came in person to the banquet prepared on the last day (August 15th), accompanied by the Duke of York, and a greater number of the nobility than we can afford space to name. Much might we rehearse, did we feel so inclined (for here the materials are not wanting) concerning the pomp and circumstance of this royal visit: how his majesty came from Whitehall in his state barge, and was received at the Temple stairs by Sir Heneage Finch, and the Chief Justice of the Common Pleas; how he passed from thence, through a double file of the readers' servants, clothed in scarlet cloaks and white doublets, whence taking his way through a breach made expressly for the occasion in the wall which at that time enclosed the Temple garden, he passed through a lane formed of benchers, utter barristers, and students belonging to the society, till he arrived at the Inner Temple hall, when the wind instruments that had been sounding ever since he set his foot on shore at the stairs, gave place to a band of twenty violins, which continued to play all dinner time. But besides the narrowness of our limits, which compels us to be brief in these matters, we have a certain consciousness that we could hardly compass a style sufficiently dignified to do such a subject full justice; and we dismiss it, therefore, with the modest excuse made by honest Master Gerard Leigh, in his 'Accidence of Armory,' for the omission of some minor details concerning another solemn banquet, at which he was present, in the hall of the Inner Temple: "I assure you I languish for want of

* We quote these authorities from Dugdale's *Origines Juridiciales*, (p. 127) where the reader may find divers amusing instances of the wisdom of our ancestors, in believing and ordaining that sound learning and copious feasting were necessarily inseparable. The provisions furnished forth at some of the Serjeants' feasts would have victualled the whole population of Ireland for a twelvemonth. Take, for example, that of 23d Henry 8, recorded by Stow, of which the bill of fare begins with such items as twenty-four great beefes, one hundred fat muttons, fifty-one great veales, &c. and finishes with thirty-seven dozens of pigeons, fourteen dozen of swans, and three hundred and forty dozens of larkes.

cunning, ripely to utter that I saw so orderly handled appertaining to service; wherefore I cease and return to my purpose." We will only add, that the Duke of York liked his entertainment so well as to become a barrister and bencher of the society in the following November, and that Prince Rupert, and several noblemen of distinction, were at the same time admitted members.

In the parliament which was assembled the same year that Sir Heneage Finch became solicitor-general, he took his seat as one of the members for the university of Oxford; but whether or not he took as active a part in the business of the house as when he was a representative of Canterbury, we have no means of knowing. The circumstance of his name being entirely unnoticed in the meagre records of the parliamentary history of that period, is certainly not decisive evidence of his having refrained from taking any share in the debates; but it is perhaps sufficient to warrant the presumption that he was not then in the habit of putting himself forward as a speaker elsewhere than in the courts of law. There, however, his reputation as an orator was such that he was commonly called the English Cicero. Another title also generally bestowed upon him, that of the English Roscius, it is to be presumed, had relation more particularly to the grace and propriety of his gesture, than to the powers of argument and command of words implied by the former designation. Evelyn bears testimony to his ability as a speaker. He has styled him in one place the smooth-tongued Solicitor; and in an entry in his diary, under the date of October 26th, 1664, he writes: "At the council I heard Mr. Solicitor Finch plead most eloquently for the merchants trading to the Canaries, praying for a new charter." That worthy and amusing gossip, Samuel Pepys, is doubtless a witness of less weight; but he also speaks distinctly to the fact. Finding space to record (among divers interesting particulars touching his own new suits of clothes, and the casual rents therein which so sorely troubled his spirit) something of certain proceedings instituted in the house of peers by Mr. Roberts, son of the Lord Privy Seal, he tells us; (May 3d, 1664), "The cause was managed for my Lord Privy Seale, by Finch the solicitor; but I do really think that he is a man of as great eloquence as ever I

heard, or ever hope to hear, in all my life." To these accounts of his oratorical ability may be added the opinion of a much higher authority than either Evelyn or Pepys, namely, of John Locke, who was often heard to declare that he considered some of Finch's speeches to be more correct in point of language, and more finished in style, than any compositions he was acquainted with in the English tongue.

That this eloquence was not exerted on behalf of his constituents, the members of the university, on a certain occasion when the interests of that body were involved, seems to be accounted by Anthony Wood a scandalous instance of remissness. "He did us no good," quoth the worthy antiquarian, "when we wanted his assistance for the taking off the tribute belonging to hearths." The punishment, however, which he incurred for such a very gross dereliction of duty, does appear to us to have been very far from immoderately severe, inasmuch as it consisted merely of a rebuke, which, although barbed and sharpened with all the keenness of university wit, a man of tolerable stoicism might have borne, we should conceive, without much wincing. The occasion fell out thus. While the parliament was sitting at Oxford, in 1665, on account of the plague which then raged violently in London, it was reported that many nonconformist divines, taking advantage of the absence of the regularly licensed curers of souls (numbers of whom had hurried away from the head quarters of infection, wisely considering, no doubt, that by thus attending to the preservation of their own corporeal health, at such a critical season, they would secure to themselves enough of future opportunity for looking after the spiritual welfare of such sheep of their flocks as they might find alive in the fold at their return), had thrust themselves into the vacant pulpits, and in the discourses which they delivered from thence had been by no means sparing in their strictures upon the lax morals of the court, for the manifold sins of which, as some of them did not scruple to affirm, the heavy visitation of the pestilence had fallen upon the land. Upon becoming informed of this, the king and the court, instead of hugging themselves in silent congratulation upon the ease with which, by so simple a process as a journey to Oxford, they had altogether evaded a punishment decreed entirely for their wickedness, took this explanation of the devout non-con-

formist in bad part; and finding that these comments upon the manifest wrath of Providence, in respect of such evil doings, were commonly mixed up with unfavourable and irreverent comparisons between the existing state of things and the state of things before the restoration, the loyal parliament resolved upon delivering the people from the danger of listening to such unorthodox doctrine. This resolution of theirs produced the five-mile act, as it was called, whereby all ministers of religion were forbidden to approach within five miles of the metropolis, or of any city, borough, town, or church where they had before officiated, except such as would consent to take an oath that they would not attempt or encourage any revolution in church or state, and that they held it unlawful to take up arms on any pretext, either against the king or those commissioned by the king. During the discussions that took place in the Commons concerning this bill, we are told by Burnet that Vaughan, who afterwards became chief justice of the Common Pleas, proposed amending the last-mentioned clause by wording it "those legally commissioned by the king." Upon which, Finch represented that such an alteration could not be necessary; because, unless a commission was issued upon lawful occasion, and to persons lawfully competent, and altogether in due form of law, it would not be a legal commission; and if not legal, it would be no commission at all. The act accordingly passed without this alteration. The university, it may be supposed, had not been indifferent to these proceedings; and indeed they had drawn forth their weapons on the side of orthodoxy, under the guise of "Reasons concerning the solemn league and covenant, &c. made in 1647," for which friendly interference on their part, Sir Heneage Finch, and three other members of parliament, were deputed to give them the thanks of the Commons. On this occasion was delivered the solemn reprehension concerning his remissness in the matter of the hearth money. The honorary degree of doctor of civil law had just been conferred upon him in full convocation: "which creation being concluded," says Anthony Wood, "in the presence of several parliament men (beside the said four), the vice-chancellor stood up, and spoke to the public orator to do his office. Whereupon he maketh a most admirable harangue, and amongst

other things to this effect, that the university wished they had more colleges to entertain the parliament-men, and more chambers, but by no means more chimneys, &c., at which Sir Heneage changed his countenance, and drew a little back."

During the time that Sir Heneage Finch filled the station of solicitor-general, it fell to his lot to conduct, on the part of the crown, several prosecutions, of more importance, or at least of more interest, than attaches to the generality of such proceedings. Such, for example, were the trials of the regicides, which occurred during the early part of his official career, and in which he is said to have displayed not only the same eloquence, the same acuteness, and the same accuracy of legal knowledge he brought to the discharge of all his forensic duties, but a degree of zeal that fully proved him to be, as the phrase is, heart and hand in the cause he advocated. Nevertheless, it is but justice to him to remark, that he never went farther in his animadversions than his duty not only warranted him in doing, but even enjoined him to do; although, even if he had overstepped the bounds within which the calm judgment of an age remote from the time of the action might be inclined to restrain every thing like indignation and hatred against the judges of Charles the First, his excuse might be found in the exaggerated notions of loyalty and allegiance entertained by the royalists of that day. In the trial of Lord Morley for murder, before a select number of peers (1666), the substance of Sir Heneage Finch's speech for the prosecution has been recorded at considerable length. The case was entirely unconnected with political matters, and indeed is one of the many reported in the State Trials, which derive their chief value from the light they throw on the manners of different classes of society at various periods of our history; a light scarcely less strong than that which other portions of the same work reflect upon the constitutional law of England. From the memoirs of Grammont we may learn how the fashionable character, as well as the finances, of an accomplished gallant in the court of Charles the Second could be improved by the practice of such barefaced cheatery as would now most assuredly cause the practiser, whatever might be his rank, to be kicked out of any gam-

ing-house in London; but it is to the records of trials like those of Lord Morley, Lord Cornwallis, or Lord Pembroke, that we must resort, if we would see how peers of the realm were wont to pass their evenings in frequenting taverns, and making up or engaging in such drunken frays as are now chiefly confined to the denizens of St. Giles's, and are recorded in the annals of Bow-street. All of these noblemen were arraigned for murders committed under circumstances like these; the first for stabbing the man he had quarrelled with, in memory of an old grudge, the second for being accessary to an unprovoked outrage upon a poor boy in the park, which caused his immediate death, and the third for knocking down an acquaintance, who at the time was powerless with intoxication, and trampling upon him till he left him in such a state that he expired shortly afterwards. That Lord Morley was guilty of the crime imputed to him we think it impossible to doubt. In Lord Pembroke's case there certainly was doubt, and he was of course entitled to the advantage of it; but in one and the other case the verdict was the same, namely, manslaughter, which by virtue of the privilege of peerage was, in all respects, tantamount to an entire acquittal. If this require any comment at all, a passage from Sir Heneage's speech on Lord Morley's trial is the best we have to offer. "I do not presume to say that the killing of a man is more capital in the case of a peer than of a private gentleman; but I affirm that no provocation in the world can make that to be but manslaughter in a peer, which would be murder in a gentleman. The quality of the offender may serve to enhance the crime; but since the world stood, it was never accounted a diminution of it, or an apology for committing it. The same duty to the king, the same obedience to the laws, the same reverence for human nature, the same caution to avoid the effusion of Christian blood, is expected from a lord as from the meanest commoner in England. It is the case of all the people of England, who are highly concerned in the present example. If they put their trust in the law, as the greatest avenger of blood in the world, and once find themselves deceived, who knows what consequences may follow — what feuds in families — what massacres, it may produce? No doubt but all the world will observe and mark the issue of this day: they will be curious

to know what became of a lord, in whose eyes the blood of a gentleman was so vile and inconsiderable."

The author of the meagre and incorrect publication bearing the title of "Lives of the Chancellors," whom Roger North, by the way, has no scruple in designating as a foul libeller, seems to throw out a hint that Sir Heneage Finch made himself particularly busy among those who got up the impeachment against Clarendon (1667), the year after Lord Morley's trial. We find nothing upon record that goes, in the slightest degree, towards bearing out the truth of this. There are, indeed, in the parliamentary history, notices of various speeches delivered by him in the House of Commons on this occasion; but they are all entirely confined to the discussion of the legal points that arose in the course of the debate; and therefore, for any thing that there appears, he took no further share in these proceedings than what necessarily devolved upon him as the duty of a law officer of the crown. Nor do we conceive it to be at all probable that he could have entertained any feeling short of disapprobation, not to say disgust, with respect to this impeachment. The motives of it were no secret to any one. It was not that there was any belief, or indeed any suspicion, of Clarendon's having really betrayed the king's counsels, advised his to lay aside parliaments, or being guilty of bribery and extortion in his office. These might do very well to put together as particular articles, after the Lords had refused to commit him upon an accusation of treason couched in general terms. But no one was ignorant that the crimes he had committed, and for which he was arraigned, were of a far different nature; that they consisted in his having prevented the settling of a greater revenue on the crown, striven to uphold the interests of the Church of England, and above all, rendered himself displeasing, by the gravity and the decency of his deportment, to a set of ministers far more influential than himself, namely, the nymphs of the royal harem, and to the bashaw whom they duped and governed. It was notorious with what anxiety the mean and selfish sensualist, whom it was his misfortune to serve, was waiting for the removal of one whose very presence was a constant rebuke to him. Every one knew what pleasure he had taken in encouraging his pandars and his buffoons to practise their vulgar mimickry of the absent chancellor's gait and ges-

tures; and how, when such a truly dignified and royal mode of expressing contempt had failed to drive the object of it from the court, his majesty had tampered with members of the House of Commons to bring about an impeachment. Now, certainly, on no ground of probability can it be supposed that a man like Sir Heneage Finch, who there is every reason to believe was on friendly terms with Clarendon, whose character and whose principles were similar to his, and who, at all events, loyal subject as he was, never stooped so low as to be the tool and the creature of his sovereign, could further, or in any degree countenance, an accusation got up from such motives and under such auspices as these.

When the death of Sir Geoffroy Palmer left the post of attorney-general vacant, Sir Heneage Finch was promoted to it as a matter of course (May 10th, 1670), and Sir Edward Turner, at that time Speaker of the House of Commons, replaced him as solicitor. This latter office was filled, on Sir Edward's being appointed chief baron of the Exchequer about six months afterwards, by Sir Francis North, who thus first struck into the wake of Finch's course. Of the manner in which the latter discharged the duties of his new station, which we can easily conceive to have been, in those days, as Roger North in his Examen phrases it, very "nice and fatiguesome," we have the following account from the Duke of Wharton. "While attorney, he was no ways honoured by his office, but was an honour to it; for he never lessened the business and reputation of one place to advance to another. He came always to the hall attended suitable to his dignity; and the greatest respect and deference were ever paid to him; for indeed he added lustre and grace to the place he filled." This sort of general panegyric, it is true, gives us little or no insight into particular facts, so that we have not the means of judging for ourselves how far they may be strictly consonant to truth. But we may remark that in this particular case there is no reason to suspect the author of being biassed, either by private feelings, or by the spirit of party. Now the latter of them has most certainly tinctured the portraiture of the same character as it is drawn by Burnet; and though perhaps the authority of the Duke of Wharton (the very type and personification of all moral inconsistencies, if we are to take Pope's sketch of him

for a correct likeness) might not be thought sufficient to set in counterpoise, on any indifferent point, to that of the Bishop of Sarum, yet whenever the political prejudices of the churchman are to be put into the balance, there certainly requires no very great weight on the opposite side, to make his testimony kick the beam.

These remarks are not made because of any discrepancy between the duke and the bishop as to that portion of Finch's life during which he was attorney-general, for that the latter has not commented upon at all; but because we shall shortly have occasion to quote their respective opinions on his general character. There is one assertion, however, made by Burnet, respecting his conduct in the House of Lords, after he had received further promotion, which may equally apply to him at this period, namely, that he always thought it incumbent on him to be the apologist of the court in parliament. Now, whatever indignation or contempt we may feel with regard to many both of the men and the measures of that court, we must bear in mind that there were then, as now, but two parties, namely that of the government, and the one opposed to it: and that, seeing there was no middle course to be steered, whoever enlisted himself under the banner of either, was bound as a party-man to tolerate much that he might not approve. To say, therefore, that Finch, or any other, took an active instead of a passive part in the endeavour to palliate abuses, which it is possible he may have inwardly condemned quite as much as those who railed most violently against them, is to say nothing more than that he courted the post of difficulty and danger: that being fairly committed to his party, he chose to fight in the foremost rank of it, rather than remain among the sutlers and the camp followers, a mere numerical unit in the array, and nothing more.

Taking this view of the case, which we are inclined to think every one acquainted with the machinery of party will allow to be a fair one, we can easily account for the part borne by Finch, while attorney-general, in the discussions in parliament relative to the Coventry Act (1670). No attempt was made by him, or by any other member, to excuse, or even to palliate in the slightest degree, the dastardly and inhuman outrage committed on the person of Sir John Coventry. That a member

of the House of Commons should be waylaid and maimed by the hireling bravoes of the court, because he had uttered a very harmless, if not a very dignified, jest upon the sovereign's amorous propensities, was enough to have excited the indignation even of the subjects of the Dey of Algiers; and in this country, even in an age when a Rochester could walk the streets unhooted and unscourged, after bribing ruffians to cudgel such a man as Dryden, assuredly no voice could have been lifted up in extenuation of such an enormity. All that Sir Heneage Finch attempted to do, was to postpone the discussions relative to the subject until the supplies had been passed; and failing in this, to introduce such modifications into the cutting and maiming, or Coventry Act, as in his capacity of legislator appeared to him expedient for the future prevention or punishment of similar atrocities. Without doubt, he would have acted with more dignity as an independent member of the house, had he taken up the matter with the warmth or indignation it deserved: but an officer of government, of such a government, especially, as that of Charles the Second, is not and cannot be an independent member.

In 1671, Sir Heneage Finch was appointed Speaker for the House of Commons, in the different conferences that took place with the Lords, during the controversy touching the right of the latter to make amendments in money bills; and on this, as on other occasions, he distinguished himself by the zeal and the ability with which he advocated the privileges of the representatives of the people. That he did not, however, think it incumbent on him to support every captious and frivolous enforcement of those privileges, is apparent from his joining with the veteran Serjeant Maynard, in proposing that the charges attempted to be brought forward against the Earl of Orrery should be left to a trial at law; by the carrying of which proposition, the old nobleman was enabled to fulfil the boast he had made when hobbling up the steps of the house, namely, that if his gouty legs would but carry him up, he would engage his head should bring him safe down again. The name of Sir Heneage Finch is also to be met with in most or all of the important debates that occurred while he remained attorney-general; and so far as we can judge from the brief record of the parliamentary history, the House of

Commons did not contain during that time a more active or a more efficient member. Whether it was while he remained in the lower house, or after he removed to the peers, that he drew up for his own use a work concerning the authority of parliament, we cannot undertake to say; but that he did so at some time or other, appears clearly from a passage in case 160 of his manuscript Chancery Reports. We should have been inclined to think that the book alluded to was merely a collection of notes, touching important cases decided in his time, before either house; but the manner in which it is quoted with a reference to a particular title, seems to shew that it was a systematic treatise, arranged methodically under different heads. The passage in which it is mentioned is in these words: "I took this occasion to shew that the Court of Chancery hath always had an Admirall jurisdiction, not only *per viam appellationis*, but *per viam evocationis* too, and may send for any cause out of the Admiralty to determine it here, of which there are many precedents in Noy's MSS. 88, and in my little book, in the preface De Officio Cancellarii, sect. 18, and in my Parliament Book, in 8, title Admiralty."

Towards the close of the year 1673, when Lord Shaftesbury was removed from the woolsack, the Seal was delivered to Sir Heneage Finch as Lord Keeper. There is a curious memorandum respecting this change, at the beginning of Mr. Hargrave's copy of the manuscript reports just mentioned; which, as it may be considered in some sort a scrap of autobiography, we shall here transcribe at length:—

"Sunday, 9th November, 1673. At six at night, I received the great seal from his Majesty at Whitehall, and was made C. S.—10th. I recepi'd my Lord Shaftesbury's pattent, which came to me from the privy seal. It was reported, his lordship kept the bill signed by him above a year and a half, for it was signed before he was chancellor as is said, and never meant to send it to the seals till there was great necessity, and so hath covered all his misdemeanors as chancellor. But this was a malicious report to his prejudice and mine, as if he had been false, and I too easy in this matter; for in truth, the pardon did extend to the 6th of November, which could not possibly be by virtue of any old warrant; but the chancellor forseeing

his fall obtained a warrant for a new pardon, signed by Mr. Secretary Coventry, and Mr. Sollicitor North passed it upon Saturday the 8th November, and his lordship intended to have sealed it as chancellor, for the privy seal was directed to him by that name; but it was razed in the king's presence and directed to me by name, with a *nuper cancellarius* interlined where it mentioned him. Also, I sealed a commission to the judges and master of the rolls to hear causes, for by the change of the C. or C. S. the commission fayles.—11th, I took my seat, and was sworne in chancery; but I made no speech, as some of my predecessors have done, upon the occasion."

He presided in this court, first as Lord Keeper, and afterwards as Chancellor, about nine years; and during that time, it is not too much to say that he acquired such a reputation for learning, for ability, and for integrity, as no judge that ever sat there before him has surpassed. Of his learning and his diligence in this capacity, several splendid monuments are still preserved. The principal one is the collection of reports of all the cases decided by himself while he sat on the bench, beginning with November, 25 Car. II. (1673), and ending in October, 34 Car. II. (1682). So far as we are able to learn, the original in his own hand-writing has not been preserved, but the copy of it which is still, we believe, in the possession of the Legge family, appears from the edge of the paper and the colour of the ink to have been made very shortly after his death. This copy was devised by his son, the Earl of Aylesford, to Baron Legge, whose mother, the Countess of Dartmouth, was a daughter of the same Earl of Aylesford, and consequently granddaughter to the author of the reports. A second copy was made from this (in four folio volumes, now bound up in two) at the cost and under the immediate superintendence of that most learned, acute, and indefatigable lawyer, the late Mr. Hargrave; and as he spared no pains to collect authentic documents from other sources, his collection (which by the kindness of his son and representative now lies before us) is in many respects more complete than the one bequeathed to Baron Legge. It does not, indeed, contain the work in thirty-one chapters, entitled *Prolegomena*, occasionally also referred to by the author, as "my little treatise of chancery

learning," and "my little book;" nor the collection of rules and orders in chancery, with observations thereupon*, both of which are in the Dartmouth copy; but the former of these has been copied by Mr. Hargrave with his own hand, and forms of itself a thin folio volume of close writing. How far he has thought fit to alter the language of the original, and what was his opinion of the value of the work, may be seen by the following memorandum, written on the fly-leaf of this volume, and dated 23rd September, 1797. "In this copy of Lord Chancellor Nottingham's Prolegomena, I have adhered closely to Mr. Heneage Legge's copy, except that I have avoided the numerous abbreviations in the latter, and that I have translated all the French words, and so made what was almost throughout a mixture of French and English, entirely English†. The whole of this copy, except a few lines in page 2, is in my own hand-writing. But from the interesting and valuable nature of the contents, I did not feel the labour of copying and translating as any fatigue."

Besides these speaking testimonies to the learning and the diligence of this great man, there exist, as we probably need not remind many of our readers, several volumes in which his decisions have been partially collected. Such is the folio published in 1725, under the title of Reports tempore Finch,

* The following is the title of this manuscript:—"A system or collection of such rules and orders in Chancery as have at any time heretofore been printed or published, together with some explanations and alterations thereof, and additions thereunto, as also some observations what rules have lately been discontinued, and yet may be fit to be revived, and what are fit to be laid aside. By F.—C. S." These two letters C. S. (*custos sigilli*) shew that the work was drawn up after his becoming Lord Keeper, and before he was made Chancellor; that is, between Nov. 1673, and Dec. 1675.

† We transcribe two or three of the titles to different chapters in the Prolegomena, by way of shewing how French, English, and Latin are blended together. To account for the use of such a piebald style, it must be recollected that the book was written solely for the author's private use, and that this sort of mixture was a dialect perfectly familiar to the lawyers of those days. "Chap. 6. Equity versus Purchasor ne sera. 7. Equity relieves en plusors cases l'ou les printed livres deny it. 12. Of trusts in general, quid sint. 30. De anomalies. 31. L'ou les juges del common ley ont agreed to alter it sans act de parlement, et l'ou nemy."

which is a selection made by a practising barrister in the Court of Chancery, of cases wherein the reporter himself was counsel. This work begins with Michaelmas term, 1673, that is, with the beginning of Sir Heneage's Lord Keepership, and goes down to Michaelmas term, 1680. It is remarkable for one peculiarity which we have never met with in any other English book of Reports; namely, that whenever the rule laid down or relied on by the judge differs from the corresponding rule of the civil law, the difference is noted in the margin. There is also an anonymous octavo volume, dated 1694, and entitled "Reports of Cases taken and adjudged in the Court of Chancery, from the 20th year of King Charles the Second to the first year of their present majesties, King William and Queen Mary," which is in fact a continuation of a similar collection, published a year before, of particular cases from the beginning of Charles the First's reign to the twentieth of Charles the Second. This second volume contains, of course, a number of cases decided by Finch. The only other work of the kind we shall mention is a black-letter folio published in 1697, under the name of "Cases argued and decreed in the High Court of Chancery, from the twelfth year of Charles the Second to the thirty-first." Nearly half of this book is occupied by the decisions of Finch. From a manuscript note written by the late Mr. Hargrave in his copy of the volume, (which is at present in the British Museum,) we learn that it was compiled from the papers of Sir Anthony Keck, one of the commissioners of the great seal, and that Lord Chief Baron Ward, in his manuscripts (case of Packington v. Wyche, A. 4. Scaccar. May 23, 1709), quotes the work by the title of Keck's Reports. There is a second part of the same work, which carries the cases down to the fourth of James II.

From all or any of these collections, the best and most ample testimony can be obtained as to Finch's legal learning. With respect to the mode in which he conducted the business of his court, there is less certainty of being able to form an accurate opinion, not so much because the accounts we have are conflicting, as because they are given in such loose and general terms as to afford no handle for an examination into their probable fairness and truth. The Duke of Wharton has made it

the subject of a warm panegyric, but vague praise such as this is ordinarily little less suspicious than vague censure; or, at all events, seldom bears such an evident impress of truth, as to banish all doubt of its being fully deserved. We are indebted to this writer, however, for the mention of one circumstance, which indeed might safely be inferred from what can be gathered elsewhere as to his general assiduity, namely, that he invariably displayed the greatest anxiety for the despatch of the business of the court, wherein it appears delay was not a whit less common at that time than at the present day. A case was once brought before him for a rehearing, which had been altogether upwards of thirty years travelling the slow road of chancery litigation. On being informed of this fact, he instantly appointed a day for it to be argued, and declared he would rather sit for five or six days together, than suffer the court to remain any longer under the disgrace of protracting a cause for such a time. Nor was this the shallow boasting of a vain-glorious man, greedy of popular applause, and seeking to be trumpeted forth in parliament or by the press as the great reformer of abuses encouraged by his predecessors: so far was Sir Heneage Finch from any such feeling as this, that he has even been accused of a propensity any one would make it a point to eschew, who had it at heart to gain the sort of ephemeral popularity that may be thus acquired: his great anxiety was to weigh and perpend most carefully and elaborately, before he struck the balance. "He was a formalist," says Roger North, "and took pleasure in hearing and deciding, and gave way to all kind of motions the counsel would offer; supposing that if he split the hairs, and with his gold scales determined reasonably on one side of the motion, justice was nicely done. Not imagining what torment the people endured who were torn from the laws, and there [in equity] tost in a blanket." How far he prosecuted this amusement of tossing in the blanket to the prejudice of graver duties, may be in some degree estimated by the number of important cases finally adjudged by him while he sat on the bench. Those which are contained in his reports amount in all to eleven hundred and seventy.

He has been eulogized for the dignity with which he kept up the state of his high office; a matter of no small consideration

in those times, when every judge, at least if he were of the coif, was attended to court, on first taking his seat, by all the barristers and students of the inn of court to which he belonged, besides officers, clerks, and retainers of all sorts, forming such a crowd as made the procession compete, in point of the numbers that formed it, if not in pageantry, with the solemn pomp of a lord mayor's show. In this respect, as well as in many others, his conduct formed a striking contrast with that of his predecessor, Lord Shaftesbury, who was wont to take his seat in court clad in an ash-coloured gown laced with silver, and having his nether person invested in a pair of full-ribboned breeches; indeed, as Roger North somewhat indignantly observes, with nothing black about him but his hat. Bearing in mind, no doubt, the luckless upshot of this popular Chancellor's memorable equestrian parade, when "from want of gravity in the beasts, and too much in the riders," Judge Twisden had been laid sprawling in the dirt, and many other weighty dignitaries of the law had been fain to exhibit themselves in little less dignified postures, Lord Chancellor Finch obliged all such officers as could afford it to attend him in their coaches. "He had no pimps, poets, and buffoons," adds Wharton, "to administer to pleasure or flattery. His train was made up of gentlemen of figure, men of estates, barristers-at-law, and such as had reputation in the profession and were suitable and becoming so high a station."

A much more essential point than this in his character as Chancellor, was the conscientious impartiality with which he invariably distributed the church preferment that fell to his gift. In bestowing it he commonly deferred to the opinion of his chaplain, Dr. Sharp, afterwards archbishop of York; whom he considered more competent than himself to exercise the duty of judicious selection. How deeply he was impressed with the sense of the importance of this duty will best be shewn by the following eloquent passage of a letter addressed by him to his chaplain on this very subject. "The greatest difficulty I apprehend in my office," he writes, "is the patronage of ecclesiastical preferments. God is my witness, that I would not knowingly prefer an unworthy person; but as my course of life and studies has lain another way, I cannot think myself so good a judge of the merits of such suitors

as you are. I therefore charge it upon your conscience, as you will answer it to Almighty God, that, upon every such occasion, you make the best inquiry, and give me the best advice you can, that I may never bestow any favour upon an undeserving man; which if you neglect to do, the guilt will be entirely yours, and I shall save my own soul."

Having thus pointed out what appear to us the most striking particulars of this great man's general merits as a Chancellor, we may now present the picture of him drawn by Burnet, without the necessity of making any comments upon its accuracy. We only premise that it is with great justice Dryden has said of Burnet:

> "His praise of foes is venomously nice;
> So touch'd, it turns a virtue to a vice."

"He was a man of probity," says the bishop, "and well versed in the laws; but very ill-bred, vain, and haughty. He was long much admired for his eloquence; but it was laboured and affected: and he saw it as much despised before he died. He had no sort of knowledge in foreign affairs: and yet he loved to talk of them perpetually: by which he exposed himself to those who understood them. He thought he was bound to justify the court in all debates in the House of Lords, which he did with the vehemence of a pleader, rather than with the solemnity of a senator. He was an incorrupt judge: and in his court he could resist the strongest applications even from the king himself, though he did it nowhere else. He was too eloquent on the bench, in the House of Lords, and even in common conversation, that eloquence became in him ridiculous. One thing deserves to be remembered of him: he took great care of filling the church livings that belonged to the seal with worthy men: and he obliged them all to residence."

The Duke of Wharton speaks of him in a very different strain. We transcribe a portion of the character he has drawn, which forms the sixty-ninth number of the True Briton:

"His decrees were pronounced with the greatest solemnity and gravity; no man's ever were in higher esteem, had more weight, or carry greater authority at this very day than his

do. He was a great refiner, but never made use of nice distinctions to prejudice truth, or colour over what deserves the worst of names. He frequently declared, he sat there to do justice, and as long as his majesty was pleased to continue him on that seat, he would do it, by the help of God, impartially to all, to the officer as well as the suitor. If the officer exceeded his just fees, or played tricks with the client, he would fine or punish him severely: at the same time, the trouble and attendance of the officer (he thought) justly entitled him to his fees. His reprimands were mixed with sweetness and severity, and so pointed as to correct, not confound the counsel. He was indeed difficult of access, but when once you had admittance, you found nothing from him but what was fair, just, and honourable; so that he had the happiness to send most people away with pleasure and satisfaction. There may have been persons on the bench of more extensive knowledge and greater capacities, but as to the duty and faithful discharge of the office, his lordship never had a superior, and I am afraid there will be but few equals. His morals were as chaste as his writings, and they who have pretended to criticise the one, could never find the least fault with the other. His conversation was always with the greatest deference to decency and good manners. He was ever on his guard to parry the thrusts of witty courtiers, and men of pleasantry. A good name he thought the most valuable thing in life, and that on which virtue and honour depended. For he that slights the one can never have any value for the other; 'tis better to be unborn than ill-bred; and out of life than profligate and abandoned. To figure this great and inestimable man aright, and to paint him in his true colours, and with some warmth of imagination, but still with the greatest submission to strict justice: I would seat him on his throne, with a ray of glory about his head, his ermines without spot or blemish, his balance in his right hand, mercy on his left, splendour and brightness at his feet, and his tongue dispensing truth, goodness, virtue, and justice to mankind."

This is no doubt, as the author himself avows, a warmly coloured picture; but we have no reason to believe he errs, when he affirms it to be in its main features a correct one. He is not by any means the Chancellor's only eulogist. A very

high but certainly not undeserved compliment is also paid to his merits, in that portion of the second part of Absalom and Achitophel, which was written by Tate. To say of him only that he had the endowments of Achitophel, that is of Shaftesbury, might not be thought a very exalted panegyric upon his ability as judge, were it not that Shaftesbury is represented by Dryden, in the first part of the poem, as a very model for Chancellors*. Finch is designated by the name of Amri.

> " Our list of nobles next let Amri grace,
> Whose merits claim'd the Abethdin's high place ;
> Who, with a loyalty that did excel,
> Brought all the endowments of Achitophel.
> Sincere was Amri, and not only knew,
> But Isr'el's sanctions into practice drew ;
> Our laws, that did a boundless ocean seem,
> Were coasted all, and fathom'd all by him :
> No Rabbin speaks like him their mystic sense,
> So just, and with such charms of eloquence ;
> To whom the double blessing does belong,
> With Moses' inspiration, Aaron's tongue."

Leaving these contemporary accounts and opinions to speak for themselves, we now resume our narrative of Finch's life, at the period of his being appointed lord keeper. About two months after his promotion to this office, he was elevated to the peerage, 10th January, 1674, with the title of Baron Finch of Daventry, in the county of Northampton, of which manor he had some time before become the proprietor. In his patent of baronetcy he had been designated as of Ravenston, or Raunston, in the county of Bucks. This estate, situated nearly on the border of Northamptonshire, about six miles

> * " Yet fame deserv'd no enemy can grudge,
> The statesman we abhor, but praise the judge :
> In Isr'els courts ne'er sat an Abethdin
> With more discerning eyes, or hands more clean ;
> Unbrib'd, unsought, the wretched to redress,
> Swift of dispatch, and easy of access.
> Oh ! had he been content to serve the crown
> With virtues only proper to the gown,
> Or had the rankness of the soil been freed
> From cockle, that oppress'd the noble seed,
> David for him his tuneful harp had strung,
> And Heav'n had wanted one immortal song."

north of Newport Pagnel, and a little to the west of Olney, had formerly belonged to a priory of Austin canons, founded by Henry the Third. On the suppression of the monasteries it had been given to Wolsey, but was afterwards resumed by the crown, and at length, in the reign of Elizabeth, had passed by grant into the possession of Sir Moyle Finch, of Eastwell, by whom it was most probably settled as a younger son's portion upon Sir Heneage Finch, the recorder. With the recorder's son it was always a favourite country residence, and a hospital or almshouse, erected and endowed by him in the parish, still attests the interest he took in the welfare of the poor of his neighbourhood. He also purchased a fee farm rent of the manor, amounting to eighty-four pounds a year, and gave it to increase the profits of the vicarage, besides which act of munificence, he contributed the yearly sum of ten pounds towards ornamenting the church.

In the House of Peers, his opinion seems to have carried no less weight with it than in the Commons. At the commencement of every session, it was usual for the king to open the parliament in person by a short speech; and this he invariably concluded by referring for further developement of the topics he had touched upon, to the lord keeper, whose discourses on these occasions are reported at considerable length in the Parliamentary History. In the one he pronounced at the commencement of the session in 1675, it may be seen that he assumes credit to the government for having revived the laws against papists (than which it is certain they could not at that time have achieved a more popular measure), and for having at the same time shewn their love of impartial justice, by pursuing a similar line of conduct with regard to the dissenters. He himself, indeed, was one of the warmest advocates of the test, a matter on which his zealous attachment to the Church of England makes it more than probable he felt almost a personal interest. Now such views as these it surely is not our intention to defend, much less to advocate. But the circumstances of the times should be taken into consideration, before we condemn him for entertaining them. There was then, as subsequent events proved, a real ground for apprehension with respect to the designs of the Catholic party. The alarm cry of "the church in danger," which has

since become, to borrow a metaphor from the green room, one of the stock properties of Tory management, was in those days the expression of a well-considered fear of actually impending peril, and not the weak foreboding of the timorous, who are always in dread of imaginary evils to come, nor the affected terror of the designing, who seek to conjure up such phantoms merely that they may take advantage of the confusion their presence is sure to create. It should be recollected, also, that the line of conduct pursued in this matter by the lord keeper was not by any means the one best calculated to further his own private interests with the court party. The thorough courtiers of that day very well knew, they could not do themselves a greater disservice, at least as far as their future prospects were concerned, than by raising or encouraging the fears of the people on such a theme. Even Charles himself was suspected by many of a leaning towards the Catholic religion, though if he had, either his discretion, or his love of ease, certainly induced him to keep it tolerably well concealed. But the Duke of York made no secret of his faith; and those who were actuated by purely selfish motives, fully understood the policy of propitiating the favour of the heir apparent, as well as of the reigning sovereign. Finch may be thought by some an over-zealous churchman, but at least his zeal was heartfelt and sincere.

On the 19th of December 1675, Lord Finch exchanged his title of lord keeper for that of Chancellor. Of this we find the following memorandum in his manuscript reports. "Sunday morning. The king going to chappell declared me lord chancellor, whereupon I kist his hand, and presently had the compliments of all the court, and not long after from all the ambassadors and foreign ministers." There are several such casual notices as this to be found in the same work, which, if we could afford more space, we should make a point of extracting. Such, for instance, is an account of Hale's coming before a master in chancery (21st February 1675), to enrol the resignation of his office as chief justice of the Common Pleas, in order to put it upon record, that he retired of his own free will, and also because, according to an opinion then prevalent, a chief justice, being appointed by writ, was held not to be removable by the king's pleasure, like the puisne judges, who held their offices by patent. There is

also, in the same volume, a very long and elaborate account of the trial of the young Lord Cornwallis for murder (30th June 1675), where Finch presided as lord high steward. All the details of the ceremonial to be observed on the solemn occasion were discussed by him and other officers with great minuteness, before the proceedings commenced; and the resolutions decided upon are carefully set forth in this report. The trial itself is interesting, if for no other reason than that it is the only one upon record of an infant peer. He had been found guilty by a coroner's jury, of the murder of a boy killed in St. James' Park by the son of Lord Gerrard of Brandon, with whom he was at the time in company. The verdict of the peers was manslaughter, which entitled him to his immediate discharge. There is also a similar account of the trial of the Earl of Pembroke (4th April, 1677) which, happening during a session of parliament, took place before the whole house of peers, instead of a select body of lords triers, as the former had done. The Lord Chancellor officiated as Lord High Steward. We shall endeavour to find space for a short extract from his report of some of the particular details, as to certain matters of ceremony, merely by way of giving a specimen of the manner in which they are described. The case itself may be seen in the State Trials. "Being come to the lords' house, and retired to putt on my robes, after prayers said, wee adjourned the house into Westminster Hall, and went in the order prescribed, through the painted chamber, court of requests, and court of wards, into the hall. In which procession the Duke of York and Prince Rupert, to do honour to the king's lieutenant (for so they called me), gave me the precedence, and suffered me to come last * all the while, till the tryall was over and the white staff broaken. When we came into Westminster Hall, the court was prepared like the house of peers in all points (with scaffolds on each side for spectators, and a place for all the foreign ministers). So the lords spirituall and temporall did quickly find and know their own places. I took my seat upon the woolsack, near the cloth of state, but not directly under it, having first made my obeysance to the chaire, and

* A curious perversion, by the way, of the original signification of the word *precedence*.

then to the king and queen, who satt by al incognito. Then I called for the commission, which was delivered to me, and received back again, and read by the clerk of the crown in B. R. in the usual forme. While the commission was reading, the whole house stood up uncovered," &c., &c.

Another of these memoranda details how, on Sunday the 12th of January 1678, the king, on returning from chapel, sent for the Chancellor to wait upon him alone in his closet at Whitehall, and there desired him to attest a document written with his own hand, the purport of which was, that he had never been married to the Duke of Monmouth's mother, nor to any one except Queen Katherine. It is much to be regretted, that there is nothing relating to an affair of greater importance, one in which the Chancellor was personally much more interested, and of which, on every account, it would be highly satisfactory to have had his own explanation. We allude to the impeachment of Earl Danby. The articles against this nobleman had been first carried up to the Lords in December 1678; but had been rendered nugatory for the time, by the prorogation of the Parliament on the 30th of the same month, and its dissolution on the 12th of January following: and when the new parliament, assembled in March 1779, announced their intention of carrying on the proceedings already instituted, the earl pleaded a pardon granted by the king. It was respecting the sealing of this pardon that the lord chancellor's name was brought in question. The seal, it appeared, had not been affixed by Lord Finch, as in the ordinary course it would have been, but by the king himself, or at least by his order and in his presence; and the Chancellor attempted to justify the irregularity, by assuming it to be 'an immediate effect of his majesty's power of creating' (these are Burnet's words), and entitling the pardon 'a stampt pardon of creation.' Roger North calls this a trick to avoid the consequences that might have awaited him, had he consented himself to make use of the great seal for such a purpose as that of defeating an impeachment; but we think the Duke of Wharton's account of the matter, which bears the impress of truth upon the face of it, completely justifies him from the charge of resorting to shift or subterfuge on the occasion. From this statenent it appears that the king sent

for Lord Finch, and commanded him to put the great seal to the pardon, which was lying ready drawn up before him. The lord chancellor remonstrated, represented to his majesty that it was contrary to law to pardon a subject under impeachment, and finally, begged to be excused from compliance. Upon this the king called for the seals himself (which, it will be remarked, was in effect desiring the Chancellor to resign his office), and then caused the great seal to be affixed by another person. Immediately afterwards he handed them back to Lord Finch, with these words, "Take them, my lord, I know not where to bestow them better." Now, if there were the slightest ground for supposing that this was a preconcerted scheme on the part of Finch to escape responsibility, we should be very ready to admit that it would deserve to be stigmatised as a trick; but where no such probability appears, it must be allowed that the term is wrongly applied.

Whatever of interest had been taken by the other house of parliament, or by the nation, in the matter of Lord Danby's impeachment, very soon yielded to the all-absorbing excitement produced by the far-famed Popish Plot. That most disgraceful of all impostures ever palmed off upon the credulity of a people, was got up, as is well known, by Lord Shaftesbury, and the Whig party. We may therefore fairly presume Lord Chancellor Finch to have been all along entirely ignorant of the secret springs that set this notable state engine in motion. But though free from all suspicion of being a confederate in the contrivance, he has to share with many other not unwise nor inconsiderate men, the odium, or we should rather say the ridicule, of being made one of its dupes. This we learn upon his own shewing, from the speech he pronounced as lord high steward, in passing judgment upon the unfortunate Lord Stafford, whose death was one of the most impressive scenes of the dark tragedy. The speech Burnet considers to be one of the best he ever made; "but," adds the bishop, "he committed one great indecency in it: for he said, who can doubt any longer that London was burnt by papists? though there was not one word in the whole trial relating to that matter." This censure is no doubt just so far as it goes; but in our opinion this is not far enough; for it

should be applied also to the bigotry which must have overlaid and blinded his judgment, before he could give credence, not only to this fable, but, as appears from his speech, to the monstrous story also, by which the murder of Sir Edmondsbury Godfrey was accounted for; a tale certainly every way worthy that renowned Titus Oates—

> Whose memory, miraculously great,
> Could plots exceeding man's belief repeat;
> Which therefore could not be accounted lies,
> For human wit could never such devise.

For the rest, the full report of the lord steward's speech on this occasion (7th Dec. 1680), which was originally published in a single folio sheet, may be seen in the State Trials. We are told by Evelyn, that the sentence of death by hanging, drawing, and quartering, was pronounced "with greate solemnity and dreadful gravity." The doubt afterwards raised in the House of Commons by Lord William Russell, as to the king's power of dispensing with any of the truly barbarous tortures superadded by the law in cases of high treason to the common mode of capital punishment, and the petition thereupon presented to the lords by the sheriffs of London (one of whom was Slingsby Bethel, the Shimei of Dryden's Absalom and Achitophel), sufficiently shew the feeling that existed against the unhappy victim of popular delusion and bigotry*.

A few months after the trial of Lord Stafford, the Chancellor took that title by which he has since been most generally known: he was created (May 12th, 1681) Earl of Nottingham. This elevation of rank, however, came too late for him to indulge in the prospect of long enjoying it. He was by that time sixty years of age, and besides the infirmities commonly incident to that period of life, his health suffered from habitual attacks of gout. So frequent latterly

* It is a curious fact, that one of the managers on the part of the Commons at this trial was Serjeant Maynard, then near eighty years of age, who had been concerned in prosecuting the impeachment against Lord Strafford forty years before, and who lived long enough to compliment William the Third on his accession to the throne.

were the visitations of this malady, that although he never abstained, but in case of absolute necessity, from the assiduous discharge of his official duties, and very often used to sit hearing petitions when in extreme bodily pain, and as he himself used to say, fitter for his chamber than for a court of justice; yet it was found expedient to have a commission always kept ready in the House of Lords for the appointment of a temporary speaker, in the event of his not being able to attend. His place on such occasions was taken by North, chief justice of the Common Pleas, who, on his resigning the post of attorney-general, had succeeded to it by his recommendation, and who afterwards became lord keeper. How fast his health was declining, and how often the state of it obliged him to be absent from the Court of Chancery, may be inferred from the falling off in point of number of the cases reported in his manuscripts. The month of July following his promotion in the peerage contains only seven, in November of the same year there are but five, in February, 1682, only three, and from that till May there is a perfect vacuum. We find, however, three so late as November of that year, the last of which was decided within a month and a few days of his death. He breathed his last at his house in Queen Street, Covent Garden, on the 18th of December, 1682, being then in the sixty-first year of his age. His remains are interred in the parish church of Raunston in Buckinghamshire, where a splendid monument was afterwards erected to his memory by his eldest son.

It is not to be expected that we should have much to tell of Lord Nottingham's private life. His wife died about seven years before him. With her we are assured he enjoyed entire domestic happiness, which (unless a man have such a biographer as fell to the lot of his successor on the bench) is nearly the same thing as to say, that there was little or nothing about his domestic affairs likely to attract particular notice; and lucky might the husband of Charles's court consider himself, of whom this could be said. Generally speaking, indeed, the even tenor of a quiet domestic life leaves no trace behind it, whereas household misfortunes of every sort and degree have a tolerable chance of being observed upon. An illustration of this, in the case of Lord Nottingham, may

be found among the important events recorded by Anthony Wood, in his diary. In the very same page of that precious work where the worthy antiquarian transmits to posterity a full account of the terrible effects produced by a vomit he thought fit to administer to himself, the world is informed, that on the 7th of November, 1677, "about one in the morning, the Lord Chancellor Finch his mace was stole out of his house in Queen Street. The seal laid under his pillow, so the thief missed it. The famous thief that did it was Thomas Sadler, soon after taken and hanged for it at Tyburn." We are happy in being able to state that, for any thing we can learn, his lordship's life was not on any other occasion embittered by the occurrence of a calamity so worthy of record as this. The fortune he inherited from his father was large, and he had increased it by his professional gains: so that he could afford to be generous, even to the sovereign, to whom he latterly gave up the stipend of four thousand a year, allowed for the tables and other expenses of the Chancellor. He had no scruple in receiving it at first, he said, because it might be considered as an equivalent for the loss he sustained by giving up his practice at the bar; but having enjoyed it long enough to compensate him for this, he declined accepting it any more, and suggested that his majesty might find the sum thus returned convenient for his own royal occasions. Charles the Second was not a man on whom a hint of this kind was likely to be thrown away.

Besides the reports and other unpublished works of Lord Nottingham's already mentioned, there is a treatise frequently referred to by him as "mon vade mecum de Prerogativa." His short notes to Coke on Littleton are probably familiar to all who are likely to read this memoir, as being contained in the edition of Hargrave and Butler. There are also several minor works that bear his name. These are speeches and discourses in the trial of the judges of king Charles I.; speeches to both houses of parliament, 7th January, 1673, &c.; speech at the trial of Viscount Stafford; answers by his majesty's command upon several addresses presented at Hampton Court; and arguments in chancery in the case of Howard v. the Duke of Norfolk. These may be so far said to be his own performances, that they are all originally and intrinsically his,

though probably not entirely in their present form. There is one very able pamphlet, however, which has been printed from his own manuscript. It is entitled "A Treatise on the King's power of granting pardons in cases of impeachment," and was written, as his son informed Mr. Speaker Onslow, on the occasion of the question being mooted in the affair of Lord Danby. This manuscript was sold among the collection of Mr. Carteret Webb, and came, we believe, into the possession of the Marquis of Lansdowne. It was particularly alluded to in parliament, at the time of Warren Hastings' impeachment; and in a debate in the House of Lords, some doubts were expressed as to its authenticity, because in sections 61, 62, and 63, the author maintains a doctrine different from that which he is reported to have delivered in the case of Lord Stafford. Mr. Hargrave had seen the pamphlet, and to remove all doubts, it was published in 1791. If we except two speeches and one official letter of Lord Nottingham's in the Harleian manuscripts, and various other loose reports of speeches contained in different works, these are, so far as we know, all the productions attributed to him as directly or indirectly their author.

Out of fourteen children, Lord Nottingham left behind him eight; one daughter and seven sons. Of these, the eldest, Daniel, succeeded to his father's title, and on the failure of issue in the elder branch of the Finch family, took also those of Earl of Winchelsea, and Viscount Maidstone, with the large possessions thereto attached. There was a younger son who followed the law with some reputation; but the second, Heneage, also a barrister, almost rivalled his father in the brilliancy and success of his professional career. A natural gift of eloquence was held, it seems, at that time, to be an hereditary talent in the Finch family; for North, in his discourse on the study of the laws, where he is expatiating on the necessity of a lawyer's endeavouring to acquire readiness of speech, after quoting the familiar saying of Serjeant Maynard, that the law is *ars bablativa*, adds that "all the learning in the world will not set a man up in bar practice without the faculty of a ready utterance; and that is acquired by habit only, unless there be a natural felicity of speech, such as the family of the Finches is eminent by." This reputation was not only well kept up,

but considerably added to by Heneage Finch, the second son of the chancellor. He was called, for his eloquence, silver tongued Finch; and this qualification, together with his legal learning, so effectually "set him up in bar practice," that he was considered fit to hold the office of solicitor-general shortly after his father was appointed Chancellor (1678). From this post he had the honour to be removed by James the Second, in 1686. In 1688 he was one of the principal counsel for the seven bishops. Subsequently, during the reign of Queen Anne, (15th March 1702) he was called to the upper house by the title of Baron Guernsey, and on the accession of George the First was created Earl of Aylesford (19th October 1714); thus attaining the same rank which his father had acquired in the peerage, and completing the list of the eminent men who have made the name of Finch so honourably conspicuous in our legal annals of the seventeenth century*.

* In one of the caustic notes written by Swift on the margin of Burnet's History, Lord Aylesford is designated as "an arrant rascal." If Swift's character stood as high for impartiality as for wit, this imputation would be a serious one: as it is, it only proves that Aylesford was a staunch whig, and therefore obnoxious to a man who, like all renegadoes, was more violent in behalf of his new faith than those who had professed it all their lives. Besides the five eminent Finches we have enumerated above (not including Francis, the younger son of the Chancellor), we find a Nathaniel Finch called to the degree of serjeant at law in 1640.

SIR JOHN HOLT.

If we were to admit the general truth of an observation often made, that the biography of a lawyer, however eminent, unless he have also won his way to political distinctions, and bequeathed his fame to posterity as a statesman or an orator, cannot be expected to afford much of interest for the general reader; it is at least subject to some striking exceptions, one of which presents itself in the instance of the illustrious judge of whom we are about—it may be said for the first time—to collect the scattered notices. Although disconnected by his station and duties, during the greater part of his mature life, from any direct interference in the conflict of politics, and undistinguished by any brilliancy of oratorical talent, the Lord Chief Justice Holt filled his high office so long and so worthily, and in times when the bold and honest administration of justice, above all of criminal justice, was so intimately essential to the welfare of his country, and so contrary, unhappily, to the melancholy experience of many years;—he presided on so many occasions most interesting to every student of our constitution;—finally, his personal character and history presented so many points, not only to excite the admiration and respect, but also to minister to the curiosity and even amusement of the reader,—that the narrative of his life can hardly be altogether unattractive to any, who look back with gratitude on the period when their country's liberties, so long the spoil of pensioned kings and servile judges, first found the security, not only of just and equal laws, but of an incorrupt and fearless application of them. To legal readers, at all events, it may furnish matter of interesting contemplation to trace the

pure and honourable career of one of the most learned and virtuous of their profession, even, as we hope, in so brief and imperfect a record as we are able to present of it.

John Holt was born at the little market-town of Thame, in Oxfordshire, on the 30th of December, 1642. He was the eldest son of Sir Thomas Holt, knight, a bencher of Gray's Inn, and a gentleman of some property in Oxfordshire, who was called serjeant in the year 1677, rather, as it would seem, in virtue of his son's reputation and practice, which had then become very extensive, than of his own, of which few traces are to be discovered. Sir Thomas was a fast adherent of the court-party of Charles II., and one of the *abhorrers* of petitioning for the sitting of parliament, who fell under the displeasure of the Commons in the unruly session of 1680. The son, after spending seven or eight years, unprofitably enough, at the free school of Abingdon (his father being at the same time recorder of that borough), was transferred, in his sixteenth year, as a gentleman commoner to Oriel College, Oxford, where he was placed, as Anthony Wood informs us, under the tuition of a Mr. Francis Barry. Of the tutor's qualifications we have no account; but the pupil, who had brought with him from school the reputation of a determined idler, and a reckless perpetrator of mischief, was by no means estranged from his disposition to forbidden gratifications, by the greater opportunities of indulgence afforded by a university life; and he is reported, accordingly, to have signalised himself by an abandonment to all kinds of license, and continual infractions of discipline. To such a length, indeed, did some of his *escapades* proceed, and so little consideration did he exercise in the choice of his associates, that tradition even reports him as having recognised, many years afterwards, one of his old companions in a prisoner convicted before him of felony; and, on visiting the culprit in gaol, and inquiring the fate of certain of their college intimates, having received for answer,—"Ah, my lord, they are all hanged but myself and your lordship!"

Another story of his juvenile extravagances, which perhaps has been too long current to be set down as altogether apocryphal, is supplied with a more extraordinary sequel in his judicial history. Having prolonged one of his unlicensed

rambles round the country, in company with some associates as reckless as himself, until their purses were all utterly exhausted, it was determined, after divers consultations how to proceed, that they should part company, and try to make their way singly, each by the exercise of his individual wits. Holt, pursuing his separate route, came to the little inn of a straggling village, and, putting the best face upon the matter, commended his horse to the attentions of the ostler, and boldly bespoke the best supper and bed the house afforded. Strolling into the kitchen, he observed there the daughter of the landlady, a girl of about thirteen years of age, shivering with a fit of the ague; and on inquiring of her mother how long she had been ill, he was told, nearly a year, and this in spite of all the assistance that could be had for her from physicians, at an expense by which the poor widow declared she had been half ruined. Shaking his head with much gravity at the mention of the doctors, he bade her be under no further concern, for she might assure herself her daughter should never have another fit: then scrawling a few Greek characters upon a scrap of parchment, and rolling it carefully up, he directed that it should be bound upon the girl's wrist, and remain there till she was well. By good luck, or possibly from the effect of imagination, the ague returned no more, at least during a week for which Holt remained their guest. At the end of that time, having demanded his bill with as much confidence as if his pockets were lined with jacobuses, the delighted hostess, instead of asking for payment, bewailed her inability to pay *him* as she ought for the wonderful cure he had achieved, and her ill-fortune in not having lighted on him ten months sooner, which would have saved her an outlay of some forty pounds. Her guest condescended, after much entreaty, to set off against his week's entertainment the valuable service he had rendered, and wended merrily on his way. The sequel of the story goes on to relate, that when presiding, some forty years afterwards, at the assizes of the same county, a wretched decrepid old woman was indicted before him for witchcraft, and charged with being in possession of a spell which gave her power to spread diseases among the cattle, or cure those that were diseased. The Chief Justice desired that this formidable implement of sorcery might be handed up to him; and there,

enveloped in many folds of dirty linen, he found the identical piece of parchment with which he had himself played the wizard so many years before. The mystery was forthwith expounded to the jury: it agreed with the story previously told by the prisoner; the poor creature was instantly acquitted, her guest's long-standing debt amply discharged,—and, it is added, this incident came so opportunely to the discomfiture of ignorance and bigotry, as to put a final end to prosecutions for witchcraft in that part of the country.

Such being the character of the young gownsman's associations and pursuits, it soon became evident that the fetters of university discipline were far too weak to retain him within due restraint, and that the only chance of effecting this was by bringing him within the immediate sphere of parental admonition and control. At least we may reasonably attribute it to this cause, that before he had completed his first year of residence, he was finally removed from the university, and became a resident student of Gray's Inn, on the books of which society he had been entered before he was ten years old (19th Nov. 1652). Here his studies were necessarily to be prosecuted under the daily tutelage and supervision of his father; and whether the paternal admonitions, or the absence of temptation and dissolute acquaintance, wrought the change, it is certain that the irregular habits he had indulged in at college did not long cleave to him, and that he became, even while yet very young, as much distinguished for industry and application, as he had been for a thoughtless waste of time and talents. We may observe, however, that he scarcely appears ever to have adequately supplied the deficiency of classical and scholastic knowledge, occasioned by the mis-spent years and neglected opportunities of boyhood.

On the 27th of February, 1663, he was called to the bar. Entering, as he did, the profession without any of the recommendations derived either from influential connexions, or from a high university reputation—which at that day carried with it much greater weight than at present,—he seems to have passed even more than the usual period of probationary expectation, before his assiduity began to be repaid by any share in the substantial rewards of professional labour. It is not, indeed, until about the year 1676 that his name occurs

at all frequently in the reports. After that period he grew almost at once into extensive and profitable employment. A glance into any of the reports which give the names of counsel, (as Shower, Raymond, or Skinner), or through the State Trials, during the last ten years that preceded the Revolution, will shew at once the great extent and first-rate character of his practice. Scarcely an argument of any importance occurs in the King's Bench or Exchequer, which is not illustrated by his learning and research;—scarcely a cause of any weight between the crown and the subject, in which his zeal and talent are not called into exercise on behalf of the accused. Attached from his youth, although without intemperance or bigotry, to the principles and party which sought to secure the maintenance of Protestantism and civil freedom against the treacherous encroachments of an unprincipled court,—for his father's precepts and example, if they reclaimed him to sobriety of conduct, had not succeeded in making him a convert to the excellences of prerogative,—he was not likely to be selected by the court as one of its instruments, in the prosecution either of its own victims, or of those which it basely yielded up to the hoodwinked rage of popular delusion. In 1680, we find him assigned by the House of Lords as counsel for three of the five Popish peers impeached of treason (Lords Arundell, Bellasyse, and Powis); on whose behalf, however, his services were not ultimately required, Lord Stafford alone being brought to trial. He had been also, in conjunction with Saunders and Raymond, named counsel for Lord Danby on his abortive impeachment in the preceding year. Our readers need not be informed, that at the period of which we speak the law denied to prisoners accused even of treason the open advocacy of counsel on their trials, except upon such matters of law as the court considered disputable, when it assigned them counsel to argue on their behalf. Hence doubtless it is that Holt is not recorded as appearing for any of the less illustrious victims of the Popish Plot, by many of whom it is probable he was privately retained and consulted. When that notable engine of faction began to fall into comparative disrepute, and the chief justice Scroggs, turning with the tide of opinion at Whitehall, and venturing at length to scatter a little soil upon the hitherto sacred char-

acters of those "arch-attestors for the public good," Oates, Bedloe, and the rest, came to be reflected on as a secret abettor of popery and massacre, we find Holt employed as junior counsel to Jefferies, then Recorder, in support of a criminal information against the libellers; the only occasion, we believe, on which he appeared for the crown in any state prosecution. About the same time, he was assigned counsel in defence of a party indicted for a conspiracy to scandalise the testimony of the same "famous cloud of witnesses." In almost all the other prosecutions that arose out of the contest of parties in the latter years of Charles II.'s reign, and that are recorded in the State Trials, he is to be found engaged in opposition to the court interest. In 1683, he was assigned, with Pollexfen and Ward (afterwards his colleagues on the bench as Chief Justice of the Common Pleas and Chief Baron of the Exchequer), as counsel for Lord Russell, to argue his legal objection to the sufficiency of a juror for want of the requisite freehold qualification. Their argument embraced two positions; first, that this was a qualification necessary at common law; or, secondly, that it was at all events required by the statute of 2 Hen. V. c. 3: the former, although it was then overruled by the unanimous opinion of the Court (consisting of at least eight judges, and some of them certainly among the least corrupt of that disgraceful period), had been admitted only two years before, on the trial of Fitzharris, the same judge (C. J. Pemberton) presiding as on the present occasion;—to the latter it was answered, that the statute of Henry V. was repealed by the 1 & 2 Philip and Mary, which directed trials for treason to be according to the course of the common law; an opinion which all the highest authorities on criminal law since the Revolution have concurred in pronouncing, as it was afterwards declared by the legislature, unquestionably erroneous.

Of the important cases involving private rights, or at least less directly connected with political disputes, in which Holt was employed as counsel, we may mention the "Great Case of Monopolies," as it was termed (East India Company v. Sandys); the question discussed in it being, the right of a private trader to carry on commercial intercourse with the East Indies, notwithstanding the exclusive privilege of trading

granted by the letters patent of Charles II. to the company. One of his arguments in support of the monopoly was a singular one enough—that the king's subjects had no legal right to hold intercourse of any kind with *infidels*, without express license from the crown: for which he adduced the expression of Lord Coke in Calvin's Case, that "infidels were perpetual enemies," and cited scriptural authority into the bargain:—"We read how the children of Israel were perverted from their religion by converse with the nations around about them, in the Book of Judges." How the king's grant was of force enough to save his subjects from the perils of idolatry, the argument did not proceed to explain. "I confess," said Sir George Treby, who argued for the defendant, "I did a little wonder to hear merchandizing in the East Indies objected against as an unlawful trade, and did not expect so much divinity in the argument. I must take leave to say, that this notion of Christians not to have commerce with infidels is a conceit absurd, monkish, fantastical, and fanatical." Mr. Holt, however, well knew before what tribunal he was arguing; this absurd and fanatical conceit was seriously taken up and strongly pressed by Jefferies, who had become Chief-Justice before the cause was finally determined (for, according to the fashion of that day, it was argued three times, by three different sets of counsel). We cannot resist the temptation of transcribing from the judgment one or two rich samples of Jefferies's commentaries on government, and notions of commercial policy. One of the defendant's counsel had ventured on a very tender ground of argument in those days—the danger of entrusting the crown with a prerogative of granting exclusive commercial privileges, which might be exercised to such an extent as to annihilate the foreign commerce of the country altogether. It needed no more to blow his lordship's loyal zeal into a flame. "The very objection," says he, "seems to carry an unsavoury as well as unreasonable mistrust in a subject of his prince; for, as it is a maxim in our law that the king cannot be presumed to do wrong, so I am sure the constant practice of our present king has not given us the least umbrage for such diffidence; [this, be it remembered, was in the very same year with the paternal monarch's quo warrantos;] and I think I may truly say, we are as safe by our prince's own

natural inclination as we can be by any law in this particular. . . . . And as it is against his inclination, so certainly it is against his interest, to make such grants as the defendant's counsel seem to fear: for it is more for the king's benefit than it can be for his subjects', the greater the importation of foreign commodities is, for from thence arise *his* customs and impositions, those necessary supports of the crown; and therefore, in some sense, the king is the only person concerned in this question; for this island supported its inhabitants in many ages without any foreign trade at all, having in it all things necessary for the life of man. *Terra suis contenta bonis, non indiga mercis*, says the poet; and truly I think, if at this day most of the East India commodities were absolutely prohibited, though it might be injurious as to the profit of some few traders, it would not be so to the general of the inhabitants of this realm." It had been said also for the defendant, that the magnitude and difficulty of the question might render it expedient to refer it to a parliamentary decision. This was an insinuation, Jefferies declared, not to be passed by without observation. "God be praised," he exclaims, "it is in the king's power to call and dissolve parliaments when and how he pleases; and he is the only judge of those *ardua regni* that he shall think fit to consult the parliament about. And Mr. Williams would do well to save himself the trouble of advising the king of what things are fit for him to consult with his parliament about, until such time as he be thereunto called. But it hath been too much practised at this and other bars in Westminster Hall of late years, to captivate the lay-gens by lessening the power of the king, and advancing, I had almost said, the prerogative of the people."—It need scarcely be added that the judgment of the Court was unequivocally pronounced in favour of the company.

Another case in which Holt was counsel about the same time, and to which we may refer as involving a question of much general interest, was that of the Earl of Macclesfield v. Starkey; an action for *scandalum magnatum* against one of the grand jury of Cheshire, who, in a *presentment* at the assizes,—one of the numerous effusions of loyal servility which marked that period,—had reflected upon the Earl and other

gentlemen of the county, who had signed a Whig address to their newly-elected members, as promoters of schism, disaffection, and sedition. The case for the defendant was rested, in Holt's elaborate argument, upon the grounds, that this was a proceeding in a course of justice, before a competent judicature, by persons having a constitutional right to entertain it; and that the causes and matters alleged in the presentment were such as would have justified the grand jury in requiring that the parties charged by it should find security for the peace. Among the documents relating to the case printed in the State Trials, there is a sort of running commentary on his argument, apparently the production of the noble plaintiff himself; depreciatory enough throughout, and closing with this complimentary piece of general criticism;—"Mr. Holt useth a multitude of words, but comes not to the merits of the cause, but touches it as an ass mumbles thistles." The Court, fortunately, was not so hard to satisfy, and gave judgment without difficulty in favour of his client.

It was not until some time after the accession of James II. that Holt, pre-eminent as his legal reputation had long been, received any promotion at the hands of the government, to which his political opinions and independent spirit were doubtless equally unacceptable. In February 1685-6, on the promotion of Sir Thomas Jenner, the Recorder of London, to the bench of the Exchequer, the vacant office, which by the recent judgment in *quo warranto* had fallen to the disposal of the crown, was conferred upon him, and with it the honour of knighthood. Having held the opinion that this judgment was valid in law, so far at least as to vest in the crown the franchises of the corporation, although not to extinguish the corporate capacity, he did not scruple to accept the appointment. Not long afterwards (April 23, 1686), he was called, with nine other members of the bar, to the degree of the coif. The motto inscribed upon their rings,—*Deus, Rex, Lex*,—is noticed by Bishop Kennett as being honourably distinguished from the badge of servility adopted on the last previous occasion of the same kind, when the learned serjeants, with their motto of *A Deo Rex, à Rege Lex*, had in so many words set up the king as supreme and sole dispenser of and *with* the laws. At the same time, "to give the reputation

of law to the court," says the bishop, Sir John Holt was appointed one of the king's serjeants. His office of Recorder, however, he retained but for a very short period. Towards the close of the same year, the infatuated monarch began his practices for possessing himself of the dispensing power; and if he found it necessary for his purpose to clear the bench of justice of many whom he had hitherto found ready and pliant instruments of despotism, it was little likely that he should expect to succeed with a spirit so independent and uncompromising as that of Holt. He was at once, therefore, displaced from the recordership, which was given to a certain Serjeant Tate; a more manageable official no doubt, though considerably less known to fame. Roger Coke, however, in his "Detection of the Court and State of King James II.," attributes Holt's removal to the same cause for which the judges Herbert and Wythens were hurried from their seats in the King's Bench,—the refusal to construe the statute of Edward III. against desertion, to extend to the standing army which James had illegally raised in time of peace, and in which he was speedily doomed to find that he had called into existence the chief instrument of his own overthrow. It has been said erroneously that Holt was "put out of all his employments;" that he retained his promotion of King's serjeant is certain from the fact, that he is named as being present in that character at the investigation which took place before the Privy Council, in June 1688, into the circumstances of the birth of the infant heir apparent, as to whose legitimacy such strange suspicions were afloat. The second Lord Clarendon, too, who was engaged at the same period in a protracted suit with the Queen Dowager, Catherine of Braganza, and complains pitifully of the extortions of his counsel, and the practices at court to defeat his claim, tells us in his Diary that he applied to Sir John Holt, amongst others, to hold a brief on his behalf, which he was prevented from doing by a prohibition from the crown,—pledging himself at the same time not to accept a brief on the other side; a piece of honourable dealing which his lordship rather ungratefully repays, by declaring, under nearly the same date, that the only honest lawyers he had met with were Roger North and Sir Charles Porter; both, like himself, thoroughpaced Tories, and one

of whom at least, if candour and veracity make any part of honesty, had but an indifferent claim to the distinction. It is most probable that Holt was precluded by a similar prohibition from appearing on behalf of the seven bishops, who would otherwise scarcely have omitted to secure the assistance of an advocate, in whom, with pre-eminent legal talents, they knew to be united a zealous attachment to the cause for which they were in jeopardy, and a constitutional intrepidity which would assure them of the fearless and efficient discharge of his professional duty. It will be observed, on reference to the report of the case in the State Trials, that of the seven counsel who appeared for the bishops, there was not one who held professional rank under the crown; nor, on the other hand, is Sir John Holt to be found among the counsel in support of the prosecution.

But the period had arrived when a great change was to pass upon all the institutions of the land. Within six months from the remarkable event we have just adverted to, the Revolution was virtually consummated. On the first assembling of the Peers, in December 1688, and again on the meeting of the Convention in January, Serjeant Holt was one of the eminent lawyers selected as legal assessors to the Lords, in the room of the judges, whose official functions had ended with the flight of their misguided sovereign, and whose character and opinions commanded little respect or authority in themselves. In a very few weeks afterwards, he was elected into the lower House for Beeralston, in the place of the veteran Serjeant Maynard, who had been returned also, and made his election to sit, for Plymouth. He was immediately added to the committee appointed to manage the conferences with the Lords, respecting the vacancy of the throne and the declaration of rights; and his argument on the nature and consequences of an *abdication* by the sovereign—that knotty question of words which seemed about to involve the settlement of affairs in a protracted dispute at the very outset,—is extant in a report more full and correct than is to be found of almost any other parliamentary proceedings of that time. After justifying the use of the word "abdicated," as one of known and determinate signification in the language, although it might not have acquired any definite place in *legal*

terminology, he passed to the broader principle for which the Commons contended: that the withdrawal of the sovereign, leaving the administration of government unprovided for, amounted to an express and absolute renunciation of the sovereignty; was an act, therefore, of *abdication*, not merely of *desertion*. "The government and magistracy," he said, "is under a trust, and *any acting contrary to that trust* is a renouncing of the trust, though it be not a renouncing by formal deed; for it is a plain declaration by act and deed, though not in writing, that he who hath the trust, acting contrary, is a disclaimer of the trust; for how can a man, in reason or sense, express a greater renunciation of a trust than by the constant declaration of his actions to be quite contrary to that trust? This, my lords, is so plain, both in understanding and practice, that I need do no more but repeat it again, and leave it with your lordships, That the doing an act inconsistent with the being and end of a thing, or that shall not answer the end of that thing, but quite the contrary, that shall be construed an abdication and formal renunciation of that thing." Whether these are propositions which can, consistently with any monarchical system, be maintained *totidem verbis* as they are here enounced, may possibly admit some question: perhaps the more correct view of the case is that in which the arguments of the Whigs are summed up by Burnet,—that a man was rightly said to abdicate, who did anything *upon which his leaving his office ought to follow*. But these are critical disquisitions rather beside our present purpose.

The only other occasion on which the Parliamentary Reports make any mention of Sir John Holt, during the brief period that he continued a member of the House of Commons, is in the course of the often agitated debates on the continuance of the royal revenue; but the notes preserved of his speeches are so meagre as to be hardly intelligible. The throne had now been filled for some weeks, but the administration of justice was not yet provided for. The delay arose from the laudable desire of filling the judicial offices as well and worthily as possible. Every privy councillor was directed to bring a list of twelve whom he considered best fitted by learning and integrity to supply the vacant seats, and from a

comparison of these lists the twelve judges were nominated. "The first of these," says Burnet, "was Sir John Holt, made Lord Chief Justice of England, then a young man for so high a post [he was in his forty-seventh year;] who maintained it all his time with a great reputation for capacity, integrity, courage, and great dispatch; so that, since the Lord Chief Justice Hale's time, that bench has not been so well filled as it was by him." The colleagues given him in the King's Bench were Sir William Dolben, who had been removed from the same seat in 1683; Sir William Gregory, whom his conscientious opposition to the dispensing power had expelled from the bench of the Exchequer; and Sir Giles Eyre, whose brother and nephew also afterwards attained judicial rank. He was sworn into office on the 19th of April, and took his seat on the first day of Easter term, May 4th, 1689. In the August following, he was admitted to a seat in the Privy Council.

To consider the Lord Chief Justice Holt, in the first place, in that character wherein his merits were most beneficially conspicuous, and the contrast he exhibited to the misdeeds of his predecessors most striking—as the supreme dispenser of criminal justice,—it is not too much to affirm, that to his appointment, more than to any other single circumstance that can be named, even amid the general amelioration in government, and in the national institutions and feelings, introduced by the Revolution, is to be attributed the essential improvement, not only in the practice of our criminal jurisprudence, but in the spirit and temper with which it was administered, and which from that period has continued more and more to distinguish and adorn the judicial bench of England. He brought to the exercise of his high functions, not only learning, integrity, and a masculine and discriminating understanding, from which fallacies and sophistry glanced off like the arrow from the polished cuirass, but with them an immoveable courage, and a compassionate patience towards the accused—not merely in ordinary cases, but in those also in which the government was most deeply interested to convict,—which, while it never compromised the dignity of justice, presented a noble contrast to the intemperance, brutality, and even vulgar ribaldry, that disgraced the criminal

trials of the preceding reigns. Nor was the nation more fortunate in the virtues of this admirable magistrate, than in the long duration of his services and example. During the period of twenty-eight years from the Restoration to the Revolution, no fewer that eleven chief justices (and puisne judges almost innumerable) sat in the Court of King's Bench,—as many as have filled the same seat from the Revolution to the appointment of its present occupant: as well promoted as removed, in most instances, for reasons equally disgraceful to the government and to themselves. Sir John Holt retained his office for twenty-one years; a period long enough so to familiarise the nation with the exercise of justice in mercy, that succeeding judges dared hardly depart from that pure standard had they wished. Irregularities and defects continued, no doubt, to disfigure for some time the proceedings of our criminal courts: the practice of interrogating prisoners on their trials was not altogether disused, although employed rather for the purpose of reminding them of the main points to which their defence should be addressed, than of convicting them by their own admissions or equivocations—the common resort of Scroggs or Jefferies in a doubtful case; too much weight was still conceded to the unconfirmed testimony of accomplices*; hearsay evidence was still mixed liberally with legal proof, and left to be disengaged from it by the summing up of the judge; the evidence for the crown was sometimes interposed and resumed in the midst of and after the prisoner's defence, with a want of regularity very prejudicial to the fair distribution of justice. Other disadvantages to which the law itself, for a considerable period, still subjected the accused,—depriving him of the open assistance of counsel or attorney, denying to his witnesses the equal title to credit derived from the obligation of an oath, and compelling him to gather the terms of the indictment,

* Thus, on the trial of Charnock, in 1696, Holt directs the jury that "accomplices are the *most proper* witnesses, for otherwise it is hardly possible, if not altogether impossible, to have a full proof of such secret contrivances. If they come in and repent, and give testimonies thereof *by discovering the truth*, (thus assuming the whole question of their credibility), great credit ought to be given to them." In that case, however, the approvers were confirmed in many points.

and the legal objections that might be made to it, by the imperfect hearing of it on his trial*,—these it did not belong directly to the authority of the judge, however impartial or humane, to obviate. But, on the other hand, we may notice, in the state trials immediately subsequent to the Revolution, some relaxations of practice in favour of the prisoners, even greater than perhaps might be deemed warrantable at the present day. Thus, on the trial of Sir John Friend for the assassination treason of 1696, a witness called by him was allowed to depose to a declaration of one of the crown witnesses that he was about to swear against his conscience, although the latter had not been at all examined to this point; and persons were admitted to speak to several of the witnesses against the prisoner, as being reputed papists. Lord † Holt repeatedly stated and acted upon the principle, now universally applied, but which had then been lamentably forgotten, that ambiguous acts or expressions should always receive the construction most favourable to the accused. But the vast improvement in the conduct of state prosecutions under his auspices, will be best shewn by contrasting one of the latest trials for treason in the reign of James II. (and that not before the blood-thirsty and ferocious Jefferies) with the first tried after the Revolution (the first, at least, which is reported at length), that of Lord Preston and his co-conspirators in 1690.

Goodenough, the seditious under-sheriff of London in 1680, who had been deeply engaged in the Rye-house conspiracy and also in Monmouth's rebellion, being taken prisoner after the battle of Sedgemoor, purchased his own worthless life by an accusation of Alderman Cornish, whose politics and person he knew to be very obnoxious to the Court, as having been a party to the former treason. The notorious

* The 7 W. 3, c. 3, first allowed the prisoner the benefit of a defence by counsel and a copy of the indictment before trial, in cases of treason; the 1 Anne, st. 2, c. 9, first provided that witnesses for the prisoner in treason or felony generally should be sworn. See 4 Bla. Com. 359.

† By this abbreviation of their title the chief justices were always distinguished before the last century. As applied to Holt, Hale, or Coke, we are still better accustomed to it than to their correct designations; but it sounds comical enough in "Lord Jones," "Lord Wright," or "Lord Scroggs."

Colonel Rumsey, who had made no mention whatever of Cornish in his former disclosures, an omission which he had now the effrontery to attribute to compassion, joined him in the accusation. The prisoner was brought to trial before Sir Thomas Jones, Chief Justice of the Common Pleas, and other Judges, amongst whom Wythens and Levinz made themselves most conspicuous, on Monday, the 19th of October, 1685. When called upon to plead by the Recorder, Sir Thomas Jenner (the Judges not having yet come in), he pressed for a postponement of his trial, on the ground that he had no notice of it until noon on the preceding Saturday, and no opportunity of consulting with counsel. "Nor ought," says Jenner, "without leave of the Court, or by his Majesty's special appointment." "My lord," urges the prisoner, "ought not I to have a copy of the panel? It is a thing never denied*." "It hath been denied very often," was all the answer vouchsafed by the Recorder. After some further parley, the prisoner was prevailed upon to plead; and the Judges being come in, he renewed his application for a postponement of the trial. "I do not come," he said, "to harangue and talk; my case was such that I had neither pen, ink, nor paper." He was told that he had no right to these either, without special order; and the application was again adjourned till the crown counsel should arrive, the Chief Justice saying, "You shall be heard in your proper time; it is a strange thing you will not be satisfied; you shall be heard, I tell you, in your proper time." After the trials of Mrs. Gaunt and others were over, he was set to the bar again, and repeated his request; but the Attorney-General "having no directions," the Court professed themselves unable to grant it without the consent of the crown†. The trial accordingly proceeds; he is now, when it could be of no use to him, allowed a copy of the jury panel: and the case for the prosecution having been opened by the Attorney-General as to be proved by the testimony of Rumsey and Goodenough, Cornish desires the two witnesses

* It had indeed been denied to Colledge, a few years before, but it was granted to Lord Russell, and most other state prisoners; after the Revolution it was invariably allowed.

† There can be no doubt the Court had a discretion to postpone the trial on the ground of the prisoner's not having had reasonable notice.

may be kept apart. "They will prove it upon you at two times," answers the Attorney-General. "You will find me guilty of neither," replies the prisoner; "I am as innocent as any person in this Court." The Attorney-General retorts upon him, "So was my Lord Russell to his death, Mr. Cornish; do you remember that?" Rumsey having given his evidence, swearing Cornish to have been present at a treasonable consult at Sheppard's house, when the seditious paper was read which was proved by him also against Lord Russell and Sidney,—and having varied most materially from his testimony on both those occasions*,—Cornish exclaimed, with some vehemence apparently, "I do declare I never was at Mr. Sheppard's at any consult in my life; but I have had great dealings with Mr. Sheppard." "Pray, sir," says the Chief Justice, "be not transported with passion: I doubt, before this time, notwithstanding the confidence you seem to have, there are few believe you to be as innocent as any person present."—"You will hear more from his oracle," says the Attorney-General;—meaning Goodenough, who had been Cornish's under-sheriff. Goodenough was then produced, and his pardon put in: and the prisoner observing, "I need not say anything against him; he is known well enough,"—was answered by Justice Wythens, "He was your under-sheriff, Mr. Cornish." The evidence of Goodenough, (the only witness produced besides Rumsey), went merely to prove a supposed conversation of his with Cornish, as to a design of seizing the Tower, entirely unconnected with the Rye-house conspiracy, and with the treason charged in the in-

* On Lord Russell's trial, Rumsey had stated that the seditious declaration supposed to be produced and read at Sheppard's, was so indistinctly heard by him that he could tell little of its tenor, and could not remember any particular passages. On Sidney's trial, he gave a list of all the persons whom he alleged to have been present when it was read, of whom Cornish was not one. On the present occasion, after a lapse of two years, he not only swore that Cornish was present, and assented to the design, but could recollect parts of the paper with precise accuracy. Cornish had offered to put in the printed report of Lord Russell's trial, to shew these inconsistencies; it was indeed properly rejected, but several of the judges had been present on the former trial, and must have well known what Rumsey then swore; but they breathed no word to his discredit.

dictment, to which therefore there was in fact one witness only. This objection, however, the prisoner, having been deprived of the opportunity of obtaining legal advice, was unable to avail himself of, and confined his defence to commenting upon the infamous character and motives of the witnesses and the gross improbability of their story. The Lord Chief Justice interrupted him to remind him that the only way to invalidate their testimony was to contradict them by witnesses—knowing that to be next to impossible. "The improbability is so manifest," urges the prisoner. The Chief Justice angrily rejoins, "Is it enough to say improbability, improbability, improbability—is that enough? Have you said any more?" Cornish thereupon proceeded to call several persons to depose to the animosity that had subsisted between him and Goodenough, and the reluctance with which he had admitted the latter into office as his undersheriff. These having been heard with great impatience, and repeatedly pronounced "impertinent," he then called witnesses to prove "the manner of his life and conversation." "Your life hath not been in the dark," observes the Chief Justice. "My lord," quietly replies the prisoner, "I will call several persons to attest my constancy at my parish church, and receiving the Sacrament according to the rites of the Church of England; that I am, to all appearance, a person that does as well affect the government as any man." Another sneer is the answer—"I doubt you are all appearance." He proceeds to call his witnesses; two or three having been examined, among whom was the celebrated Calamy (who deposed to Cornish's having been a regular communicant at the Sacrament for two years), the Chief Justice interrupts the examination to say, "Mr. Cornish, it is not impossible for you to produce men enough that shall say they know nothing against you concerning the government, and that you have been a loyal man; *sure those you choose will say so, you have chosen them;* and perhaps, if it were the business of the King's counsel, they could do contrary; you are not accused touching your general conversation, but concerning a particular fact. I marvel," he presently adds, "you, who have been an alderman yourself a great while, do not call some of the aldermen; I wonder you don't call some of your brethren

that are known persons." And to the testimony of the prisoner's receiving the Sacrament, the answer is immediately given, "To be sure; to get into your office you could lay aside your scruples, and receive the Sacrament." After some further interruptions, Cornish gave up the struggle. The Chief Justice then summed up the evidence with considerable unfairness, treating Rumsey and Goodenough as witnesses of perfect credibility, and representing the prisoner's witnesses as utterly irrelevant, and his own solemn asseveration of his innocence as perfectly nugatory. "Why," he says, "should Rumsey deliver this testimony, if it were not the testimony of his heart? and that which he says himself he had too long concealed out of the compassion he had for him." He takes not the slightest notice of the alleged inconsistencies in Rumsey's evidence at different times, or of the insufficiency of proof by two witnesses to sustain the indictment. The jury having been a short time absent considering their verdict, on their return, Cornish represented that he had omitted to call Sheppard, at whose house the treasonable consultation was alleged to have taken place, and who would contradict Rumsey in some material points. After a long parley, in the course of which he was repeatedly rebuked as "putting a mere trick on the Court and on the King's evidence," and insinuations were thrown out of his having practised upon Sheppard to get him out of the way of a crown subpœna, he was allowed at last to call him. Sheppard directly contradicted Rumsey as to the only fact which bore strongly against the prisoner in his evidence—that of Cornish's being present when the traitorous declaration was read; but because he agreed with the other witness in facts not disputed by either party, he was represented by the Court as strongly confirming the latter's credibility. As Mr. Phillipps well remarks*, "with just as much reason might it have been said on the other side, that Sheppard derived credit from the confirmation of Rumsey, as that any credit was reflected on Rumsey from the confirmation of Sheppard." More than once, when borne down by the angry rigour of the judges,

* State Trials Reviewed, vol. 2, p. 226. See also the spirited observations of Sir John Hawles on this trial, 9 How. St. Tr. 455.

the unhappy prisoner cried out, "Pray, my lords, do not be offended; my life will do you no good." And when brought up to receive sentence (for the verdict was of course secured beforehand), while entreating intercession with the King for mercy, he touchingly exclaimed, "I hope, when you come to reflect upon what hath been said to-day, that perhaps you will be of another mind, and have more charity for me than you had upon my trial." He was executed four days afterwards.

Such was the scene exhibited in the administration of justice between the crown and the subject, some three years only before the advancement of Sir John Holt. We turn from it to a very different picture.

Sir Richard Graham (a Scottish peer by the title of Lord Preston, and created an English baron by James II. after his abdication), Ashton, and Elliott, indicted for a treasonable conspiracy to restore the dethroned king by the aid of a French force, were tried at the Old Bailey, January 16th, 1690. The principal overt acts proved against them were the hiring and embarking on board a vessel for France, in the hold of which they were found concealed, and on the person of one of them (Ashton) papers containing unequivocal proof of their being engaged in the prosecution of schemes of a deeply treasonable character*. Holt, Pollexfen, and several other judges, were assembled for their trial. Lord Preston having first ineffectually urged his claim of peerage, next pressed for a copy of the indictment before pleading (which by the uniform course of the decisions it was clear could not be allowed him), and insisted that he was entitled to it under the statute of 46 Edw. III. which gave the subject the benefit of free access to records "whether they made for or against the King." The act not being in print among the statutes, an attested copy from the roll was sent for and read at the prisoner's request; and it was manifest that it had no application to the

* Roger North (Examen, 410) has the effrontery to adduce this case as a parallel one to that of Sidney, and as justifying the reception in evidence of *his* unpublished speculative treatise, written many years before, and having no earthly connexion with the treason for which he was tried; and indulges in some coarse exultation over Sir John Hawles for his supposed inconsistency in questioning the one case and prosecuting the other.

case, but related simply to records which might be made evidence of private rights. He continued nevertheless to urge the point just as strenuously as before; and expressing his fear of giving offence by his pertinacity, the Chief Justice replied, "My lord, nobody blames you, though your Lordship do urge things that are unnecessary or improper; and we shall take care that it shall not tend to your Lordship's prejudice. We consider the condition you are in; you stand at the bar for your life; you shall have all the fair and just dealings that can be; and the Court, as in duty bound, will see that you have no wrong done you." The prisoner next pleaded that he was not prepared for trial (he had had seven days' notice) and that his witnesses were not forthcoming. Pollexfen, the veteran "practiser in Hale's time," breaks out upon this with a flash of the old intemperate spirit. "The evidence that is to convict you," says he, "lies all on their side that are for the King, and I cannot imagine where your witnesses should be, unless they are in France." Holt, on the other hand, replies to the request with moderation and dignity; "If we had oath that they wanted material witnesses, and to material facts for their defence, that might be occasion for our further consideration; but shall we put off a trial on a bare suggestion of the want of witnesses, naming neither person, nor place, nor matter such witness should prove? Sure that was never done." The prisoners then pleaded, and as they insisted on the full benefit of their several challenges, it became necessary to try them separately*. Lord Preston was first put to the bar, and his trial proceeded. The identity of the papers produced in evidence with those found in the vessel (which had been taken before the Privy Council, and had passed through several hands) was disputed by the prisoner. Serjeant Thompson, one of the crown counsel, thereupon interrupts him—"My Lord, you are not to sum up the evidence to the jury till we have done, nor to make your observations." Against this interruption the Chief Justice takes the prisoner's part;—"Brother, my lord opposes the reading of the paper as not well proved." The objection, however, was very rightly over-ruled; and the case for the

* It is worthy of notice, that a juror was set aside on his own suggestion that he was not a freeholder.

prosecution and defence being finished, the Chief Justice began to sum up the evidence. Lord Preston interrupted him repeatedly while stating, which he did with perfect fairness, the evidence as to the ownership and identity of the treasonable papers. "Interrupt me as much as you please," he replies to one of the prisoner's apologies for doing so, "if I do not observe right; I assure you I will do you no wrong willingly."—"No, my lord," the prisoner could not help acknowledging, "I see it well enough that your lordship would not." Holt's summing up was indeed so temperate *, that Pollexfen thought it necessary to request leave to address the jury also, and pressed far more pointedly, and with all the usual garnish of a "bloody and horrid popish treason," and so forth all the strong points against the prisoner. When the jury were about retiring to consider their verdict, Lord Preston desired permission to speak again. "Your lordship," said the Chief Justice, "should have said what you had to say before; it is contrary to the course of all proceedings to have any thing said to the jury after the Court has summed up the evidence; but we will dispense with it; what have you to say?" The prisoner then made a fresh address of some length to the Jury, who however soon returned with a verdict against him. Ashton was next tried; and the case for the crown having been proved by the same testimony as the former, he called witnesses to attest his Protestantism and loyalty. One of them, a nonjuring clergyman, having spoken of him as a good Protestant and a quiet subject, was asked by Pollexfen, "Pray what have you heard him say concerning his affection to King William and Queen Mary?"—"I do not remember any thing of that," answers the witness. "Have you heard him say any thing to the contrary?"—"No, I cannot remember that." One of the Crown counsel, Serjeant Tremain, proceeded upon this encouragement to the still more unfair question, "What have you heard him say about his affection to King James?"—but at once received from the Chief Justice the rebuke which he had refrained from admi-

* It would appear from a passage, in which he speaks of having repeated the evidence as faithfully as his memory would serve him, as if he took no regular notes.

nistering to his brother on the bench:—"Do not ask him that, there may be a snare in that question." Upon the prisoner saying he had done, Holt reminded him of the most material fact proved against him (his importunity to have the papers thrown overboard), and said, "It seems material, and I would not have it forgot if you can answer it." Ashton's reply was equally honourable to the Chief Justice and to himself—"I humbly thank your lordship, and whatsoever my fate is, I cannot but own I have had a fair trial for my life, and I thank your lordship for putting me in mind." The prisoner was then subjected to some interrogation from the Court, obviously however with no unfair intention towards him, and in which the Chief Justice took very little part. He also was found guilty, and refusing to enter into any negotiation with the government, suffered according to his sentence: Lord Preston, who made a sort of half disclosure of the conspiracy, obtained a pardon.

It would be difficult, we think, for a judge of our own time to go much beyond the courteous and charitable forbearance displayed by Lord Holt on this occasion. We might multiply examples of the same kind. Thus, on Harrison's trial for the murder of Dr. Clench (1693), the crown counsel calling a witness to prove some felonious design of the prisoner three years before, the judge exclaimed indignantly, "Hold, hold, what are you doing now? Are you going to arraign his whole life? Away, away, that ought not to be, that is nothing to this matter." Again, on Cranburne's being brought to the bar to plead, in irons (1696), the Chief Justice, hearing the clank of the fetters, instantly, and without any application made to him, demanded why the prisoner was brought in ironed, and directed the keeper to take them off, "for they (the prisoners) should stand at their ease when they are tried." The keeper replied that he had no implements in court, on which he was ordered to send to the Gatehouse for them. After a short time spent in hearing some arguments as to the sufficiency of the indictment, an adjournment took place until the afternoon. "and in the meantime," repeats the Chief Justice as he goes out, "you keeper, knock off the prisoner's fetters." The merit of his conduct will appear the greater, when we recollect that it was not until the last year of William III.'s reign (12

& 13 W. III. c. 2) that the judges were rendered less dependent by law upon the crown than before, by having their commissions during good behaviour instead of during pleasure. Burnet tells us that it was owing to the representations of some of the judges, who thought it was not fit they should be out of all dependence on the court, that the king refused his assent to the bill which went to effect this salutary reform ten years sooner. We should find it difficult to believe that such advice could come from such a man as Holt; it was much more likely to proceed from the octogenarian Pollexfen, or the hackneyed politician Treby, if the bishop is right in affirming that it was given at all.

Lord Holt's exposition of the principles of the criminal law was no less sound, clear, and unprejudiced, than his administration of it was righteous and humane. He has indeed been censured as having put a strained construction on the Statute of Treasons, when he ruled, in Sir John Friend's case, that a conspiracy to levy war within the realm, without proof of any actual insurrection, was an overt act within the statute of compassing the king's death; and the historian Ralph goes so far as therefore to speak of him in such terms as these:—"The Lord Chief Justice Holt, who presided on this occasion, has in general the character of an upright judge; but almost all lawyers have narrow minds, and by the whole drift of their studies find themselves biassed to adhere to the king against the prisoners." But not to mention that this doctrine has been recognized and promulgated by all succeeding authorities, we may content ourselves with opposing to such censure the eloquent eulogy of Erskine, who, in his defence of Hardy, spoke of Lord Holt and his reading of the Statute of Treasons in very different terms:—"Gentlemen, Lord Holt illustrates this matter so clearly, that if I had anything at stake short of the life of the prisoner, I might sit down as soon as I had read it; for if one did not know it to be an extract from an ancient trial, one would say it was admirably and accurately written for the present purpose;" and then he proceeds to quote the commencement of the summing up in Friend's case, and to insist how much the proof against his client fell short of what the doctrine there propounded required to be made out against the accused. Another most important branch of

the criminal law—that relating to homicide—has also been admirably illustrated by the learning and sagacity of Lord Holt, whose exposition of it, in the cases of R. v. Mawgridge and R. v. Plummer, has received high praise from one of the greatest authorities that can be quoted on this subject—we mean Mr. Justice Foster. In the former case particularly, he enters with much reason and learning into the distinctions between the different kinds of felonious homicide.

It was during Sir John Holt's occupation of the bench, that the prosecutions for witchcraft—of which the piety and wisdom of Hale had not sufficiently enlightened him to discover the cruel and fanatical absurdity—began to fall into general discredit. Of eleven poor creatures who were tried before him for this supposed crime, notwithstanding all the accustomed evidence of fasting, vomiting pins, sucking imps, devil's marks, cures by pricking of the sorceress, and so forth, not one was convicted; a result, no doubt, mainly owing to the good sense and humanity of the judge. The prejudice and ignorance on which so many impostures had subsisted were after a while so far overcome, that in the year 1704, a fellow named Hathaway was brought to trial and convicted as a common cheat, for pretending to be bewitched by a poor woman, whom he had indicted for the crime at the preceding assizes. By a well-contrived scheme, the knavery of his pretences to a ten weeks' fast was discovered much sooner than, in our own time, it took many wise heads to detect a cunning impostor of the same description. Numerous witnesses, nevertheless, stoutly deposed to their assured belief that Mr. Hathaway's ailments—his expectoration of pins, his universal pains, his abhorrence of victuals—were all owing to the malignant influence of the witch. One of his witnesses, one Dr. Hamilton, whose faith seemed rather more staggering than that of the others, was first asked by the Chief Justice, "Doctor, do you think it is possible in nature for a man to fast a fortnight?" —To this the doctor could not but reply in the negative, and was then pressed with a more home inquiry—"Can all the devils in hell help him to fast so long?"—"Truly, my lord," replies the witness, "I think not." The jury were brought with very little difficulty to be of the same opinion, and Mr. Hathaway's conviction, and elevation to the pillory, appear to

have pretty well given the *coup-de-grace* to criminal accusations of witchcraft, of which we believe there were at most but one or two subsequent instances in England. The report of this case, in the fourteenth volume of the State Trials, is well worth the perusal of those who are curious in the history of human folly or fanaticism.

We observed in the outset that Lord Holt had little claim to distinction as an orator. In one case, however, which is to be found among the trials for treason in 1696, in passing sentence upon the prisoner (Mr. Knightly), who had pleaded guilty, he almost rises into eloquence. After expatiating on the enormity of the crime confessed by the prisoner, he concludes in these terms:—

"There being, then, nothing to be said that can palliate such a crime as that of which you are convicted, but you having taken a different course the last time you were at the bar from what you took at first, you have relinquished your plea of not guilty, and have confessed the indictment. I wish, out of charity to your person, this was as sincere as I think it was prudent; for after several convictions of others that were your accomplices, you could not be a stranger to the evidence upon which they were grounded; you must therefore, in all probability, have expected to have undergone the same fate. If your confession *be* a real effect of your repentance, you will have the advantage of it in the next world; what consequence it will have in this, I cannot say; 'for the heart of the king is in the hand of the Almighty, which, as the rivers of water, he turneth whithersoever he will.' Live therefore for the time to come in expectation of a speedy death, and prepare yourself to appear before another judgment-seat: to the making of which important preparation I shall dismiss you, first discharging the court of that duty now incumbent on it, in giving that judgment which the law hath appointed."

It was the fortune of the Lord Chief Justice Holt to be placed more than once in a position, in which the sincerity of his attachment to constitutional principles, and the personal intrepidity of his character, were tried by the strongest tests. For the independent courage with which he exercised his judicial functions, he became in turn obnoxious to both Houses of Parliament. Familiar as these passages of his history must

be to many of our readers, a narrative of his life would be most unjustly imperfect, in which they were not spoken of in something of detail.

Charles Knollys, claiming to be Earl of Banbury as heir to his father Nicholas (whose legitimacy was long disputed, and finally denied by a celebrated parliamentary judgment in our own time), was indicted as a commoner for the murder of Captain Lawson. The indictment being removed by *certiorari* into the King's Bench, the defendant pleaded misnomer in abatement, and set forth his title to the earldom. To this plea the Attorney-General replied, that the defendant had already petitioned the House of Lords to be tried by his peers, and that the House, according to the law and custom of parliament, had resolved that he had no right to the dignity of Earl of Banbury, and had dismissed his petition. The defendant demurred to this replication; and after the case had been depending for a considerable time, the Court, by a unanimous judgment, decided that the replication was no sufficient answer to the plea; the grounds of their determination, as disclosed in the elaborate judgment of the Chief Justice, being, that the defendant did not plead his plea before them to make out a title to the peerage, but simply by way of misnomer or abatement of the indictment; that the resolution of the Lords was not a *judgment* by the court of parliament, which consisted of King, Lords, and Commons, though the judicial power resided in the Lords: or if it was in form a judgment, the House of Peers had no jurisdiction of an original cause; there was no plea regularly depending before them as to the title to the earldom, which could be brought under their cognizance only by petition to the crown, referred by the crown to the consideration of the Peers; and that a peer did not, by submitting his trial to the House of Lords, thereby submit to them his title to the peerage. "The House of Peers," he admitted, "has jurisdiction over its own members, and is a supreme court: but it is the law which has invested them with such ample authority, and therefore it is no diminution to their power to say that they ought to observe those limits which this law hath prescribed for them, which in other respects hath made them so great." As to the averment in the replication, that the judgment of the Lords was "secundum legem

et consuetudinem," he said, "he did not know any reason for this allegation, which the king's counsel had inserted, if it was not to frighten the judges; but he did not regard it; for though he had all respect and deference for that honourable body, yet he sat there to administer justice according to the law of the land and according to his oath, and that he ought not to regard anything but the discharge of his duty; and as to the law and custom of parliament for the determination of inheritances, he knew not any but the common law of England, which is the birthright of every Englishman, and he would be glad to be satisfied by any man, if there be any such custom and law of parliament, where it is; for a *custom* ought to consist in usage, and he desired to see the precedent of such judgments; and as to the *law* of parliament, he did not know of any such law, and every law which binds the subjects of this realm ought to be either the common law and usage of the realm, or an act of parliament."

This judgment was resented by the House of Lords as an invasion of their privileges; the terms in which it was delivered were probably not less distasteful to them; and a committee having been appointed to consider Knollys's claim (which was afterwards regularly referred by the crown to the House), the Chief Justice was required to give an account of the proceedings in the King's Bench. He accordingly appeared before the committee (Feb. 5th, 1697), and it was demanded of him why the Court of King's Bench had thought fit to quash the indictment, after the determination of the House against the defendant's claim. His answer, marked with all the spirit and determination of his character, derived, no doubt, some additional pungency of expression from his recollection of the arbitrary inquisition to which, since the Revolution, several other judicial decisions had already been subjected in parliament:—"I acknowledge the thing. There was such a plea, and such a replication. I gave my judgment according to my conscience. We are trusted with the law: we are to be protected and not arraigned, and are not to give reasons for our judgment; and therefore I desire to be excused from giving any." Having thereupon withdrawn, and after a short time being called in again, he was asked whether he persisted in the answer he had given. He replied:—"I gave judgment as it appears upon the

record. It would be submitting to an arraignment for having given that judgment, if I should give any reasons here: I gave my reasons in another place at large. If your lordships report this to the House, I desire to know when you do so, that I may desire to be heard in point of law. This judgment is questionable in a proper shape; but *I* am not to be questioned for any judgments; I am not in any way to be arraigned for what I do judicially: the judgment may be arraigned in a proper method by writ of error. I might answer if I would, but I think it safest for me to keep under the protection the law has given me: I look upon this as an arraignment; I insist upon it, if I am arraigned, I ought not to answer." Mr. Justice Eyre, the only other surviving member of the Court who had concurred in the obnoxious judgment, was next called in, and answered to the same effect, although in terms much more humble and apologetic. The committee made a special report of these refractory proceedings, and the Chief Justice was summoned to answer for them to the House itself. He declared with as much boldness as before,—"I never heard of any such a thing demanded of any judge as to give reasons for his judgment. I did think myself not obliged by law to give that answer. What a judge does in open court, he can never be arraigned for it as a judge." Finding the *terrors* of their authority ineffectual, they tried to gain their point by assuring him that the inquiry was not at all intended as an accusation. He was no more to be cajolled than intimidated:—"I have other reasons to induce me not to comply," was his concise rejoinder. The House was now in vehement indignation; a day was appointed on which the two recusant judges were ordered to attend again, and with them a judge of each of the common law courts; and it was the subject of some angry debate whether the Chief Justice, the leader of this audacious resistance, should not be sent to expiate his contumacy in the Tower. Before, however, the day arrived for the further prosecution of the affair, the indignant peers, finding with what intractable materials they had to deal, had cooled into the discreet resolution of letting the whole business drop quietly into oblivion.

It was on a much more important occasion that Sir John Holt came into collision with the House of Commons—in the

memorable case of the Aylesbury burgesses, which gave birth to a whole campaign of hostilities between the two houses of parliament. The judgment in which, contrary to the opinions of the other three judges of his court, he asserted the right of an elector to claim damages at law, in an action on the case, against the returning officer who refused to record his vote, was, as is well known, solemnly affirmed in the House of Lords; and is familiar to almost every lawyer. We will extract from it only one or two passages which mark the masculine and independent tone of his opinions. "I am of opinion," he began, "that judgment ought to be given for the plaintiff. My brothers differ from me in opinion, and they all differ from one another in the reasons of their opinions. I will consider their reasons. My brother Gould thinks no action will lie, because the defendant, as he says, is a judge: my brother Powys, indeed, says he is no judge, but *quasi* a judge: but my brother Powell is of opinion, that the defendant neither is a judge nor any thing like a judge: and that is true, for he is only an officer to execute the precept." .... "First, I will maintain that the plaintiff has a right and privilege to give his vote; secondly, in consequence thereof, that if he be hindered in the enjoyment or exercise of that right, the law gives him an action against the disturber; and that this is the proper action given by the law." He proceeded to examine historically, with much learning and research, the law of election of burgesses to parliament; and then passed to the other head of his argument:—

"If the plaintiff has a right, he must of necessity have a means to vindicate and maintain it, and a remedy if he is injured in the exercise or enjoyment of it; and indeed it is a vain thing to imagine a right without a remedy; for want of right and want of remedy are reciprocal..... It is said there is no hurt or damage to the plaintiff; but surely every injury imports a damage, though it does not cost the party one farthing, when a man is thereby hindered of his right. If a man gives another a cuff on the ear, though it cost him nothing, no not so much as a little diachylon, yet he shall have his action, for it is a personal injury. It is no objection that it will occasion multiplicity of actions; for if men will multiply in-

juries, actions must be multipled too; for every man that is injured ought to have his recompense.

"But my brothers say, we cannot judge of this matter, because it is a parliamentary thing. O! by all means be very tender of that! Besides, it is intricate, and there may be contrariety of opinions. But this matter can never come in question in parliament; for it is agreed that the persons for whom the plaintiff voted were elected, so that the action is brought for being deprived of his vote; and if it were carried for the other candidates, his damage would be less. To allow this action will make public officers more careful to observe the constitution of cities and boroughs, and not to be so partial as they commonly are in all elections, which is indeed a great and growing evil, and tends to the prejudice of the peace of the nation. But they say that this is a matter out of our jurisdiction, and we ought not to enlarge it. I agree we ought not to encroach or enlarge our jurisdiction; by so doing we usurp both on the right of the queen and the people; but sure we can determine on a charter granted by the king, or on a matter of custom or prescription, when it comes before us, without encroaching on the parliament. And if it be a matter within our jurisdiction, we are bound by our oaths to judge of it. This *is* a matter of property, determinable before us.

"The parliament *cannot* judge of this case, nor give damages to the plaintiff for it; they cannot make him a recompense. Let all people come in and vote fairly; it is to support one or the other party, to deny any man his vote. By my consent, if such an action comes to be tried before me, I will direct the jury to make him pay well for it; it is denying him his English right; and if this action be not allowed, a man may be for ever deprived of it. It is a great privilege to choose such persons as are to bind a man's life and property by the laws they make."

Several other electors, who were in the same situation as the plaintiff Ashby, having subsequently commenced similar actions, the House of Commons forthwith resolved that they were thereby guilty of contempt and breach of privilege, and committed them to Newgate. They sued out writs of *habeas corpus* into the King's Bench; the return set forth the war-

rant of commitment; the twelve judges met to consider the case; and the Lord Chief Justice was opposed to them all, in the opinion that the defendants were entitled to their discharge. He said that this was not such an imprisonment as the freemen of England ought to be bound by; for that this, which was only doing a legal act, could not be made illegal by the vote of the House of Commons; neither house of parliament, nor both houses jointly, could dispose of the liberty or property of the subject; to this purpose the Queen must join, and it was in the necessity of their several concurrences to such acts that the great security for the liberty of the subject consisted. "If the House of Commons," he proceeded, "have any such privilege as can be broken by bringing this action, they ought to shew precedents of it. The privileges of the House of Commons are well known, and are founded upon the law of the land, and are nothing but the law. As we all know, they have no privilege in cases of breach of the peace. And if they declare themselves to have privileges which they have no legal claim to, the people of England will not be estopped by that declaration." Clarendon's expression having been cited, "that a judge can neither punish nor examine the breach of privilege, nor censure the contempt," he said he would oppose to it a higher authority than Clarendon's—King Charles the First, who, in his answer to the declaration and votes of the two Houses concerning the removal of the magazine from Hull, told them "he very well knew the great and unlimited power of a parliament; but he knew as well, that it was only in that sense as *he* was a part of that parliament; without him and against his consent, the votes of either or both Houses together must not, could not, should not (if he could help it, as well for his subjects' sake as for his own), forbid any thing that was enjoined by the law, or enjoin any thing that was forbidden by the law."

The House of Commons immediately fell with fury on all who had been concerned in procuring the writs of *habeas corpus*; voted that the counsel who argued for the defendants had committed a breach of privilege, and issued warrants for their apprehension also; one of them (Mr. Lechmere) narrowly escaped the clutches of the serjeant-at-arms by descending, by means of his blankets and a rope, from the window of his cham-

bers in the Temple; two others were consigned to Newgate. It has been said, moreover, and the story has been retailed as genuine by every anecdote-monger for the last half-century, that the Chief Justice himself was visited by the same formidable functionary, and summoned to appear at the bar of the House to purge himself of his share in the contempt. "That resolute defender of the laws," pursues the story, "bade him with a voice of authority be gone! on which they sent a second message by their Speaker, attended by as many members as espoused the measure. After the Speaker had delivered his message, his lordship replied to him in the following remarkable words: 'Go back to your chair, Mr. Speaker, within these five minutes, or you may depend upon it I will send you to Newgate! You speak of *your* authority, but I'll tell you that I sit here as an interpreter of the laws and a distributor of justice, and were the whole House of Commons in your belly, I would not stir one foot!' The speaker was prudent enough to retire, and the house were equally prudent in letting the affair drop." We grieve to be under the necessity of pronouncing the whole of this dramatic picture the pure invention of some ingenious fabulist. Not only does no hint appear of so remarkable an occurrence, in any of the King's Bench Reports; but in the Journals of the Commons, where all the proceedings in the Aylesbury case are minutely detailed, not a word is to be found of any motion, resolution, or proceeding in any way impeaching the conduct or language of the Chief Justice. His answers to the House of Lords in Knollys's case evidently supplied the foundation upon which this "interesting incident" has been constructed. How little, indeed, he recked of the omnipotence of parliamentary authority, a circumstance noted in Lord Raymond's Reports demonstrates quite as emphatically. A question arose whether a writ of error to the Lords was grantable in a particular case (Bishop of St. David's v. Lucy, Ld. Raym. 539): the House, after hearing the Chief Justice's reasons, determined that they could not entertain the case; "but note," adds the reporter, "that Holt, C. J., told me, if the House of Lords had been of opinion that a prohibition ought to be granted, *he never would have granted it.*"

Lord Ellenborough, who speaks of Holt's conduct in the

Aylesbury case, and of the general independence and manliness of his opinions and character, in terms of high eulogy, seems, moreover, almost to convey an implied approval of his legal judgment in that case, when thus expressing himself*: "If a commitment appeared to be for a contempt of the House of Commons *generally*, I would neither in the case of that court, nor of any other of the superior courts, inquire further; but if it did not profess to commit for a *contempt*, but *for some matter appearing on the return*, which could by no reasonable intendment be considered as a contempt of the court committing, but a ground of commitment palpably and evidently arbitrary, unjust, and contrary to every principle of positive law and natural justice; I say, that in the case of such a commitment, (if it ever should occur, but which I cannot possibly anticipate as ever likely to occur), we must look at it and act upon it as justice may require, from whatever court it may profess to have proceeded." Now, in The Queen v. Paty, the return set forth the warrant of commitment, which appeared on the face of it to be for a contempt in bringing an action which the highest judicature in the realm had declared to be a legal action: it was upon this very ground,—it was because the matter thus appearing on the return "could by no reasonable intendment be considered a contempt of the court committing,"—that Lord Holt proceeded to look at and act upon the case as justice seemed to him, and to every unprejudiced judgment in the kingdom, to require.

While adverting to the questions of constitutional right which came under his cognizance, we must not omit to notice the celebrated "Bankers' Case," in which he pronounced an elaborate judgment, opposed to that of Lord Keeper Somers, and holding, first, that the sovereign had power to alien the revenue in question (the hereditary excise) so as to bind his successors; and next, that the bankers had pursued the proper remedy by petition to the Court of Exchequer. Lord Somers, it is well known, reversed the judgment of the Exchequer on his own opinion, in opposition to that of the majority of the judges; but that reversal was set aside again in the House of Lords, where Holt maintained his original

* Burdett v. Abbott, 14 East, 150.

opinion with more effect, and indeed with so little deference to that of the lord chancellor, that some warmth of language appears to have been excited between them. Somers, admitting that the despoiled bankers had a right, affirmed that they had no remedy; "to which Holt answered very resolutely, that was nonsense, for if they had lost one they had lost the other; but no Englishman could lose either but by his own default, which was not their case. Upon that (adds Lord Dartmouth, from whom we borrow this account), after a very warm debate, the decree was set aside, and Lord Somers fell ill, and never appeared upon the woolsack more." On his dismissal, a few weeks afterwards, the great seal was offered in the first place to Sir John Holt, whose short reply was, that he had never had but one Chancery cause (meaning, we presume, as an advocate), which he lost, and consequently he could not think himself fitly qualified for so high a post; which, moreover, he had other good reasons, in the then state of parties, and the extreme uncertainty of its tenure, to prevent him from desiring. The attorney-general, Sir Thomas Trevor, was found (just at that time) equally unambitious, and the seals at last found their way into the keeping of Sir Nathan Wright, a man, as it appears from the reports of his contemporaries, at once incompetent and corrupt.

Great as are the respect and gratitude with which all right-minded Englishmen must regard the memory of the Lord Chief Justice Holt, both as a criminal judge and an interpreter of constitutional law, he has no less a title to the veneration of every philanthropist, as the first judge who declared the soil of Britain incapable of being profaned by slavery. The Court of Common Pleas, in 1693, had adjudged that *trover* would lie for a negro boy, "for they were heathens, *and therefore a man might have property in them*, and that the Court, without averment, would take notice that they were heathens*." But within a year or two afterwards, when an action of *trespass* was brought in the King's Bench for taking away a negro slave†, the whole Court being of opinion that the action would not lie (because the averment of the loss of service had

* Gelly v. Cleve, C. B. 5 W. & M. See also Butts v. Penny, 3 Keble, 685 (1678).

† Chamberlain v. Harvey, Ld. Raym. 146.

been omitted in the declaration), the Chief Justice added, that in his opinion *trover* would not lie; and in a subsequent case, in 1707*, it was determined accordingly, by the whole Court, that trover did *not* lie for a negro any more than for any other man; "for by the common law," said Lord Holt, "no man can have a property in another, but in special cases, as in a villein, or a captive taken in war; *but there is no such thing as a slave by the law of England.*" It was not, nevertheless, until the solemn decision of the same Court in Somerset's case, in 1772, that this became an unquestioned principle of law, and could be made the exulting theme of the most thoroughly *English* among our modern poets.

An anecdote is preserved of Sir John Holt, which (if it also be not apocryphal) shews the constitutional jealousy he entertained on a subject which has recently much occupied the public mind—the employment of military force in the suppression of domestic tumults. A riotous mob had assembled with threats of tearing down a house in Holborn, which was suspected to be used as a place of decoy and imprisonment for young persons who were kidnapped to be shipped to the new American settlements; an infamous practice of which we meet with many traces in that age. A party of the guards were ordered out to disperse them, and an officer was dispatched to the Chief Justice to desire that a civil force might be directed to attend the military, and give their proceedings a greater countenance of legal authority. "And suppose," asked the judge, "the populace should not disperse at your appearance, what are you to do then?"—"Sir, we have orders to fire upon them," answered the officer. "Have you, Sir?" replied Holt; "then take notice of what I say; if there be one killed, and you are tried before me, I will take care that you and every soldier of your party shall be hanged. Go back," he continued, "to those who sent you, and acquaint them that no officer of mine shall attend soldiers; and let them

* Smith v. Gould, Ld. Raym. 1275, Salk. 666. There is also another case of Smith v. Browne, in the same page of Salkeld, in which Lord Holt is reported to have held, in arrest of judgment, that "as soon as a negro comes into England, he becomes free: one may be a villein in England but not a slave." The date of this latter case does not appear.

know at the same time that the laws of this kingdom are not to be executed by the sword; these matters belong to the civil power, and you have nothing to do with them." And ordering his tipstaves, with a few constables, to attend him, he went himself to the scene of the tumult (which probably was not of a very formidable nature), expostulated with the rioters, assured them that the subject of their indignation should undergo a full inquiry by law, and prevailed upon them to disperse peaceably.

We may surmise, moreover, from a circumstance recorded in one of Speaker Onslow's notes to Burnet's History, that the Chief Justice, if he had lived in these days, would have lent no great countenance to the Constitutional Associations and Vice-Suppressing Societies, with which the present generation has been blessed. In the early part of Queen Anne's reign, many prosecutions were set on foot by the "Societies of Reformation," which established themselves to root out irreligion and immorality from the land by the strong hand. "The Lord Chief Justice Holt," says the annotator, "was no friend to them; he did not approve of voluntary combinations for putting laws into execution, which frequently ran into violences and personal revenges, and other irregularities; some persons too severely prosecuted, while others were connived at. He had met, it was said, with several instances of this in the prosecutions carried on by this society, upon bad information from their agents, the 'reforming constables,' who seldom acted upon principle, and were often corrupted. He was thought, however, to be too much sharpened in this matter, and against some very good men, who meant very well." Indeed, the infamously corrupt and inefficient state of the magistracy and police of the metropolis at this period made it almost a matter of necessity to resort to voluntary associations of the kind, if anything like morality or decency was to be upheld at all.

We have yet to regard Sir John Holt in that capacity in which his merits are most familiar to the profession—as head of the supreme court of civil judicature. The decisions of the King's Bench, during the long period when he presided in it, are spread over many books of Reports, of which those of Lord Raymond, Shower, Skinner, and the collection called the

Modern Reports*, may be distinguished as the fullest and most comprehensive; those also of Carthew, Levinz, Salkeld, &c. have a high reputation for legal accuracy. The volume entitled Reports *tempore* Holt, which was not published until 1738, contains an abridgement from the other Reports of all the cases determined before him, with many additional ones then first printed from private manuscripts. On the learning and authority of Lord Holt's judgments it is needless to enlarge; in respect to style and manner, they are chiefly distinguished by great perspicuity and simplicity of expression, by a logical precision in the arrangement of his arguments, which he generally subdivides (we speak of course of his more elaborate judgments) so as to exhaust in detail every view of which the subject is capable; and by a careful deduction of his conclusions from expressed premises: not that we mean to affirm that his logic is not occasionally at fault, or his arrangement imperfect, nay, sometimes inaccurate, and his phraseology now and then obscured by quaintness or carelessness of expression. Like Lord Mansfield, he not unfrequently illustrates his reasonings by references to the corresponding provisions of the civil law; a branch of knowledge on which it was the more meritorious to be well informed, inasmuch as it was in that age even less cultivated by the generality of lawyers than at present, nay, had fallen almost into absolute neglect, if not discredit. His well-known judgment in the great case of Coggs v. Bernard†, which has been justly termed by high authority "a most masterly view of the whole subject of bailment," affords an apt illustration of all these excellences and peculiarities. No higher eulogium could possibly have been pronounced upon this celebrated argument than that expressed by Sir William Jones, when he is content that his own admirable Essay shall be considered merely as a commentary upon it: yet every lawyer will probably agree that he has shewn its

* These latter were published without the sanction of the judges, and fell accordingly more than once under the judicial *ban*. A case being cited from 2 Modern, "Holt, C. J., *in irâ* said, that no books ought to be published but such as were licensed by the judges:" and on an other occasion he spoke of "those *scambling* Reports," that would make posterity think ill of his understanding and that of his brethren on the bench.

† Lord Raym. 912.

division of the subject to be imperfect, and its reasonings on one or two points inconclusive if not inaccurate. It is almost amusing to observe how entirely some of the reporters, in particular Lord Raymond, seem to have considered the whole legal authority of the Court as residing in the Chief Justice. The latter, after giving a condensed report of the arguments of counsel, generally notes the answer they received from the Court, thus: "*Sed non allocatur;* and *per* Holt, chief justice, &c. &c.:" scarcely ever noticing in detail the arguments of the other judges, unless in cases where there was a difference of opinion on the bench. In such cases, and they were by no means unfrequent, the Chief Justice, even where he stood alone, invariably asserted his own opinion with the same decided confidence of its being the right one, which we have seen him express in the Aylesbury case: a confidence, indeed, in which he was borne out by repeated decisions of the tribunals of appeal in accordance with his judgment. None of that anxious deference to his brothers' better judgment—none of that amiable concern at being compelled to dissent from it, which judges of this more polished and courteous generation have been wont to express, is to be seen in him: occasionally, in truth, he treats the arguments, not merely of the counsel, but of his learned brethren beside him, with a *brusquerie* amounting to something very like avowed contempt. In this self-assured tone of feeling and expression, as well as in the grasp and vigour of his intellect, he appears to have borne a considerable resemblance to Lord Thurlow; who fell, however, sadly short of him in the higher attributes of independence and public virtue. One of the most important cases (after Ashby v. White) in which he differed from all his colleagues, was that of Lane v. Cotton, where he argued that the Postmaster-General was personally liable to make good the amount of an exchequer bill abstracted from a letter in the Post Office. His judgment in that case has been again—and, we agree, rightly—overruled by a solemn determination of the same Court*; but of the weight that was then attached to it a sufficient proof is afforded by the fact, that the defendant, notwithstanding the determination of the other three judges in his favour, paid the money rather than encounter the chances

* Whitfield v. Le Despencer, Cowp. 754.

of a writ of error. One or two instances occur of an extraordinary revolution of opinion in his dissident brethren, after the delivery of his judgment. Thus in the case of the Queen v. Tutchin, (6 Modern, 287), in which the judges Powys and Gould delivered opinions one way, and Powell and Holt the other, the report concludes with this postscript; "Note, Powys justice recanted *instanter*; and Gould justice *hæsitabat*." Occasionally we have the reporter's opinion of the other members of the Court pretty plainly intimated: thus, in a case (Brewster v. Kitchin, Ld. Raym. 317), where, the Court being unanimous on the question which had been brought before them in argument, Holt started an objection that occurred to him in the course of pronouncing his judgment, namely, that the covenant sued upon, being a personal covenant, did not bind the defendant as assignee of the land; "the other three judges," says Lord Raymond, "seemed to be in a surprise, and not in truth to comprehend this objection, and therefore they persisted in their former opinion, talking of agreements, intent of the party, binding of the land, and I know not what." Now and then, as was not unnatural, a *tiff* occurs between the self-resolving Chief Justice and a sturdy brother. The following smart dialogue between him and Mr. Justice Dolben, who appears to have been made of metal almost as unmalleable as himself, enlivens the report of a case in Shower. (Rex. v. Bishop of London, 1 Show. 469). The cause was about to be adjourned for a *third* argument, but the Chief Justice took occasion to state his present impression on the main question in dispute—the right of the Crown to present to a benefice on the incumbent's promotion to a bishopric. Hereupon the other learned judge, whose opinion was the other way, interposes with—"I pray, my lord, let us deliver no opinion till it be argued again."—"I do not give my opinion, brother," replies the Chief Justice. "No, my lord," pursues Dolben, "it is a case of great consequence, and that point I desire may be argued as well as any of the rest." His lordship kindles a little at this: "But, brother, if I be ready to give my opinion, I hope you will not restrain me."—"If it be to be argued again," repeats the other, "I desire the whole case may be argued entire."—"Well, brother," concludes the Chief Justice, "I tell you I do not give any opinion, but only

we are breaking the case, that we may shew what is in doubt with any of us." Such an interchange of *fraternal* courtesies occurring now-a-days would electrify the back rows of the Queen's Bench.

Lord Chief Justice Holt may be said to have sat by the cradle of our system of commercial law, which afterwards, under the fostering genius of Lord Mansfield, was expanded and matured into such growth and symmetry. It was under his auspices that the general negotiability of bills of exchange was first recognized in the courts of law. But he resisted the extension of the same privileges to promissory notes (or as they were then termed, goldsmiths' notes), which had already come into almost universal circulation among the mercantile community, with a tenacity which wore almost the appearance of hostility to the whole monied tribe. He designated them as "a new kind of specialty invented in Lombard Street, which attempted in these matters of bills of exchange to give laws to Westminster Hall;" and declared on another occasion, "I am of opinion, and always was, notwithstanding the noise and cry that it is the use of Lombard Street, as if the contrary opinion would blow up Lombard Street, that the acceptance of such a note is not actual payment." Such, indeed, was his admiration of the common law in all its venerable integrity, that he was not easily brought to view as an improvement any innovation upon it by whatever authority; and reverenced even some of its barbarisms which the common consent of later generations has swept away. When the Chief Justice Treby designated the appeal of murder as a proceeding that ought not to be encouraged, Holt's constitutional sympathies were up in arms at once; "he wondered it should be said that an appeal was an odious prosecution; he esteemed it a noble remedy, and a badge of the rights and liberties of an Englishman." To the most important branches of our mercantile law—those of shipping and marine insurance—the Courts were as yet comparatively strangers. From the Revolution down to Lord Mansfield's elevation to the bench, not more than fifty insurance causes were tried in all; and instead of the luminous and admirable elimination of legal *principles* which the summings-up and judgments of that great lawyer presented, the judges were accustomed to leave the whole mass of facts

to the jury together, and trust to the remedial effect of a general verdict one way or the other. Unformed, however, as our mercantile code remained, until the multiplied relations and complicated interests of a commerce increased a hundred-fold called into exercise the powers of its great architect, whoever looks through the reports of Lord Holt's decisions will find a vast number of interesting points redeemed from uncertainty and confusion by his learning, experience, and good sense.

On the accession of Queen Anne, the Chief Justice, holding his office by writ, although it was *quamdiu se bene gesserit,* held it to be *ipso facto* determined by the demise of the crown, notwithstanding the recent provisions of the Act of Settlement; and received accordingly a new writ of appointment. He continued to preside with no less honour to himself and benefit to his country for eight years longer, until, towards the close of the year 1709, his health began sensibly to decline. Thursday, the 9th of February, 1709-10, was the last day he sat in court: he lingered without hope of amendment until the 5th of the following March, when he expired, universally honoured and deplored, at his house in Bedford Row. His remains were deposited in the church of Redgrave, in Suffolk, where he had purchased from the family of the Bacons the manor and house of that name—the same in which Sir Nicholas Bacon had entertained Queen Elizabeth, as may be seen in the Royal Progresses. His brother and heir erected over his grave, at a cost of £1500, a magnificent monument of white marble, which represents him seated in his judicial robes under a canopy of state, with emblematical figures of Justice and Mercy on either side: a design, as our readers may remember, almost identical with that of Lord Mansfield's monument in Westminster Abbey.

To the testimonies we have already given of the judicial character and public virtues of this eminent magistrate, we will add only the eloquent portrait drawn of him by Sir Richard Steele, in the fourteenth number of the Tatler, where he is described under the appellative of Verus.—"It would become all men as well as me, to lay before them the noble character of Verus the magistrate, who always sat in triumph over and contempt of vice. He never searched after it, or spared it

when it came before him; at the same time, he could see through the hypocrisy and disguise of those who have no pretence to virtue themselves but by their severity to the vicious. He was a man of profound knowledge of the laws of his country, and as just an observer of them in his own person. He considered justice as a cardinal virtue, not as a trade for maintenance. Wherever he was judge, he never forgot that he was also counsel. The criminal before him was always sure he stood before his country, and, in a sort, a parent of it. The prisoner knew, that, though his spirit was broken with guilt, and incapable of language to defend itself, all would be gathered from him which could conduce to his safety; and that his judge would wrest no law to destroy him, nor conceal any that could save him."—Where flattery could serve no purpose, contemporary eulogy has the best title to belief.

In political matters, as we have already intimated, Sir John Holt appears to have borne very small part. Heartily attached as he was to the principles on which the government of the Revolution was established, and steadily as he maintained the supremacy and enforced the injunctions of the laws, he was no partisan of court measures, no depositary of court intrigues. More than one of the "sham plots" which were so rife in the early part of William III.'s reign, and which were strongly suspected to be of ministerial parentage, were exposed and foiled by his humane sagacity. We are somewhat surprised to find him in confidential intimacy with Lord Sunderland, and can hardly understand what community of feeling could exist between the upright and inflexible judge and the unprincipled and versatile minister; but Sunderland's consummate talent of winning golden opinions from all kinds of people with whom he came immediately in contact, is well enough known to account even for so unnatural an association. In matters of religion, Sir John Holt was a warm friend to a liberal toleration, and appears to have retained but in a mitigated degree the Whig horror of popery which was so generally felt or affected by that party. Eminently learned as he was in his profession, beyond its circle his knowledge was probably, as we have before hinted, not very extensive or profound, "He was not," says Speaker Onslow, "of very enlarged notions;"—and adds, with a narrow-judging criticism by no means uncommon,—

"*perhaps the better judge;* whose business it is to keep strictly to the plain and known rules of law."

Of his private life very few memorials survive; nor are they needed for the illustration of his character, which lay entirely on the surface, both in its light and shadow. The same fearless and confident spirit which had impelled him to be foremost in the feats and follies of boyhood, was visible in every scene and action of his life; restrained, indeed, by an undeviating principle of integrity within the strictest bounds of truth and honour. His strong and manly intellect, impatient of sophistry and anility, combined with this temperament of mind to carry him occasionally beyond the limits of that well-governed courtesy which is tolerant even of dullness or absurdity; and the practitioners in his court, and possibly his brethren on the bench, might have reason to regard him as somewhat too self-assured, if not disposed at times to be overbearing. He is said to have possessed a strong natural turn for humour, in illustration of which the following anecdote is recorded. One of the leaders of a set of fanatics who were known by the title of the "French prophets," having been committed by the Chief Justice's warrant for some seditious language, one Lacy, another of the fraternity, called at his house and desired to see him; and when told by the servants that he was unwell, and could see no company, bade them acquaint their master that he must see him, for he came to him from the Lord God. The Chief Justice thereupon ordered Lacy in, and asked him his business. "I come," said he, "from the Lord, who has sent me to thee, and would have thee grant a *nolle prosequi* for John Atkins, his servant, whom thou hast sent to prison."—"Thou art a false prophet and a lying knave," answered the Chief Justice; "for if the Lord had sent thee, it would have been to the Attorney-General, for he knows it is not in my power to grant a *nolle prosequi*; but I can grant a warrant to commit thee to bear him company;" which he did forthwith.

By his wife Anne, the daughter of Sir John Cropley, of Clerkenwell, Bart., who survived him till 1712, Sir John Holt had no issue. Their conjugal harmony, indeed—as, unluckily, has been the case in many a wise man's house—was, it appears, but very indifferently tuned. Dr. Arbuthnot, writing to Swift

an account of his own attendance on the poet Gay, says, "I took the same pleasure in saving him, as Radcliffe did in preserving my Lord Chief Justice Holt's wife, whom he attended out of spite to her husband, who wished her dead." The lofty and independent spirit which braved the wrath of Lords and Commons, was doomed, we suspect, to find itself subjected to a more undignified mastery at home.

The only publication attributed to Lord Holt is that of Chief Justice Kelyng's Reports, a collection of points on criminal law ruled by that judge, and edited from his MSS. in 1708. To these were appended reports of his own judgments in three important criminal cases; Armstrong v. Lisle (on the effect of a conviction for manslaughter in barring an appeal of murder), R. v. Plummer, and R. v. Mawgridge. But although, like almost all our greatest lawyers, he wanted leisure or inclination for the labours of the press, his profession and his country might be well content with the legacies that he bequeathed them. They had the stores of judicial wisdom gathered from his lips during twenty years:—they had what was even more valuable, the influence and the example of his virtues.

LORD COWPER.

THE ancient and wealthy family of Cowper, settled for several centuries in the county of Hertford, and having besides considerable possessions in Kent and Sussex, is traced back in lineal ascent to the middle of the fifteenth century. William Cowper, the representative of the family in the reign of Charles I., was created a baronet in 1641, and, adhering inflexibly to the royal cause, suffered an imprisonment of some length in Ely House, Holborn, together with his eldest son John, who died under his confinement. Sir William, however, long outlived his troubles, and is recorded by Stow to have resided many years at his castle of Hertford, in the practice of the most extensive hospitality and charity, until, dying at a great age in 1664, he was succeeded in his title and possessions by his grandson, a second Sir William, who represented his native town of Hertford in the two last Parliaments of Charles II., and was among the most active partizans of the Exclusionists; being one of the party who, at the instigation and under the leading of Shaftesbury, presented to the grand jury of Middlesex, in June, 1680, during the high fever of the Popish plot, articles for the indictment of the Duke of York as a papist recusant. By his wife Sarah, daughter of Sir William Holled, a London merchant, he had two sons, of whom the elder, William, forms the subject of the present memoir.

He was born, according to tradition, in his father's castle at Hertford, but at what period has never been precisely ascertained; most probably in the year 1665 or 1666. The place and circumstances of his education are equally unrecorded *;

* His name does not appear in the list either of Oxford or Cambridge graduates, and he was most probably at neither university.

nor have we been able to collect any particulars of his early years, except that they were by no means free from irregularities, to which the universal license of that age ascribed merit rather than applied censure. While very young, it seems that he contracted a *liaison* with a Miss Elizabeth Culling, the proprietress of Hertingfordbury Park, a mile or two distant from Hertford town, which continued for several years; and by her he had two children, a son and a daughter *. It was even alleged against him that he deceived her by means of an informal marriage; an imputation which, many years afterwards, in the virulence of party warfare, the bitter pen of Swift revived against him, taunting him (peer and chancellor as he had then become) with the undignified nickname of "Will Bigamy." He was entered of the Middle Temple, March 18, 1681, and on the 26th of May, 1688, (the required term of studentship being then seven years), was called to the bar; having previously, if we may judge from the period at which he became a tenant of chambers (Nov. 1683), devoted upwards of four years to the worship of Themis; divided, however, we are afraid, with an adoration of more material objects of idolatry.

Of the protracted hopes, of the capricious and chilling neglects, by which so many of no less eminence in his profession have in the outset been depressed and obscured, he had no experience. The influence of his high Whig connexions, well seconded no doubt by his own promise of ability, and the legal acquirements of which he gave speedy proof, appear almost at once to have obtained for him employment and reputation in his profession, and (what was still more acceptable) to have introduced him to the favourable notice of the dispensers of preferment. As early as the year 1693, when he could not have been much past five-and-twenty, and was scarcely yet of five years' standing at the bar, he had been appointed Solicitor-General to the Queen, and enrolled in the list of king's counsel—a distinction rated at that time of day at a far different estimate than now, when we see it bestowed

* The daughter, by her brother's death without issue, became mistress of this property at Hertingfordbury, and afterwards sold it to Spencer Cowper, the Chancellor's younger brother, in whose family it remained till within the last twenty years.

so profusely, and which then not only gave professional rank and promise of promotion, but implied the special countenance of the crown; as may be inferred from the fact, that at no period during the reign of William III. or Anne, was it enjoyed by more than eight members of the bar in the whole. Even two years before this date, we find him arguing at great length, and with much display of legal learning, a case in the King's Bench on an important and at that time novel question of law relating to the transfer of copyhold estate. In the parliament which met in November, 1695, he was returned, jointly with his father, for the town of Hertford; and it is manifest that he was already master of one quality essential to success even more in parliament, if possible, than at the bar—namely, a very sufficient confidence in his own powers; for we are informed, that on the very day he took his seat he found occasion three several times to address the house, and, speaking with much applause, already gave promise of the distinguished parliamentary reputation he subsequently attained.

In the following year (1696) his name first occurs in the State Trials, as one of the crown counsel against Sir John Friend, Sir William Parkyns, and the other parties subsequently brought to trial for their participation in the Assassination and Invasion plot. Parkyns's case is remarkable as being the last that was tried under the old law, which forbad the appearance of counsel on behalf of prisoners accused of treason. The statute allowing a defence by counsel (7 W. & M. c. 3) had already passed, and was to come into operation on the 25th of March. The trial was fixed for the 24th; Parkyns, on his arraignment, pressed earnestly for its postponement, so as to bring him within the benefit of the new law; a request which, reasonable as it would now be deemed, met with a peremptory refusal from the court. The evidence for the crown was summed up by Cowper, who certainly, according to the report in the State Trials, easily outdid his colleagues in oratory at least, if not in law. The case next tried, that against Rookwood, Lowick, and Cranborne, fell within the new act of parliament. Sir Bartholomew Shower accordingly appeared as counsel for the prisoners; and the

numberless objections, both of form and substance, which he started, and the hours that were wasted in debating, refuting, and re-urging them, with what would now be deemed an utter disregard of anything like regularity of procedure, must have gone far to surfeit the judges with the alteration of the law. Of the guilt of all these parties, or of the propriety of the convictions in their several cases, the reports of the trials leave little or no room to doubt. But a very different and much more questionable character attaches to the proceedings which were instituted about the same time in parliament against Sir John Fenwick, for his accession to the same treason. The bill of attainder was avowedly resorted to for the purpose of supplying the place of a trial before the ordinary tribunals, in which, from the absence of the necessary proof by two witnesses, a legal conviction could not have been obtained—the bench being now somewhat differently filled than upon the trials of Russell and of Sidney. Cowper, who inherited all his father's attachment to whig principles, and whose personal prospects and interests, moreover, pointed the same road with his political predilections, was among the most active and influential supporters of the bill. An important point debated in the first instance was, whether the preamble of the bill, which stated only that Sir John had been *indicted* of high treason on the oaths of two witnesses (one of whom had since absconded), and had obtained from time to time a postponement of his trial under the pretext of making a full discovery of the conspiracy—contained any sufficient allegation upon which the house might proceed to hear evidence tending to prove him actually *guilty* of high treason. Upon this, as well as upon the more interesting question involved in the whole proceeding, how far the defect of legal evidence could or ought to be supplied by the extraordinary operation of a parliamentary attainder, we find Cowper ably but sophistically combating the objections urged against the bill; which however, as is well known, the government succeeded in finally carrying only by a very inconsiderable majority.

The part he took on this occasion could not fail to confirm and secure him in the enjoyment of court favour; and he ap-

pears to have been employed in all the crown prosecutions of any importance, of which that reign was so prolific. Of these we may mention the trials of Lords Warwick and Mohun for the murder of Mr. Coote, in 1699; in the latter of which he was paid a rather unusual compliment, at the expense of the Solicitor-General, Sir John Hawles. Mr. Solicitor had summed up the evidence on Lord Warwick's trial the day before in so mumbling and inaudible a tone of voice, as to occasion considerable trouble to the peers and interruption to the proceedings. When he rose to perform the same office on the present occasion, the same complaint was renewed; whereupon "several lords did move that one that had a better voice might sum it up, *and particularly* Mr. Cowper [he was the junior in the case]; but it being usually the part of the Solicitor-General, and he only having prepared himself, he was ordered to go on; but for the better hearing of him, several of the lords towards the upper end of the house removed from their seats down, as they did the day before, to sit upon the wool-packs." Their lordships might reasonably enough be willing to hear any of his brethren in place of the worthy Solicitor, who, considerable as were his qualifications as a lawyer, belonged undoubtedly—independently of his lack of lungs—to the dullest and most prosaic school of matter-of-fact speech-makers.

In this same year it was that Cowper had to appear in a criminal court in a much less agreeable character than he was wont to fill there—as a witness, namely, on behalf of his brother (who was also a barrister in some repute) on a charge of murder. The circumstances of the case were altogether so curious, that a summary of them may interest such of our readers as have not become familiar with them by the report in the State Trials, or from the works of writers on medical jurisprudence. A young Quaker lady of the name of Stout, residing with her mother at Hertford, had, it seems, conceived a violent passion for the young barrister, and resorted to all possible means of communicating and contriving meetings with him, married though he was; going so far as to repair clandestinely to his chambers in the Temple, on which occasion he virtuously avoided a meeting with her by pretending business out of town, leaving his brother to represent him,

and, we suppose, to lecture the lady upon her imprudence. Both brothers went the Home Circuit, and were in the habit, "out of good husbandry," of jointly occupying the same lodgings at their native town of Hertford. On the spring circuit of 1699, William being detained in town by parliamentary business, of which, as it seems, Miss Stout was by some means informed, Spencer Cowper received from her a pressing invitation to lodge during the continuance of the assizes at her mother's house. The same "good husbandry" which induced him to share his brother's lodgings, disposed him also, maugre the peril to which his virtue might again be subjected, to comply with an invitation which was to give him a lodging for nothing; but on arriving in Hertford, he found that his brother's letter which was to have communicated this change of purpose had not arrived, and that preparation had been made as usual to receive him at their lodgings. He went, however, to Mrs. Stout's to dinner, and there spent the greater part of the evening. About eleven at night, when he was preparing to go home, he was pressed by the young lady to remain and occupy a bed there. He appeared to accede, and accordingly the maid-servant (this was the account given by her on the trial) was sent up stairs to warm his bed, leaving her young mistress and him alone together. While thus engaged, she heard the outer door of the house shut; and on her return down stairs after about a quarter of an hour, both of them were gone. The mother and the maid, after waiting some time in vain for the daughter's return, betook themselves to bed; and the former, more solicitous, as it would seem, about her daughter's reputation than her virtue, and dreading the censures of the quaker community, refused to allow any search to be instituted for her during the night. But early in the morning her dead body was found, *floating* as it was alleged, on a pond about a mile out of the town. A coroner's inquest came, without much inquiry, to the conclusion that she died by suicide; but the mother was not so satisfied, and preferred an indictment for her murder against Mr. Cowper, and three other gentlemen, who also were attending the assizes on the day of her disappearance, and against whom the only ground of charge arose out of some mysterious expressions which were sworn to have been interchanged between them on that evening, relative

to the young lady, and which might be construed to import a knowledge that some design against her was in progress. A long and minute report of the proceedings is to be found in the thirteenth volume of the State Trials. Independently of the strange circumstances of the case itself, and the interest it excited from the station and character of the accused parties, it was moreover remarkable for several important questions of medical science involved in it, and upon which a great deal of evidence (conflicting of course) was given by eminent medical practitioners*:—viz. whether upon death by drowning, without violence or resistance, water would of necessity be received into the lungs or stomach; and whether the body of a person who had so committed suicide would, so soon at least after death, float upon the surface. On the part of the prisoners, besides the medical evidence adduced, several witnesses, among them William Cowper and his wife, deposed to the young lady's frequent fits of melancholy, and her repeated expressions of her wish to be rid of life, and prognostications of her approaching death; and it was proved also that Mr. Cowper had returned to his lodgings so shortly after eleven o'clock on the night in question, as to render it next to impossible that he could have been at or near the pond in which the body was found, after leaving the house of Mrs. Stout. All the accused were ultimately acquitted; but the mother was still unappeased, and procured an appeal of murder to be lodged against the verdict, which in the end was got rid of by an understanding between the Cowper family and the appellant (the heir-at-law and a cousin apparently of the deceased), who, by the connivance of the Sheriff of Hertfordshire, got back the writ

* Doctors Sloane, Garth, and Wollaston, and William Cowper, the celebrated anatomist, were among those examined for the prisoners, whose joint defence was conducted by Spencer Cowper in person. One of the learned doctors (Dr. Crell) exhibited an amusing sample of the pedantry which is still heard so often from medical witnesses. "Now, my lord," says he, "I will give you the opinion of several ancient authors." "Pray, sir," interrupts the judge, Mr. Baron Hatsell, dreading the coming dissertation, "tell us your own observations." "My lord," rejoins the doctor, "I humbly conceive that in such a difficult case as this we ought to have a great deference for the reports and opinions of learned men; neither do I see why I should not quote the fathers of my profession in this case, as well as you gentlemen of the long robe quote Coke upon Littleton in others."

of appeal out of his office; a misfeasance for which the latter was visited with a considerable fine.

The narrative of this transaction has led us somewhat astray from the proper subject of our notice, to whom we now return. On the occasion of Lord Somers's impeachment in 1701, his defence was warmly taken up in the House of Commons by Cowper, with more zeal however, as it proved, than discretion, since a long debate was thereby generated, in the course of which much of the impression made by Somers's manly and simple justification of his conduct earlier in the morning was worn off, and the impeachment, which would probably have been negatived had a division been taken upon the question at once, was carried by a very small majority. Its fate in the Lords is well known. Early in the following year, the accession of Queen Anne filled the Tories with joyful expectation, and threatened the entire extinction of Whig influence and favour. The cautious policy, however, of Godolphin and Marlborough, hesitated to exercise against their opponents the extreme measures which the more intemperate of their party would have adopted, and many of the Whigs were retained in the offices they had enjoyed under the former reign. Among those who were thus spared was Cowper; being one of the only two king's counsel out of six to whom fresh patents were granted. He had now acquired a high reputation as a parliamentary speaker, and took a leading part in most of the important questions debated in the House of Commons. At the general election in 1700-1, he lost his seat for Hertford, where his father's interest had for some time been warmly contested, but found refuge in the little borough of Beeralston (now consigned to everlasting rest), for which he was returned in the two following parliaments in conjunction with Mr. King, afterwards his successor in the occupation of the woolsack. The Parliamentary History has however preserved no record of his speeches, until we arrive at the debates on the celebrated case of Ashby and White, in 1704*. On that memorable occasion, he distinguished himself by an able and unqualified

* See ante, pp. 119 et seq., for a summary of the proceedings of both Houses in this case.

opposition to the unconstitutional jurisdiction claimed by the House of Commons, and maintained with equal talent and spirit the legal right of an elector to claim damages at the hands of the returning officer for corruptly or improperly refusing to receive his vote. He addressed himself particularly to the refutation of the arguments of Harley, then the Speaker and Secretary of State, the sum of which was, that the determination of all matters relating to elections, where no statute had expressly directed otherwise, belonged by law and precedent exclusively to the House of Commons. Admitting that the law and custom of Parliament vested in the House the sole right to adjudicate upon election questions, for the purpose of determining who were rightly elected, and that incident to that end it had the power also of inquiring into the rights of the electors, he yet maintained that the injured subject, deprived unlawfully of the exercise of his unquestionable right, was entitled to resort to the ordinary tribunals for redress of that wrong; a proceeding which, as it in no degree brought into question the propriety of the *return*, was entirely independent of, and trenched not upon, the lawful judicature of the House of Commons. The scandalous and barefaced corruption with which the jurisdiction of the House was exercised, at the very period when they were so strenuously and intemperately contending for an almost unlimited extension of that jurisdiction, may be seen by a reference to Burnet, or any other historian of the time.

The difficulties and distractions of the Tory ministry, the lukewarmness of Godolphin's party spirit, and the influence and importunities of the Duchess of Marlborough, always a rancorous enemy of the Tories, opened the way to a fuller participation in the good things of office by the Whigs. It was only by concert with the latter party that the union with Scotland, a measure which the circumstances of the succession had rendered indispensable, could be expected to be carried. They exulted in the critical predicament into which the cabinet was brought, and Lord Wharton coarsely expressed the triumph of his party, by declaring that "they held the head of the Lord Treasurer in a bag." One of the changes most pressingly urged upon the queen by her arrogant favourite, and struggled for during nearly two years with a pertinacity which no repulse

could daunt, was the removal of Sir Nathan Wright from his office of Lord Keeper, and the elevation of Cowper, who had now become one of the most powerful supports of the Whig party, in his room. Wright was a violent Tory and high churchman, odious for his covetousness, and suspected of corruption in the administration of his office and the disposal of church patronage. The Queen nevertheless long and stoutly resisted the change, but was compelled at length to yield, which she did with undisguised ill-will; and on the 11th of October, 1705, Sir Nathan being required to deliver up the great seal, it was transferred to the hands of Cowper, with the title of Lord Keeper, and he was sworn of the Privy Council.

His elevation was probably in truth not much more palatable to the the prime minister than to his mistress, although the former was compelled to promote it with a degree of apparent zeal which could have been prompted only by the multiplied difficulties of his situation. The day after the appointment was completed, in reply to Lord Dartmouth, who was telling him of the high expectation the public entertained of the new Lord Keeper, Godolphin coldly answered, "that he had the advantage to succeed a man that nobody esteemed; but the world would soon have other sentiments, for his chief perfection lay in being a good party man." It was a measure, however, which had a great effect in procuring for the government the support of the Whigs as a party; and the manner in which the Lord Keeper exercised his office speedily recommended him to all parties. One of his first measures of reform—"a thing of a great example," Burnet calls it—was to put a stop to the custom which had prevailed with his predecessors, of receiving from the officers and bar of the Court of Chancery large presents in money, under the title of new-year's gifts; and which had come to be so considerable as to amount of late years to more than £1500; a practice which, if it was not bribery, "he thought came too near it, and looked too much like it. This," says the same historian, "contributed not a little to the raising his character; he managed the Court of Chancery with impartial justice and great despatch; and was very useful to the House of Lords in the promoting of business." These merits, of impartiality

and despatch in the exercise of his judicial duties, are accorded to him by all contemporary writers. The Duke of Wharton, writing after his death, bears testimony to them in the following glowing terms of panegyric:—"The Lord Cowper came not to the seals without a great deal of prejudice from the Tory party in general, among whom, I believe, there was not one but maligned him. But how long did this scene continue? He had scarcely presided in that high station one year, before the scales became even with the universal applause and approbation of both parties. All signs of prejudice were removed, and Tories and Whigs joined in admiration of his most excellent qualities. There was not the least mark of party rage, rashness, rigour, or impatience, to be seen or traced throughout all his conduct in this critical branch of his high office; for which he shewed such a masterly genius and uncommon abilities, that made easy to him the great task of dispensing justice; which, like the sun, he diffused with equal lustre on all, without regard to quality or distinction."—"The skilful pleader," says Steele in his dedication to him of the third volume of the Tatler, "is now for ever changed into the just judge; which latter character your lordship exerts with so prevailing an impartiality, that you win the approbation even of those who dissent from you, and you always obtain favour, because you are never moved by it." These testimonies, it is true, come from his political friends; but they are not opposed by any contemporary censure, as to these points of his character at least, from his adversaries, whether political or personal. Even Swift, when writing for posterity, and divesting himself, we may presume, of some portion of his party prejudices, although he depreciates him as a scholar and a statesman, ventures no imputation upon his conduct as a judge. "The Lord Cowper (he writes in his History of the Four Last Years of the Queen) was considerable in the station of a practising lawyer; but as he was raised to be a chancellor and a peer without passing through any of those intermediate steps, which in late times had been the constant practice, and little skilled in the nature of government or the true interest of princes, farther than the municipal or common law of England, his abilities as to foreign affairs

did not equally appear in the council*. . . . . As to his other accomplishments, he was what we usually call *a piece of a scholar*, and a good logical reasoner; if this were not too often allayed by a fallacious way of managing an argument, which made him apt to deceive the unwary, and sometimes to deceive himself."

The personal exertions of the judge, however, (even if this belauded despatch were in itself—as we in these days may have had good cause to doubt—a certain good, at all events unless it be the produce of an understanding profoundly stored with the knowledge of the principles, and habitually versed in the practice, of equitable jurisprudence), could do little towards eradicating a mass of grievances which had been extending in depth and rancour for above a century. The complaints against the delay, vexatiousness, and expense of legal proceedings, especially in Chancery, which had been increasing ever since the time of Bacon, had now become so loud and general as to force themselves upon the serious attention of the government and the legislature. In the session of 1705-6, Lord Somers, with the full concurrence of Cowper and the judges, introduced into the House of Peers the "Act for the Amendment of the Law and the better Advancement of Justice," which still stands upon the Statute-book (4 Anne, c. 16). Burnet informs us that a much more extensive and effectual

* A circumstance noted in Lord Cowper's Diary may induce a belief that Swift has done some injustice to his capacity for the administration of foreign affairs. He alone of all the cabinet, it seems, had sagacity enough to distrust the concurrence of Lewis XIV. in the famous Barrier Treaty of 1710, and for expressing his doubts incurred the sharp rebuke of Godolphin. "Lord Treasurer, Lord President Somers, and all other Lords, did ever seem confident of a peace. My own distrust was so remarkable, that I was once perfectly chid by the Lord Treasurer, *never so much in any other case*, for saying such orders would be proper *if* the French king signed the preliminary treaty. He resented my making a question of it, and said there could be no doubt of his signing. For my part, nothing but seeing so great men believe it could ever incline me to think France reduced so low as to accept such conditions." The Lord Keeper, it would appear, had pretty often the misfortune to express opposite opinions to my Lord Treasurer's; being, perhaps, disposed to bolder measures than Godolphin's timorous and temporising spirit durst adventure on.

reform was provided for by the bill as it came down from the Lords; but as it went through the other house, "it was visible that the interest of under-officers, clerks, and attornies, whose gains were to be lessened by this bill, was more considered than the interest of the nation itself; several clauses, however beneficial to the public, which touched on their profit, were left out by the Commons." The act, however, as it finally passed, wrought a substantial amendment of the delay and cost of law proceedings. In the next year a second bill, comprehending most if not all of the rejected clauses of the former, (as we learn from a contemporary pamphlet on the subject, for we find no trace of it in the Parliamentary History*), was presented to Parliament, but with no better success. We may reasonably believe that none of these reforms were proposed without the sanction of the Lord Keeper. He shares also with Somers the praise of having discouraged, as much as his predecessor had promoted, the jobbing in private bills, from which the speakers and clerks of both houses had been in the habit of deriving inordinate profits. Immediately on his acceptance of the seals, he had issued a strict injunction to all the officers of his court to discharge their duties without receiving any extra fees whatever; an order which, under the venerable practice which time and right honourable example had sanctified in their eyes, must have rendered him as little popular with the race of registrars and six clerks as the noble reformer who is now threatening to lay so unmerciful a clutch upon the profits of their offices†.

The new Lord Keeper appears very speedily to have disarmed the Queen's dislike, if not conciliated her favour. The speech she delivered from the throne on the opening of the new parliament, within a fortnight after his appointment, is

* "Reasons humbly offered to both Houses of Parliament to pass a Bill for preventing delay and expense in Suits at Law and Equity:" printed in 1707. The alterations proposed comprehended several amendments in pleading, practice, and process, which have since been carried into effect, and some which yet remain to be—*e. g.* the abolition of the payment of *copy money* in chancery, and of the heavy fees of the registrars on the engrossment of bills in equity, &c. &c. No blame whatever is imputed to the then judges.

† Written in 1833.—On the trial of Lord Macclesfield, in 1725, when that notorious peculator justified his extortions by the usage of his pre-

said to have been of his composition. It is considerably longer and in a less formal style than such addresses were then or now are wont to be; but we cannot say that it exhibits much more of the graces of eloquence. The ascendancy of Whiggism in the cabinet was manifested by the terms in which the Tory cry of "the church in danger" was denounced as the contrivance of malicious and disaffected hostility to the state. The accession of the Whigs to power appeared to have contributed much to the stability of the administration; the elections were carried in favour of their party by a great majority, and the temper of the new House of Commons seemed accommodating and liberal. In the following spring, the treaty of union with Scotland was formally opened, and Cowper was named one of the Commissioners for England, and took the leading part in the management of the negotiations. During their progress, (November 9, 1706), he was advanced to the dignity of the peerage, by the title of Baron Cowper, of Wingham, in the county of Kent; and in the following May, the Queen further manifested her favourable disposition towards him by investing him in council with the title of Lord Chancellor. He had already, by his father's death about a year before, succeeded to the baronetcy.

The trimming policy with which the Lord Treasurer Godolphin continued to temporise between the two great parties that divided the state, and to endeavour at the same time to gratify, as far as he durst, the known inclination of the Queen to Toryism, had led to the introduction, some time previously to the period of which we are now speaking, of Harley and St. John into the ministry. Cowper, who knew the craft and insincerity of Harley's character, had foreseen that this ill-considered partnership would be the parent of intrigue, dissension, and probable overthrow. He describes in an amusing strain, in a diary he kept at this period, the incidents of

decessors, it was proved that in one instance, in 1716, a sum of 500*l.* had been paid for the use of the great seal by a party receiving the appointment of Master in Chancery; but it appeared also that the money was paid out of his own funds, not from the suitors' monies, as in Lord Macclesfield's cases; and moreover that Lord Cowper had in several instances expressly refused the receipt of presents on the appointment of persons to other offices.

a dinner given by Harley on the occasion, at which all the Whig leaders were present. "On the departure of Lord Godolphin, Harley took a glass, and drank to love and friendship, and everlasting union; and wished he had more Tokay to drink it in. We had drank two bottles, good, *but thick*. I replied, his white Lisbon was best to drink it in, *being very clear*. I suppose he apprehended it (as most of the company did) to relate to that humour of his, which was never to deal clearly or openly, but always with reserve, if not dissimulation, or rather simulation; and to love tricks when not necessary, but from an inward satisfaction in applauding his own cunning." From this ill-omened junction the seeds of distrust and decline speedily took root. The Duchess of Marlborough's influence, too, had faded before that of Mrs. Masham, a less imperious and more artful favourite, whose personal interests and party connexions concurred in prompting her to flatter, instead of thwarting, the secret predilections of her mistress, and who omitted no opportunity of multiplying and exaggerating causes of dislike and division betwixt her and her ministers. Godolphin, thus threatened on the one side by back-stair influence and covert hostility, was harassed on the other by the unseasonable ambition, or rather avarice, of Marlborough, who was only prevented from obtaining the unprincipled demand he preferred, of being invested with a commission as captain-general for life, by the determination and independence of Cowper, whose advice the Queen sought in the matter, and who not only endeavoured by the strongest representations to turn the duke from his extravagant and dangerous purpose, but when they were unavailing, put an end to the scheme by unreservedly declaring that if such a commission were drawn, he never would affix the great seal to it. That this resolution was dictated by an honourable spirit of resistance to an unconstitutional and insolent design, and was not prompted by any feeling of personal hostility to Marlborough, can scarcely be doubted from the fact, that when, on Sunderland's dismissal from his office in 1709, the duke threatened to throw up his command of the army, Cowper was one who, in conjunction with the Dukes of Newcastle and Devonshire, wrote to dissuade him in the most earnest terms from doing so. It was about this time also, if we may credit the statements and authorities of Macpherson, that Marlborough,

in concert with Prince Eugene of Savoy, then in England, allowed himself to be drawn into the discussion at least of schemes of the most violent and unqualified treason, for the consolidation of his own and his party's power; one of them comprehending a plan for the occupation of the metropolis, and the seizure of the Queen's person, by an armed force under Marlborough's command, and the compelling her to dissolve the parliament, and to punish the parties (that is, Harley and his friends) suspected of the secret correspondence with France which had just then been discovered. This scheme is said to have been communicated to the Lords Cowper, Somers, and Halifax; by whom, however, even according to the suspicious authorities quoted by Macpherson, it was at once and absolutely rejected; and they expressed their determination to proceed in the investigation according to the legal and ordinary course. The consequence, however, of the disclosures relative to the French correspondence, was the removal of Harley and St. John from the ministry. But this contributed little towards restoring its consistence or vitality: they were indulged with no less opportunities than before of practising upon the resentments and predilections of the queen; and the dislike with which she viewed the party by whom they had been dispossessed was still deeper, and more openly exhibited. The Chancellor was probably the only one of the cabinet whom she continued to regard with anything like favour. It would seem from what shortly followed as if she, as well as the Tory leaders, considered the sincerity of his attachment to his party more questionable than it proved; and the earnest and repeated attempts which, as we shall see presently, were made to induce him to desert it, prove at least the high opinion they had of his ability and value as a political ally.

In the following year (1709) the proceedings on the absurd impeachment of Sacheverell, and the universal ferment, and hue and cry of "Church in danger," which were successfully excited throughout the kingdom, came most opportunely to the aid of the Tories in completing the discomfiture of their adversaries. The Lord Chancellor of course presided on the trial which began in Westminster Hall 27th February, 1710, and was protracted for three weeks; during which the fanatical and turbulent churchman was attended to and fro by the tumultu-

ous idolatry of a bigoted multitude, stuffed with a zealously propagated belief of a whig conspiracy to overturn the church, and sufficiently disposed before to disaffection and violence by the discontent arising from a general scarcity of provisions. Harley's plans were now fully enough matured to enable him to assume the offensive, and the entire disruption of the ministry was soon effected. The first blow was struck by the dismissal of Sunderland from his office of secretary of state; in two months afterwards, Godolphin was as unceremoniously removed from the Treasury; and in September "the queen came to council (says Burnet) and called for a proclamation dissolving the parliament, which Harcourt (now made attorney-general in the room of Montague) *had prepared:* when it was read, the Lord Chancellor offered to speak, but the queen would admit of no debate, and ordered the writs for a new parliament to be prepared." Almost all the remaining members of the cabinet were displaced or resigned their offices the same day. Harley, who had not originally contemplated so entire a sweep as this, but only the removal of Godolphin and his immediate dependents, had already in the most humble and supplicating terms solicited Cowper to retain his office, communicating to him, as a precedent for the treachery, Marlborough's secret correspondence with the jacobite Shrewsbury; but his overtures had been contemptuously rejected. The Chancellor, instantly on the breaking up of the council, obtained an audience of the Queen, for the purpose of delivering up the seals. She expressed surprise at his determination*, and combated it with

* Speaker Onslow, in one of his notes to Burnet's History, asserts, on the authority of Sir Joseph Jekyll, that Harley had made overtures to Somers, Halifax, and Cowper in conjunction, who were disposed to entertain them, had it not been for the indignant refusal of Lord Wharton to serve with Harley, whom he abused in the most contemptuous terms: and ascribes the expectation entertained by the Tories and the queen that Cowper would come into their views, to the circumstance of his retaining the seals so long after Godolphin's dismissal, and consenting to the Tory Harcourt's appointment as attorney-general. Macpherson, who takes more than one occasion of depreciating Cowper, and calls him elsewhere "a man of heavy and confused parts," says, "he derived this favour (of being retained in office), perhaps, on account of his insignificance:"—an hypothesis not very easily reconcileable with the pains that were taken to gain him.

the greatest earnestness; and thrice returned the seals into his hands after he had laid them down; and when he persisted in refusing them, absolutely commanded him to take them, adding, "I beg it as a favour, if I may use that expression." Cowper could not refuse (such is his own account of the interview in his diary) to obey this command, but after a short pause said he would not carry them out of the palace except on the promise that the surrender of them would be accepted on the morrow. "The arguments on my side," he says, "and the professions and repeated importunities of her majesty, drew this audience into the length of three quarters of an hour." The next day, Harley and Mrs. Masham having been consulted in the mean time, his resignation was accepted without any further difficulty, and the great seal was transferred, after a short interval, to Sir Simon Harcourt.

The resolute and honourable consistency which Lord Cowper maintained on this occasion gave him new weight and credit with his party, of which he might now be considered perhaps the most active and efficient leader. Never, probably, was there a period at which the conflict of parties raged more fiercely, or was conducted with more combination and system, than that of which we are now treating; and the aid of the press was largely invoked to give point and intensity to the mutual attack. The "folio of four pages," circulating to the remotest corners of the realm, with almost the speed of light, the detail of senatorial schemes and squabbles, the tale of public rumour and private scandal, as yet was not; still less were the breakfast-tables of that generation overspread with the huge sheet of four feet square, that now issues daily from the recesses of Shoe Lane and Blackfriars:—but lighter and more pointed missiles were supplied by the press in aid of the party war. Short and pungent political papers,—the Examiner, the Medley, the Freeholder, the Englishman, &c. &c.—employed the daily pens of no mean masters of the game. On the Tory side, Swift, Atterbury, Arbuthnot, Prior, Defoe*,—in the Whig interest, Addison, Steele, Maynwaring, and others, exercised their powers of invective, sarcasm, persuasion, apology, or flattery, to main-

* Defoe began as a Whig, but found it convenient to modify his principles soon after Harley's accession to power.

tain the predominance of their own party, or assault that of their adversaries. The chiefs of the several factions themselves descended occasionally into this arena; and Bolingbroke (then Secretary St. John) having indited a "Letter to the Examiner," of which paper Swift about that time assumed the conduct, in which he called upon him to pass in review, and hold up to public censure, the foreign and domestic policy of the expelled ministry, and the tyranny and insolence of the Duchess of Marlborough and her creatures—Lord Cowper replied by a counter epistle addressed (anonymously at the time) to Isaac Bickerstaff (Steele, who conducted the Tatler under that disguise), in which he entered into a laboured defence of the policy of the late government, and retorted upon his opponent the machinations and political sins of the Tories; and in turn invoked the pen of *his* correspondent to portray the triumphs of the war, and the glories wherewith the nation had been blessed under a Whig ministry. "Describe," says he (we quote a portion of the letter, because it presents almost the only specimen extant of the written style of its author, and that from a composition wrought evidently with some pains)—

"Describe the vast extent of the kingdoms and provinces undertaken to be wrested out of the enemy's hands: pass leisurely from the battle of Blenheim to that of Saragossa, and all the way observe, that Heaven, to prevent our undervaluing the glorious cause which the allies contend for, has suffered no acquisition to be made but by true military conduct and fortitude, and permitted disgrace to fall on those only of their commanders who have acted rashly or carelessly, and without counsel or discretion. Place in the clearest light those generals, who, faithful to their sovereign, just to themselves, pursuing honour with an honest affection, not irregular lust, have by the sword in open day recovered almost all the Spanish dominions in Europe;—

Non cauponantes bellum, sed belligerantes.

Describe them negotiating with caution and probity in the cabinet equal to their generosity and vigilance in the field; and give them the same superiority in one as in the other over the vain pretenders to mastery in both. Then set to view in all magnificence, the head and soul of the alliance, the pious royal Anne; and next her those ministers and patriots who

have given so many illustrious and immortal proofs of their duty and zeal for her person, and love to their native country. You cannot want shade sufficient for all this bright scene of beauteous images. The black hypocrisy and prevarication, the servile prostitution of all English principles, and the malevolent ambition of a perverse and arrogant faction, will serve to make the strongest contrast. And from the whole piece the world shall judge and own, in spite of senseless flattery, that the personal glory of monarchs is built upon the ability and integrity which their generals, ministers, and councils, shew in discharging their respective trusts, with just regard as well to the laws as to the prince."

Both these compositions obtained considerable celebrity at the time; St. John's, however, has much the advantage in ease, spirit, and poignancy. They are printed in the thirteenth volume of the Somers' Tracts.

It was at this period that the unscrupulous pen of Swift, pouring out upon the party he had just deserted the double bitterness of a renegade's hostility, assailed Lord Cowper with the old story of his connexion with Miss Culling, to which we before alluded; choosing for his purpose to represent it as an actual marriage, and ingeniously combining with the imputation upon his lordship's morality a no less malicious insinuation against his orthodoxy:—"This gentleman*," says he, (in the 22d number of the Examiner, published some three months after the change of ministry), "knowing that marriage fees were a considerable perquisite to the clergy, found out a way of improving them cent. per cent. for the benefit of the Church. His invention was, to marry a second wife while the first was alive, convincing her of the lawfulness by such arguments as he did not doubt would make others follow the same example. These he had drawn up in writing, with intention to publish for the general good; and it his hoped he may now have leisure to finish them."—Again, in the 26th number, after eulogising

* "Will Bigamy," by which name he several times designates Cowper; as Godolphin is styled "Mr. Oldfox," and Wharton held up to execration under the name of Verres. In another place, Lord Cowper is also most probably pointed at under the character of Cinna. Voltaire mentions, in the Encyclopédie, a tract in defence of polygamy, which he states to have been attributed, most probably in malice or irony, to Lord Cowper's pen.

the ability and eloquence of the new Lord Keeper Harcourt, he contrasts him with his predecessor in the following cutting terms:—"It must be granted that he (Harcourt) is wholly ignorant in the speculative as well as practical part of polygamy; he knows not how to metamorphose a sober man into a lunatic*; he is no freethinker in religion, nor has courage to be patron of an atheistical work, while he is guardian of the queen's conscience."—The last paragraph refers, we presume, to the Chancellor's having accepted the dedication of some of Toland or Tindal's heterodox publications; there is reason, indeed, to surmise that his opinions on religious subjects, or at least his practice, partook of the license so fashionable in the age and with the party in which he was brought up.

The Tories were not satisfied with the victory they had achieved in driving their adversaries from the helm, but sought to push their triumph into vengeance. They began by an inquiry into the conduct of the war in Spain, and after long examinations of Lord Peterborough and the other generals who had held commands in it, a vote of censure was proposed on the late ministry, for having embarked in offensive hostilities under circumstances and with means which rendered a defensive policy alone justifiable. Lord Cowper took a prominent part in the defence of his colleagues and himself, and his name is found to all the protests against the criminatory resolutions of the Lords. Harley, now become Earl of Oxford and Lord Treasurer, bent all his efforts towards the establishment of that peace which was afterwards so disgracefully consummated at Utrecht: a course to which he was urged at least as much by the difficulty of providing supplies for the maintenance of the war, as by any more patriotic motive. On the next meeting of parliament (December, 1711), the first trial of strength arose upon the resolution moved by Lord Nottingham (Swift's "Dismal"), who had just joined the Whig opposition, to append to the address to the throne the advice of the two houses, that no peace could be secure as long as Spain and the West Indies were left in the possession of the House of Bourbon. The

* This alludes to a commission of lunacy issued by the Chancellor in 1709 against Richard Viscount Wenman: his case excited much interest at the time, and was made, like almost every thing then, a party matter. See the Tatler, No. 40.

Whigs were still strong in the Lords; the Duke of Marlborough's manly and impressive vindication of his conduct and policy, zealously seconded by Cowper, Halifax, and other leaders of their party, had a powerful effect upon the house; and notwithstanding the presence of the Queen, who, after divesting herself of her robes of state, had returned to hear the debates *incognito*, the resolution was carried by a majority of three. "The partizans of the old ministry (this is Swift's account) triumphed loudly and without reserve, as if the game were their own. The Earl of Wharton was observed in the house to smile and put his hands to his neck when any of the ministry were speaking, by which he would have it understood that some heads are in danger." This was, however, a premature triumph; the Tories maintained their ascendancy, and signalized it by the disgrace of Marlborough, whom they had not in the outset ventured absolutely to break with, although they had assailed him with every species of obloquy and insult, but whom they now expelled, his fame blackened with charges of peculation and mismanagement, from all his employments.

The narrative of Lord Cowper's life during the remaining years of Queen Anne's reign, so far as we have the opportunity of tracing it, is little else than the history of the parliamentary disputes and struggles between the two parties, in all the more important of which he was prominently engaged. He opposed with unremitting hostility the ministerial projects of peace, which terminated in the memorable and ignominious Treaty of Utrecht; and subsequently denounced it in the most energetic terms:—"I cannot remove my finger from the original of our misfortunes, 'the cessation of arms.' We were then told, that if a blow had been struck, it would have ruined the peace. Would to God it had ruined *this* peace!" The breach which had already begun between Oxford and Bolingbroke, and the determination with which the latter pushed his schemes for defeating the Hanover succession, and for the establishment of high-church and jacobite ascendancy, produced the introduction, in the session of 1714, of the noted Schism Bill, the effect of which, had it come into active operation, would have been to subject all classes of dissenters to the most inquisitorial and exasperating persecution. Of this odious measure, Lord

Cowper was among the foremost adversaries; and signed the spirited protest against its passing, which remains on the Lords' journals. On the very day on which its operation was to have begun, the designs of its authors became at once abortive, and the whole fabric of their power was rent asunder, by the Queen's unexpected death.

The posture of affairs was now altogether changed: the Whigs were again in the full blaze of triumph; and Cowper, who had been long in correspondence with the Elector, and immediately on the passing of the Act of Security, in 1706, had written to assure him of his zeal for his person and devotion to his service, was nominated one of the Lords Justices for the administration of the government until the coming of the new sovereign; nor had four-and-twenty hours elapsed after his arrival at St. James's, when the great seal was demanded from Lord Harcourt, with circumstances almost of personal indignity, and forthwith delivered to Cowper, who (21st September, 1714) was declared a second time Lord Chancellor; and almost immediately afterwards was honoured with the appointment of Lord Lieutenant of his native county. He retained the seals until, in the spring of 1718, after the breach between the parties of Walpole and Townshend on the one hand, and Stanhope and Sunderland on the other, and the elevation of the latter to the head of the government, finding the conduct of affairs taking a course more and more alien from his principles, and his position in the cabinet daily more unsatisfactory to him, he finally resigned his high office, again to combat, for the short remainder of his life, in the ranks of opposition. The king accepted his resignation with reluctance, and testified his sense of his merits by advancing him (March 18, 1718) to the dignities of a Viscount and Earl, by the titles of Viscount Fordwich, of Fordwich in Kent, and Earl Cowper. The preamble to his patent was drawn up, in terms of the most glowing eulogy, by Hughes the poet, on whom he had conferred, unsolicited, an office of considerable emolument in the Court of Chancery, and who was the only one of his dependents whom he expressly recommended to the patronage of his successor, Lord Parker*.

* Hughes appears to have been a great favourite with the Cowper family. Two copies of encomiastic verses to his memory are prefixed to

We have already touched on the most prominent of Lord Cowper's judicial merits. His legal knowledge was undoubtedly extensive and various. The equity and common-law departments of practice did not at that time fall so exclusively into the hands of distinct classes in the profession, as to render it, as at present, a matter of necessity that an individual of even high eminence in the latter must have much to learn when he came to administer the former. The principles of our equitable jurisprudence, moreover, were then comparatively in their infancy; not, as now, defined by a long series of judicial determinations, and circumscribed within a system of rules and a course of practice little, if at all less precise than those which regulate the administration of the other branches of our municipal law. An intimate familiarity with precedents and practice was then, therefore, of less immediate importance in the formation of an equity judge; but as cases of the first impression arose almost daily, it was perhaps even more necessary than now that a mind deeply conversant with *principles*, and capable at the same time of applying them with a discriminating precision, should preside in the Court of Chancery. In these respects it is impossible, undoubtedly, to claim for Lord Cowper a place in the same rank with a Hardwicke or a Nottingham; but the fact that scarcely any of his decrees were reversed on appeal (although some of them are recorded to have been unsatisfactory to "that great man, Mr. Vernon," who appears to have been the oracle of the Chancery bar in those days) is a testimony to the soundness of his judicial determinations, the more unquestionable that from the comparatively short period for which he held the seals on both occasions, an appeal from his judgment to the House of Lords was not necessarily, as in some later cases, in effect a rehearing of the cause before the same judge. His decisions are contained in the reports of Vernon and PeereWilliams, and the Precedents in Chancery;

his poems, which bear the signatures of Judith and William Cowper, the Chancellor's niece and nephew. Among his poems are two panegyrical odes to Lord Cowper, in one of which, in imitation of Horace (Carm. ii, 20) he imagines himself transformed out of his unpoetical human shape by his patron's favour and friendship, and soaring as a swan. A few days before his death, he dedicated to the same liberal patron his well-known tragedy of the Siege of Damascus.

the third volume also of the collection entitled Reports in Chancery comprises a few of the most important cases heard before him during his first chancellorship. Valuable as these reports are to the lawyer—more valuable perhaps than some of the bulky volumes of our day, wherein everything, good, bad, and indifferent, that is made matter of question or experiment in Westminster Hall (at least before the courts of common law) is noted down with the same prolix fidelity—it is in vain to look to them for any thing like a faithful representation of the language or style of elocution of the judge whose decisions they record. The last mentioned volume only pretends to give, in one or two instances, (particularly in the great case of Orby v. Mohun), a verbatim report of the judgments; they appear, however, to be distinguished, in a literary point of view, more by a certain quaintness of diction than anything else—which, if it be not in truth the property rather of the reporter than of the judge, would seem to have been imbibed from a recent and laborious perusal of the erudite pedantries of Lord Coke.

Lord Cowper's personal demeanour on the bench was marked at once by dignity and courtesy. In illustration of the latter, we find related by several collectors of anecdotes a story of his considerate kindness towards Richard Cromwell, the former Protector, who, in the year 1705, was compelled to apply to the Court of Chancery against a daughter who disputed with him the title to a manor he inherited from his mother, and on whom the counsel opposed to him had been making some unworthy personal reflections. It is doubtful, perhaps, whether the story does not in truth belong to a later period, and to a descendant of the Cromwells instead of the Protector Richard. Miss Hawkins, however, in her Memoirs, tells it of Cowper in the following circumstantial manner, on the alleged authority (derived through Charles Yorke) of Lord Hardwicke, who is stated to have been in court at the time—that however could scarcely be the case in 1705, for he was not then fifteen. "The counsel made very free and unhandsome use of his (Cromwell's) name, which offending the good feeling of the Chancellor, who knew Cromwell must be in court, and at that time a very old man, he looked round and said, 'Is Mr. Cromwell in court?' On his being pointed out to him in the crowd,

he very benignly said, 'Mr. Cromwell, I fear you are very inconveniently placed where you are; pray come and take a seat on the bench by me.' Of course no more hard speeches were uttered against him. Bulstrode Whitelocke, then at the bar, said to Mr. Yorke, 'This day so many years I saw my father carry the great seal before that man at Westminster Hall.'"

Lord Cowper presided in 1716 as Lord High Steward, on the trials of Lord Derwentwater and the other peers implicated in the northern rebellion, and in the following year on the impeachment of the Earl of Oxford. His speech in passing sentence on the rebel lords who had pleaded guilty has been commended, we think, beyond its merits. The phrases are well chosen, the sentences well rounded; but the whole composition is cold, rhetorical, and unimpassioned. It may be doubted, indeed, whether either his powers of mind or his temperament qualified him for the forcible expression of the deeper and more passionate emotions, whether of anger or pity. It was in *persuasion*—clothed in all the garniture of a symmetrical and graceful eloquence—that his triumphs as an orator were achieved; the regions of pathos and invective lay equally beyond him.

The secret of Lord Oxford's easy escape from the perils of his impeachment is now pretty well understood to have lain, not in the disputes between the two houses on points of form which were apparently the proximate cause of his acquittal, but in the fears of Marlborough, of whose secret correspondence with the court of St. Germains he threatened to produce the proofs upon his trial. The Chancellor's demeanour towards his old opponent was liberal and courteous. Within a year or two afterwards—such are the changes and chances of political alliances—we find them sitting upon the same opposition bench, voting together in the same minorities, and joined in the same protests.

The only measures of importance upon which Lord Cowper is recorded in the parliamentary reports as a speaker during his last occupation of office, are the Septennial Bill in 1716, and the Mutiny Bill a few weeks before his resignation. He is stated to have addressed the House at considerable length on both, but the merest fragments are preserved of his speeches. After his retirement from office, he appears much more frequently and

prominently in debate. It is impossible within our limits even to refer to all the occasions on which he is mentioned as having spoken at length. He supported the "Bill for strengthening the Protestant interest," so far as it went to the repeal of the Schism Act, which he had so strenuously opposed in the last reign, but had not so far emancipated his understanding from the trammels of orthodox alarms, as to assent to the repeal of the sacramental test—a consummation, indeed, to which it took another century to reconcile the fears and consciences of the legislature.

In the year 1720, the splendid bubble of the South Sea scheme threw all ranks of the community into a delirium of greedy expectation. Lord Cowper was among the few who escaped the infection, and distinguished himself by an uncompromising opposition to the project, which he described as "like the Trojan horse, ushered in and received with great pomp and acclamations of joy, but contrived for treachery and destruction;" and truly predicted that a contract which put such enormous profits into the pockets of a few interested individuals, could not prove otherwise than prejudicial to the community. In a few months the bubble burst, and almost universal ruin and bankruptcy ensued. In the course of the inquiry which followed into the conduct of the company, an incident occurred which shewed the respect and influence Lord Cowper's character and talents commanded in the House of Peers. It was apprehended that Knight, the treasurer, who had been the negotiator of most of the fraudulent and corrupt practices by which the passing of the South Sea Act had been secured, was on the point of absconding out of the kingdom, and it was proposed to Lord Sunderland to prevent his escape by an immediate apprehension, without waiting for any parliamentary resolution against him. Sunderland, who had the best reasons in the world for not desiring to push matters to extremities against inferior delinquents, affected to acquiesce, but said, before any motion was made for the purpose, the Earl Cowper should be consulted, "for without his joining in with it there was no likelihood of its passing, and then Knight would be alarmed to no purpose. The other lord (who had made the proposal to Sunderland) applied to Earl Cowper, who seemed very averse to the taking any such step, till, upon Knight's further examin-

ation, the house should come to a resolution particularly with regard to him. Upon which the matter dropped; and it was suspected that the Earl of Sunderland, knowing the Earl Cowper's sentiments, referred that other peer to him on purpose to prevent the motion's being then made." Knight speedily received a hint of his danger, and the same night was on his way to France.

On the opening of the session of 1721-2, the immense navy debt, the commercial treaty with Spain which had just been concluded, and the measures necessary to guard against the introduction of the plague from France, where it had been raging to a dreadful extent during the summer, formed the principal topics of the royal speech. On all of them warm debates arose, in which Lord Cowper was a frequent speaker and protester—for a protest was then the certain *pendant* to a debate,—and arraigned in severe terms the extravagance and mismanagement of the government. In reference to the last, he moved the introduction of a bill for repealing the provisions of a statute passed in the preceding session, which authorised the forcible removal of persons infected with the plague, or even of healthy persons out of an infected family, to a lazaretto, and the drawing lines of entrenchment round infected places. The protest which he drew up on the rejection of this bill is remarkable for the sensible and temperate views it expresses on the subject of contagion and quarantine, which have since been amply confirmed by experience and scientific inquiry.

Lord Cowper's conduct and principles did not entirely exempt him from the imputation levelled against so many eminent persons of that time, of being secretly favourable to the interests of the Pretender. On the discovery of the Jacobite conspiracy in 1722, Christopher Layer, the barrister, who was first brought to trial, and made strenuous efforts to save himself by successive disclosures, and by impeaching almost every body whom he considered most obnoxious to the ministry, declared in one of his examinations before the secret committee of the House of Commons, that he had been told by his confederate, Plunket, of the existence of a Jacobite club, called in Plunket's letters Burford's club, of which Lord Orrery was chairman, and which met monthly at the several members'

houses in turn; and that among its members were Lord Cowper and several other lords and commoners whom he named—some of them of undoubted Jacobite principles; and (in another examination) that Lord Orrery had assured him (Layer) that Lord Cowper had told him 200 Tories and 90 Grumbletonians (a cant term by which the Whigs were designated among the Jacobite party) would try their last efforts in the House of Commons. One of Plunket's letters also, preserved in Macpherson's collection of original papers, insinuates that "Cowper, the late Chancellor, if he could get off handsomely from the Whigs, would join with the Princess Anne in all her measures." That this accusation, which rested altogether on the assertions of this Irish jesuit and spy, was as unfounded as it was malicious, it is impossible to doubt. Lord Cowper expressed the strongest indignation at the charge, and declared, "that after having, on so many occasions and in the most difficult times, given undoubted proofs of his hearty zeal and affection for the Protestant succession, and of his attachment to his majesty's person and government, he had just reason to be offended to see his name bandied about in a list of a chimerical club of disaffected persons, printed in a parliamentary report, on the bare hearsay of an infamous person, notoriously guilty of gross prevarication." He even dropped a hint that the lies of the confessions were enough to give an air of fiction to the whole conspiracy; and concluded by a motion for summoning Plunket to the bar of the House for examination on the subject. Lord Townshend, the Secretary of State, while he expressed the fullest conviction of the utter falsehood of the imputation, vented also his surprise "that a noble peer, whose abilities and merit had justly so great weight in that illustrious assembly, should upon a trivial circumstance ridicule as a fiction a horrid and execrable conspiracy, supported by so many proofs as amounted to a demonstration." The government refused to assent to Plunket's examination at the bar, and Lord Cowper thought it necessary to circulate a solemn declaration of his innocence (which was published in the Historical Register for 1723), affirming his entire ignorance of the existence of the supposed club, and even of the persons of many of its alleged members. He was not, however, deterred by the promulgation of these calumnies, from opposing, in the most uncompromising manner,

all the arbitrary proceedings of the government in the prosecution of the conspirators. He had already ineffectually resisted the suspension of the Habeas Corpus Act, at least for a longer period than six months, and now waged an unremitting, though equally fruitless, war against the Bills of Pains and Penalties, by which the government determined to punish Atterbury and his co-conspirators, on evidence of the most ultra-legal and inconclusive character. His speech on the third reading of the bill against Atterbury is by far the most perfect and interesting specimen which has been preserved to us of his parliamentary eloquence; at once masterly in argument, admirable in illustration, rich and copious in diction and ornament. Our limits allow space for only one or two passages. He happily ridiculed the absurd distinction between legal and moral evidence, and the position of the Solicitor General, Sir Clement Wearg, that no evidence was, strictly speaking, legal, but what was mathematical:—

"Legal evidence is nothing else but such real and certain proof as ought in natural justice and equity to be received; and therefore the oath of one credible witness, being certain and sufficient to induce a belief of the things he swears, is legal evidence; and yet so tender is our law, so great a degree of certainty does it require, that as it now stands, two positive witnesses are required to convict a man of high treason. . . . Will any one pretend to say that the oral evidence of witnesses can be called mathematical? But the gentleman goes on, and says, that the evidence for this bill is legal in the ordinary sense of the word [it consisted mainly of hearsay and comparison of handwriting]; on the contrary, I beg leave to affirm that it is not legal in any sense whatsoever. No act of parliament has made it legal, nor can it in natural justice or equity be called so, for want of sufficient certainty. . . . . The wisdom and goodness of our law appear in nothing more remarkably, than in the perspicuity, certainty, and clearness of the evidence it requires to fix a crime upon any man, whereby his life, his liberty, or his property may be concerned. Herein we glory and pride ourselves, and are justly the envy of all our neighbour nations. Our law in such cases requires evidence so clear and convincing, that every bystander, the instant he

hears it, shall be satisfied of the truth of it. It admits of no surmises, innuendoes, forced consequences, or harsh conclusions, nor anything else to be offered as evidence but what is real and substantial, according to the rules of natural justice and equity. . . . . The distinctions that have been made, and the instances that have been produced, shew only what *legal* evidence is sufficient for conviction, and what not; and if that were the question now before your lordships, it would deserve another consideration. The question now is, whether any evidence at all has been offered to your lordships to fix treason upon the Bishop of Rochester? That there is no legal evidence it is agreed on all hands; and I hope I have sufficiently satisfied your lordships, that if it be not legal it is not real evidence, nor such as in natural justice and equity ought to be received, and therefore no evidence at all."

The peroration is striking:—

"My lords, I have now done; and if on this occasion I have tried your patience, or discovered a warmth unbecoming me, your lordships will impute it to the concern I am under, lest, if this bill should pass, it should become a dangerous precedent to after ages. My zeal as an Englishman for the good of my country obliges me to set my face against oppression in every shape; and wherever I think I meet with it—no matter whether one man or five hundred be the oppressors—I shall be sure to oppose it with all my might. For vain will be the boast of the excellency of our constitution; in vain shall we talk of our liberty and property secured to us by laws, if a precedent shall be established to strip us of both, where both law and evidence confessedly are wanting.

"My lords, upon the whole matter, I take this bill to be derogatory to the dignity of the parliament in general, to the dignity of this house in particular; I take the pains and penalties in it to be either much greater or much less than the bishop deserves; I take every individual branch of the charge against him to be unsupported by any evidence whatsoever; I think there are no grounds for any private opinion of the bishop's guilt but what arise from private prejudice only; I think private prejudice has nothing to do with judicial proceedings; I am therefore for throwing out this bill."

With this honourable display of principle and public spirit his distinguished career was closed. His health had been long delicate, and had for years been partially sustained only by a strict adherence to regimen in exercise and diet. Immediately on the prorogation of parliament, within a fortnight after the passing of the Bill of Pains and Penalties, he retired, overwrought with the exertions of the session, to his house in Hertfordshire, in the hope of recruiting his shattered health by the enjoyment of quiet and fresh air. But his constitution was enfeebled beyond recovery; his strength daily declined, until, entirely worn out, on the 10th of October 1723, he breathed his last, and was buried on the 19th of the same month in the parish church of Hertingfordbury. That church, which contains splendid monuments to his brother and other less eminent members of his family, has not even a tablet to record the talents and virtues of the distinguished founder of their nobility.

He departed not however unhonoured or unsung. A few days after his death, the Duke of Wharton devoted the fortieth number of his True Briton to an elaborate panegyric, in the true style of a French funeral *éloge*, upon every part of his character and conduct, public and private; of which if but the half was deserved, he must indeed have been a rare specimen of the union of all excellence and talent. We transcribe that portion of it which celebrates his excellences as a judge:— "The dignity of this weighty office sat easy and graceful upon him. In his person and countenance there was plainly to be seen a fine exterior figure of that inward worth, which every body experienced whom their own wants pressed, and his affability moved, to approach him. No sooner was he mounted on the bench, but all honest men found with pleasure that righteousness and truth were the only pleaders that could be prevalent before him. Every poor and just man, though almost sunk by the weight of oppression, entered the Court of Chancery with an air of confidence, because he knew, as sure as he came there, so sure he should be *eased of his burthen*, and depart with a light and comforted heart. The party that was cast, never went away without a full and plenary conviction of his having been in the wrong; and if any person appeared guilty of injustice, the Chancellor laid it open in such a manner,

that he rather excited in the person a compunction and remorse for his crime, than any indignation at the discovery ..... The delay of the law, which used to be numbered as one of its greatest grievances, was by him turned into despatch; and he made his own labours the greater, to give ease to other people." This is tolerably warmly coloured; but the terms in which his oratorical powers are lauded are still more transcendent:—"As great as all his other talents were in him, they would never have had anything like that force and efficacy which they ever carried along with them, if he had not been blessed with the gift of eloquence. It was the orator that lighted up the most shining parts both of the statesman and judge. His discourse might not improperly be compared to lightning: it was divinely beautiful, and yet powerfully strong; it gilded and adorned whatsoever it touched upon, but struck down every thing that opposed it ..... When he grew silent, oratory was struck dumb. But silent he can never be! No! all the memorable acts of his illustrious life still speak, and speak aloud, this one great truth—That whoever would be a fine gentleman, a judge, a scholar, or a statesman; that whoever would be a great man while he lives, and be esteemed so when he is dead, must necessarily become, in the first place, a good man." But prose, even so glowing, was insufficient for the due celebration of his fame. The age of elegy was not yet past; and Ambrose Philips (a staunch Whig) sung his praises in a regular ode of strophes and antistrophes, of which the opening stanza may be a sample sufficient to satisfy the taste of our readers:—

"Wake the British harp again
To a sad melodious strain;
Wake the harp whose every string,
When Halifax resigned his breath,
Accused inexorable death:
For I once more must in affliction sing,
One song of sorrow more bestow,
The burden of a heart o'ercharged with woe;
Yet, O my soul, if aught may bring relief,
Full many, grieving, shall applaud thy grief,
The pious verse that Cowper does deplore,
Whom all the boasted powers of verse cannot restore."

Of Lord Cowper's legal and judicial character and qualifications we have already spoken. With regard to his merits and failings as an individual, the virtues of integrity and kindheartedness appear to have been denied him by none; but of the strictness of his morality, or the depth of his religious impressions, there is less reason to entertain a very favourable opinion. He was a generous patron of literature and the fine arts: a handsome collection of pictures, formed by his taste, still adorns the seat of his noble descendants in Hertfordshire. But of his scholastic acquirements, independently of the learning of his profession, Swift did not perhaps give a very unjust report, when he designated him "a piece of a scholar." One of the most amusing anecdotists of those times (Dr. King) indeed affirms, that for a century and a half this country had boasted but two Chancellors who could be called really learned men—meaning, we presume, Bacon and Somers; and informs us that Lord Hardwicke even learned Latin after he arrived at the woolsack—which however we take to be a slight exaggeration. Nor were Lord Cowper's powers of intellect, perhaps, of the highest order, or his grasp of mind to be at all compared with that of a Mansfield or a Thurlow. But whatever were his merits or defects in other points, in one capacity—as a consummate master of the external part at least of the art of oratory, he had scarcely a rival in his own time, and has had probably few superiors since. The elegance of his diction, the charm of his elocution, the graces of his manner, set off as they were by the advantages of an animated and pleasing countenance, and handsome person, atoned for the want of strength, and not unfrequently perhaps cast a veil over the scantiness of argument. Of the first, the mutilated remains in the Parliamentary History present us with a faint resemblance; of the latter we can know nothing but by the reports of his contemporaries. By them they were all loudly celebrated. The panegyric pronounced by Ben Jonson upon Bacon was applied to him—that "he commanded when he spoke, and had his judges angry or pleased at his devotion. No man had their affections more in his power; and the fear of every man that heard him was lest he should come to an end." "The Lord Chancellor Cowper's strength as an orator,"

says Chesterfield, "lay by no means in his reasonings, for he often hazarded very weak ones. But such was the purity and elegancy of his style, such the propriety and charms of his elocution, and such the gracefulness of his action, that he never spoke without universal applause; the ears and the eyes gave him up the hearts and the understandings of the audience." The Duke of Wharton's rhapsodical encomiums we have already quoted. The poets also took up the praises of his eloquence. Pope, when in imitation of Horace's "Frater erat Romæ consulti rhetor," &c. he introduces his two brother serjeants bandying compliments, makes Cowper their model of a graceful speaker:—

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

Sir Charles Hanbury Williams, (or rather the uncertain author of a lively poem printed among his works, for it is wrongly attributed to him), offering Sir Hans Sloane divers rarities to enrich his museum, enumerates amongst them

> "Some strains of eloquence, which hung,
> In ancient times, on Tully's tongue;
> But which conceal'd and lost had lain,
> Till Cowper found them out again."

Ambrose Philips soars a higher flight;—

> "Hear him speaking, and you hear
> Music tuneful to the ear;
> Lips with thymy language sweet,
> Distilling on the hearer's mind
> The balm of wisdom, speech refined,
> Celestial gifts!"

These testimonies—others might be added—sufficiently attest the estimation in which he was held as an accomplished orator. The few specimens that remain of his written style, although pure and harmonious, certainly would not of themselves have prepared us to expect such high commendation. A few of his familiar letters are preserved in the correspondence of Hughes the poet—they are easy and agreeable, and strongly display the writer in the light of an amiable and kind-hearted friend, but can make little or no pretension to merit as compositions.

As a public man, Lord Cowper's character may fairly claim the praise of an honourable and independent consistency,

superior to the temptations of power and gain, although falling short undoubtedly of that higher principle of public conduct which soars above the connexions and views of party —a principle admirable in theory, but the most difficult in the world to maintain stedfastly in practice; and the more so because its own good purposes are unattainable from the want of that strength of union which party only can exert. Cowper was, in truth, from first to last "a staunch Whig:" condescending to no mean compliances to secure his own personal aggrandizement, but not equally above engaging in the *tracasseries* of political strategics, for the advancement of the party whose general principles and policy he no doubt conscientiously believed the most conducive to the welfare of his country.

After the lapse of a century, it is in vain to seek for details of the private life even of an individual of the most eminent public station and character, unless they have been treasured up by some gossiping kinsman or intimate, or preserved in the form of autobiography, or at least in familiar correspondence. Of Lord Cowper's we know almost nothing. He is represented to us as a lively and agreeable companion—a *bon vivant*, until the failure of his health compelled him to abstinence—goodnatured, generous, and hospitable: but of the scenes or circumstances in which these qualities were called into exercise, little or nothing can be traced. Although he kept a diary for some years, it records little besides political matters:—it still remains in manuscript only, in the collection of the Earl of Hardwicke.

By his long and profitable career at the bar, and his various official emoluments, he realized, in addition to his patrimonial estate, an ample fortune, out of which he purchased the manor of Hertingfordbury, and built upon it, at a spot called Colne Green, a handsome house, which was pulled down in 1801, when the present more stately mansion of Pansanger was erected. At Colne Green were to be seen (when Dr. Kippis's *collaborateur* in the publication of the Biographia, worthy Dr. Towers, went down to collect information about the family in 1789) the purses which had contained the seals during the several years of Lord Cowper's chancellorship, which however were too few to be applied to

the thrifty purpose to which good Lady Hardwicke devoted her lord's—the hanging of the state apartment. Among the pictures, there were three different portraits of the Chancellor by Kneller, which no doubt are still preserved at Pansanger.

Lord Cowper was twice (avowedly) married; first, to Judith, daughter and heiress of Sir Robert Booth, of London, who died in April 1705, and by whom he had one child only, a son, who scarcely attained boyhood: secondly, to Mary, daughter of John Clavering, Esq., of Chopwell, in the county of Durham, who survived him a few months. By her he had two sons and two daughters; the former were William, his successor in the title, and Spencer, who entered the church and became Dean of Durham. The Chancellor's younger brother, Spencer, was not prevented by the heavy charge alleged against him in early life, from attaining rank and repute both in his profession and in parliament. On his brother's elevation to the woolsack, he succeeded him in the representation of Beeralston, and sat afterwards for Truro; adhered with equal inflexibility to the Whig party, was a frequent and successful speaker, and one of the managers in the impeachments of Sacheverell, and of the rebel lords in 1716. On the accession of George I., he was appointed Attorney-General to the Prince of Wales; in 1717, Chief Justice of Chester; and in 1727, a Judge of the Common Pleas, retaining also, by the especial favour of the Crown, his former office until his death in December 1728. His second son, John, became the father of another William Cowper, of even greater celebrity than he whose career we have been recording—the poet of "The Task."

LORD HARCOURT.

FEW names have adorned the English peerage, which could boast their descent from a nobler source or more remote antiquity than that of Harcourt. Connected in its course, by blood or alliance, with several of the most distinguished families of Britain, it claimed kindred also for centuries with one of the noblest houses that graced the proud aristocracy of France during the middle ages. When Rollo the Norman, at the close of the ninth century, overran and wasted the province of which, by a formal cession from Charles the Simple, he became the tributary sovereign, and which thenceforth received the name of Normandy, his second in command, Bernard, a Danish chief of the blood royal of Saxony, was rewarded for his services in the expedition by a grant of several valuable fiefs, among which was that of Harcourt, within a few miles of the town of Falaise. He continued next the throne in trust and power during the reigns of Rollo and his son, and was nominated guardian of the infant successor of the latter, and regent of the duchy during his minority. Of his two grandsons, Touroude or Turulph, and Turchetil, who were also joint governers and guardians of their infant sovereign, the elder had a numerous issue, and according to some genealogists was the progenitor of all the Scottish Hamiltons; the younger was also the father of a son, Anchitel, who, on the general introduction of surnames among the Norman nobles, first assumed that of Harcourt. His two eldest sons attended William the Norman in his descent on England; and from the second of them, Robert de Harcourt, descended in a direct line, without a single

interruption to the male succession, the noble subject of this memoir:—he was the lineal ancestor also of the Counts and Dukes of Harcourt in the peerage of France. The third in descent from this Robert became possessed, in the reign of Richard I., in right of his wife Isabel de Camvile, of the manor and house of Stanton in Oxfordshire, which was thenceforward distinguished by the name of Stanton Harcourt, and has to the present time—a period of above six hundred years—remained the property of his descendants. It is beside our purpose to trace the succession or fortunes of the family, which continued of knightly rank down to the period of the Great Rebellion. Sir Simon Harcourt, its representative in that unhappy time, a brave soldier and determined royalist, was appointed military governor of Dublin on the breaking out of the Irish Rebellion in 1641, and is honourably remembered for the gallantry he displayed in raising the blockade of that city in the following year. Being killed by a musket shot in an attempt to dislodge a rebel garrison from the castle of Carrick Main, about four miles from the capital, in March 1643, his possessions devolved upon his eldest son, Philip, who was knighted at Whitehall immediately on the Restoration, and sat for Oxfordshire in the turbulent and short-lived parliament which met at Oxford in March 1681. By his wife, the daughter and heiress of Sir William Waller, the first parliamentarian general, (whose mother was Sir Philip's paternal aunt), he had an only son, Simon, whose biography is here to be recorded in his capacity of a lawyer, but who is at least as well known to posterity as a politician, and as the convivial associate of the wits and poets of his time.

Of the course and circumstances of his early life, previously to his appearance in the scenes of political contest, the information afforded us is of the most scanty character, extending, in truth, little beyond the knowledge of a few dates. He was born at Stanton Harcourt in the year 1660: where or under whose guidance the studies of his boyhood were prosecuted, we have found nowhere recorded; they were completed at Pembroke College, Oxford, where he entered as a gentleman commoner in his sixteenth year. It appears, however, that, from whatever cause, he quitted the University

without a degree*. Had he lived a few years earlier, and exercised his pen in any of the multifarious polemical controversies which were so hotly disputed during the greater part of Charles the Second's reign, we should doubtless have been able to resort to honest Anthony Wood for a copious exposition of his sayings and doings both as an Oxonian and a Templar, which now, for the want of some such worthy chronicler, we are constrained to leave in the oblivion which shrouds the personal history of so many of his more illustrious contemporaries. We may surmise, however, that it was during his residence at Oxford, the very head-quarters of monarchical and anti-schismatical zeal in those days, that he imbibed the strong disposition towards Toryism and High-Church ascendancy doctrines, which he afterwards professed so staunchly, and which certainly he could not have derived from the example or instructions of his father; who, educated under the guardianship of Sir William Waller, maintained a strict adherence to presbyterianism, and was distinguished as a liberal protector and benefactor of the ejected non-conformist clergy: nor is it improbable that Sir Philip's apprehensions lest this disposition should be confirmed by a longer residence in the University, were the occasion of his early removal. He had already (17th May, 1676) been admitted on the books of the Inner Temple; and having duly completed the requisite probationary period of seven years' studentship,—spent as much perhaps, if we may judge from the intimacies of his after life, among the symposia of Will's coffee-house † or the Half-Moon, as in the grave and solitary digestion of the Year Books and Lord Coke,—was called to the bar on the 25th November 1683: the same month which the execrable Jefferies, just raised to the chief seat in the King's Bench, blackened with the legal murder of Sidney, the first in the horrible catalogue of his judicial butcheries. At that period also, Lord Keeper

* In the entry of his creation as LL.D. in 1702 (the only occasion where his name is found in the list of graduates), he is merely described as "sometime of Pembroke College."

† At the corner of Little Russell Street and Bow Street, the favourite resort of Dryden:—the Half-Moon Tavern, in Aldersgate Street, was also frequented by Davenant, Wycherley, Congreve, and the other wits of the time.

Guildford,—with whom, by the half-idolatrous admiration of that matchless gossip his brother Roger, posterity has become much more familiar than his own legal attainments or judicial merits could possibly have effected for him,—was in the first year of his presidency in the Court of Chancery, where he honoured his seat by a more earnest and honest endeavour to reform the abuses of his court than has been exhibited since his time by much greater men, with far better opportunities. In neither court, however, in this the very worst period of our judicial history, was the young barrister likely to hear much that was calculated to moderate his zeal for prerogative, or his aversion to schismatics;—nor yet at the bar, which, "following its encouragings," as Roger North phrases it, had become as strongly sensible to the claims of prerogative, as in the preceding generation it had been alive to the superior excellence of republican and presbyterian institutions. Nothing certain, however, is recorded of Mr. Harcourt until, in the year 1690, on the assembling of the second parliament of William and Mary, he was returned on the Tory interest for Abingdon, of which borough he had been already elected recorder, and for which he continued to sit during all the follo wing parliaments of that reign, and the first of Queen Anne's. His father's death, in 1688, had left him entirely free to pursue his own political inclinations without restraint; and it is at all events some merit that he had not changed his opinions, or at least abandoned the profession of them, with the change of times. But youth is little apt to do so; that is a consummation reserved, as it was in his case, for a period of life when the selfish and calculating *experience* of the hackneyed politician has opened his eyes to the *indiscretion* (such is the phrase) of youthful enthusiasm.

He appeared as a speaker within a few days after the meeting of parliament, and took a part in almost all the momentous discussions which occupied that session. The first great debate arose upon that part of the bill for recognizing the king and queen, which went to declare the acts of the Convention parliament good and valid *ab initio;* and which he, in common with the rest of the Tory members, resisted as being in contravention of the Bill of Rights. The startling rejoinder of Somers, that if the Convention were not to all

intents and purposes a legal parliament, the members of the present House, who had taken the oaths enacted by the Convention, and imposed taxes under the authority of its provisions, were guilty of treason, and bound to return to their allegiance to King James, silenced at once the threatened opposition, and the bill, which had been hardly dragged through the other House by the smallest majorities, passed the Commons in two days. The Tories, however, rallied their force in opposition to the Abjuration Bill and the suspension of the Habeas Corpus Act, on both of which occasions Harcourt is reported to us as a speaker: but from the scanty fragments preserved of the debates, consisting only of short notes taken by one of the members (Mr. Anchitel Grey), it is impossible to guess at what length or with what effect he spoke; probably he took some considerable part in debate, or he would not have been recorded at all. It would appear, however, either that his oratorical ambition cooled considerably after its first essay, or that he has been visited with unaccountable neglect; for his name occurs not once during the three following sessions. He was one of the small minority of commoners who declined to sign voluntarily the association for the king's defence, entered into by both Houses on the discovery of the assassination plot in 1696. The bill of attainder against Sir John Fenwick, in the same year, furnished the Tories with an opportunity of standing forth as the champions of liberty and justice, while it drove the Whigs into the arbitrary argument, so ill according with all their recent professions, of a state necessity superseding the ordinary and constitutional forms of law. Among the ablest impugners of this doctrine,—the application of which was undoubtedly not demanded by the exigency of the particular case,—was Harcourt, of whose "brave reply" to the Solicitor-General Hawles (on the committal of the bill) a portion has been preserved by Ralph, and deserves quotation for its concise and simple force:—

"I know no trial for treason but what is confirmed by Magna Charta, *per judicium parium*, by a jury, which is every Englishman's birthright, and is always esteemed one of our darling privileges; or *per legem terræ*, which includes impeachments in parliament. But if it be a trial, it is a pretty strange

one, where the person that stands upon his trial has a chance to be hanged, but none to be saved. I cannot tell under what character to consider ourselves, whether we are judges or jurymen. I never heard of a judge, I am sure I never heard of a juryman, but he was always on his oath: I never yet heard of a judge but had power to examine witnesses upon oath, to come to a clear sight and knowledge of the fact: I never heard of a judge, but if a prisoner came before him, the prisoner was told he stood upon his deliverance, and he had not only a power to condemn the guilty but to save the innocent. Have we that power? . . . . . You cannot dispose of him otherwise than to send him back to Newgate, though you were satisfied of his innocence; but in such a case the party must undergo a double trial, which is contrary to all the rules I ever heard of. If I am a judge in the case, I beg leave to tell you, for my own justification only, what definition I have met with of a judge's discretion: my Lord Chief Justice Coke says it is 'discernere per legem;' and by that discretion I take leave to consider this case. If judges make the law their rule, they can never err; but if the uncertain, arbitrary dictates of their own fancy, which my Lord Coke calls the crooked cord of discretion, be the rules they go by, endless errors must be the effect of such judgments."

He proceeded to shew the insufficiency of the evidence of the single witness to the treason in the particular case; and on the third reading of the bill, again opposed to it in vain the powers of eloquence and reason, always most thrown away upon a government pursuing measures of unnecessary or unjust severity. His reputation as a parliamentary speaker was now high, and the odium which about this time began to attach itself to the Whigs, contributed to his importance as an efficient and zealous instrument of the party in opposition. In the session of 1700, when the Tories had gained the ascendant in the Commons, he was selected to impeach Lord Somers at the bar of the House of Peers, carried up the articles of impeachment, conducted the several conferences between the two Houses, which arose out of their differences as to the form and conduct of the trials, and was chairman of the committee appointed to direct the proceedings. We have adverted, in the Life of Lord Cowper, to the circumstances

under which, owing to the indiscreet zeal of Somers's friends, the impeachment was carried in the House of Commons. According to the account of the debate given by Sir Robert Walpole (for the names of the speakers are not recorded in the Parliamentary History), it was Harcourt who, "with extremely fallacious, but as plausible remarks as the subject could admit, to which Cowper's indignation moved him to reply," opened the protracted discussion, the purpose and effect of which was to give time for the impression produced by Somers's defence to wear away. This was among the last proceedings of the session*. The new Parliament, which met in January, 1701-2, had scarcely made any progress in business, when the king's death struck down the reviving strength of the Whigs, and threw power and profit into the hands of the exulting Tories. Harcourt, among the rest, not unreasonably looked for a requital of his services to his party in some of the good things at their disposal; nor was it long before he was gratified by the removal of Sir John Hawles from the Solicitor-Generalship to make way for his advancement. He was sworn into office 1st June, 1702, and was knighted the same day, in company with Northey, the Attorney-General, who, pliant enough to serve either party, had escaped dismissal. In August following, he formed one in the train of courtiers who attended the Queen and her husband on their visit to Oxford, and having re-entered himself

* In this year he had a narrow and curious escape from loss to the gentlemen who *practised* in those days on Hounslow Heath. We read the following in the London Post of June 1st, 1700:—"Two days ago, a lawyer of the Temple coming to town in his coach, [a manuscript note in the margin states it to have been Mr. Simon Harcourt,] was robbed by two highwaymen on Hounslow Heath of £50, his watch, and whatever they could find valuable about him; which being perceived by a countryman on horseback, he dogged them at a distance; and they taking notice thereof, turned and rid up towards him; upon which he, counterfeiting the drunkard, rid forward making antic gestures, and being come up with them, spoke as if he clipped the king's English with having drunk too much, and asked them to drink a pot, offering to treat them if they would but drink with him: whereupon they, believing him to be really drunk, left him, and went forward again, and he still followed them till they came to Cue (Kew) ferry, and when they were in the boat, discovered them, so that they were both seized and committed; by which means the gentleman got again all they had taken from him."

of Christ Church, was among those who were honoured on the occasion with the degree of LL.D. His son, then an undergraduate of the same college, a young man of considerable accomplishment and promise, was selected for the honour of complimenting the illustrious visitors in a copy of verses, which are preserved among the Lansdowne MSS. in the British Museum, and exhibit a fair sample of easy and agreeable versification.

The tide had turned against the Whigs throughout the country as well as at court, and the elections to the new Parliament produced a triumphant majority of supporters to the Tory ministry. The controverted returns, also, were determined with the most bare-faced corruption and injustice in favour of their adherents. One of these cases, the most flagrant perhaps of all, in which Mr. Howe, one of the most factious and virulent partisans of the Tories during the last reign, was voted by a great majority duly elected for Gloucestershire, in direct contravention of the legal forms of inquiry into election petitions, passed on the motion, and mainly by the agency, of the Solicitor-General, and exposed him to no little scandal. He was often, Speaker Onslow informs us, reproached with it to his face;—"but," adds the same authority, with a severity justified by a review of Lord Harcourt's political career, "he was a man without shame, though very able." It was not very long, as we shall see presently, before he was paid for his conduct in this transaction in the self-same coin.

His practice at the bar, up to the period of his appointment to office, appears, if we may judge by the unfrequent occurrence of his name in the King's Bench Reports, to have been by no means extensive. Throughout Lord Raymond's Reports, extending without a break from 1694 to 1703, in which the names of counsel are almost always given, his occurs scarcely half a dozen times, and the earliest of these is in Trinity Term, 1700; and the only case in which it is to be found in the State Trials is in conjunction with no fewer than six other counsel, in defence of Mr. Duncombe, the Receiver-General of the Excise, charged with defrauding the revenue by false indorsements on Exchequer bills, in 1699. It is to be considered, however, that in the reports of courts of equity,

in which probably his principal practice lay, the counsels' names are very rarely noted. His patrimonial fortune, diminished as it had been by the inroads made upon it during the civil wars, still remained, doubtless, sufficient to relieve him from the necessity of subjecting himself to the *drudgery* of bar practice; and his duties in Parliament, more congenial both to his talents and his ambition, scarcely permitted him to pay an undivided attention to professional employments, even if it had been necessary. By his appointment as Solicitor-General, he secured a considerable accession of income, without being compelled to much increase of professional labour. The emoluments of the law officers of the crown, although not so ample as they had been under the reigns of the last Stuarts, when the Attorney-General's profits amounted to about £7000 a year (a sum equivalent to nearly twice as much at the present day), were still very considerable, and exceeded the salaries of any of the common-law judges. The latter, however, had now obtained some compensation in the comparative certainty of enjoyment which the legislature had secured to their offices.

The first occasion on which we find the talents of the new Solicitor-General called into exercise in Parliament, was in the memorable debates on the case of Ashby and White, when, as may be surmised, he appeared as a strenuous supporter of the jurisdiction claimed by the Commons; and moved the resolution adopted by the House, "that the sole right of examining and determining all matters relating to the election of members to serve in Parliament, except in such cases as were otherwise provided for by act of Parliament, was in the House of Commons, and that neither the qualification of the electors, nor the right of the persons elected, was elsewhere cognizable or determinable:"—a position, the correctness of which, when limited to the proper object of the parliamentary jurisdiction, the determining who were rightly elected, was not impeached by the Whigs. His speech on this occasion, though plausible and clever, is not very remarkable for argument. Not long afterwards, the project of the union with Scotland was formally submitted to Parliament. Harcourt was employed to draw the bill, which he did so ably and ingeniously as to cut off all debate upon those of its provisions to which the opposition had determined to object. The pre-

amble was made to contain a recital of the articles of union passed in Scotland, and of the acts made in both Parliaments for the security of their several churches; and then came a single enacting clause ratifying them all. Thus the recital, being mere matter of fact, afforded no room for objection; and the objectors did not venture to oppose the general enacting clause *in toto*, and found such difficulty in fixing on particular points, and introducing provisoes applicable to them, that the bill, pushed forward with much zeal, passed the Commons before they had recovered from the surprise into which the form it was drawn in had thrown them. We may infer from the expressions of Burnet, that the credit of this management was mainly, if not altogether, due to Harcourt.

He filled about this time the chair of the Buckinghamshire quarter sessions; his manuscript notes of his charges to the grand jury, at the several sessions from Midsummer 1704 to Michaelmas 1705, are preserved in the British Museum, and would contrast amusingly with a quarter-sessions charge at the present day. Aiming at far higher topics than county rates and beer-houses, the burden of their song is the excellences of the constitution, the church, and the laws, the perfections of the Queen, and the glories of the war. "The government of England" (thus the first sets out) "is the happiest constitution in the world, for the admirable frame and wisdom of the laws: for by them all ranks and degrees of men are insured in the liberty of their persons and the property of their estates.—How much happier, gentlemen, are we than our neighbours, who groan under insupportable miseries, even to the last degree of slavery, while we live in ease and hospitality, and eat the fruit of our own vine. *All which* we owe to the wisdom of our ancestors; and take care that those laws by which we enjoy this happy state should have a due obedience paid them, for they will stand us in no stead without an honest, prudent, and impartial administration.—You, gentlemen, must enable us to put them in force by your presentments, else we cannot correct and punish the several offenders in our county. You are the eye of the county, and it may justly be presumable that no offence can be committed there but which must come to the knowledge of some of you, &c. As, gentlemen, we are blessed with such good laws, so we are

under the most auspicious reign of the best of queens (whom God long preserve!); a queen who will impartially put them in execution; a queen who is a zealous professor of the religion of the Church of England as established by law, and will always be a promoter of its honour and interest; and a queen who wishes from the very bottom of her breast there were no separatists from it in her dominions," &c.

These weighty truths the gentry of Buckinghamshire ran little risk of forgetting; for we find them imported in full into all the subsequent charges, each being referred to by the initial words of the paragraph, thus:—

"The government of England.

How much happier, gentlemen.

All which we owe.

You, gentlemen, must enable us—"

and so forth; with variations to suit the particular topic of the time, such as a declamation upon the victory of Blenheim or the surprise of Gibraltar, a lament over the thrice-rejected bill against occasional conformity, or an electioneering tirade against schismatic and lukewarm churchmen, giving note of the declension of Tory predominance.

This last appeal, as far as it regarded Sir Simon's own electioneering interests, was without effect: on the general election in the summer of 1705, he lost his seat for Abingdon, but he was returned by the government interest, in that and the following Parliament, for Bossiney. It was about this period that the series of intrigues and machinations was set on foot by Harley and his ally Mrs. Masham, which ended in the dismemberment of Lord Godolphin's ill-assorted cabinet. Of these Harcourt was a zealous and busy abetter, and lent all his efforts to persuade the leaders of the Tory party into the interests of the intriguers. These arts were for the present unsuccessful, and Harley and St. John were compelled to withdraw from office until their schemes should be more fully matured. Harcourt, who had in the last year (April 23, 1707) been advanced to the post of Attorney-General, on the dismissal of Sir Edward Northey, had now scarcely any alternative but to quit it in company with his confederates; which he did with a formality of which there is no other recorded precedent —by a surrender of his patent by deed inrolled in Chancery;

designed, we suppose, to attest the entire voluntariness of the sacrifice, since he could scarcely deem such a ceremony requisite in law. Had the mine been sprung more successfully, there is no doubt that the plot comprehended the removal of Lord Cowper from the woolsack, and the elevation of the Attorney-General in his room. Although, however, the views of the confederates were defeated for the time, they retired with little fear, supported by the prejudices of the Queen and the co-operation of her favourite, of carrying them into effect more securely. At present, matters appeared to go wrong in more ways than one with the dispossessed Attorney-General. In the Parliament which assembled in November, 1708, he was again returned for Abingdon; but on a petition lodged against his return by the government candidate, he was unseated, after two days' long and angry debate in a very full house*, by a determination as illegal and corrupt as that of which he himself had been the author six years before. Finding the turn the matter was about to take, he took his leave of the House in a short speech of great spirit and severity—the only portion preserved of the debate:—

"Whatever the determination of this House may be, this I am sure of, and it must be admitted, that I am duly elected for the borough of Abingdon as ever any man was. Had it been the pleasure of the House to have construed the charter under which this election is made, according to the natural and plain words of it, as the inhabitants have always understood it,—in such a sense all former Parliaments have frequently expounded it,—had you determined the right of election to be in those persons who have without any interruption exercised it for 150 years, you could not have insisted that I had not the majority. Even as you have determined the right, my majority is still unquestionable. No gentleman, with reason, can disprove my assertion, whatever reason he may have to refuse me his vote. You have been truly informed, the petitioner, on closing the poll, declared he did not come there with any prospect of success. But any opposition may give a handle to a petition; no matter for the justice of

* We need scarcely remind our readers, that the jurisdiction in election cases was not transferred to a select committee until the passing of the Grenville Act, in 1770.

it, power will maintain it. Whoever sent him on such an errand*, what mean and contemptible notions must he entertain of the then ensuing Parliament! he must suppose them capable of the basest actions, of being awed and influenced by menaces or promises, of prostituting their consciences at the word of command. Had there been such a Parliament elected, and I declared not duly elected, I should then have left my place with a compassion for the unfortunate friends that stayed behind me: whoever could have framed such a project to himself must undoubtedly have wished for, perhaps have wanted, such a Parliament. He must have been a person, the most abandoned wretch in the world, who had long quitted all notions of right and wrong, all sense of truth and justice, of honour and conscience. Whatever his dark purposes were, it is our happiness and the nation's that they were entirely disappointed in the choice of this Parliament. I cannot directly point him out, but whoever he was, I have so much charity as sincerely to wish he may feel, and be truly sensible of, the impartial justice and honour of a British Parliament." He then summed up the poll on both sides, and demonstrated that the counsel for the petition had left him the majority of two votes, and had added several unquestionable votes to his own poll.

The reign of Queen Anne was not fruitful in state prosecutions; and the only occasions on which we meet with Sir Simon Harcourt in the State Trials, during his employment as a crown officer, are the trials of the parties implicated in the forcible marriage of Mrs. Pleasant Rawlins, in 1702; of Mr. Lindsay, for treason in returning into the realm without a licence, in 1704; and of Tutchin, the libellous publisher of the Observator, in the same year. In the last case, the queen's counsel seemed to have revived the old prerogative strain which had been in use under the Stuarts. Montague, the defendant's counsel, was attempting to put an innocent construction on various parts of the libel:—"But," says the Solicitor-General, "Mr. Montague says nothing of 'the prerogative the people have that the representatives are the

* Lord Wharton, who exercised a gross interference in the elections in that part of the country, is doubtless aimed at here.

judges of the mal-administration of their governors; that they can call them to account, and can appoint such to wear the crown who are fittest for government;'—he passes by all this scandalous matter." "I did so, Mr. Solicitor," rejoins Montague, "and I did it on purpose, because I look upon it as a matter not proper for you and me to talk of as advocates in this place. I think the rights of the princes and the power of the people too high topics for me to meddle with." The Attorney-General (Northey) construing this into a covert justification of the doctrine complained of, takes occasion afterwards to say, "I am surprised to hear it justified here by a counsel that the people have power to call their governors to account. *I will always prosecute any man that shall assert such doctrines.*"—In the long and learned arguments which afterwards took place in the King's Bench, as to the amendment of the process in Tutchin's case, the Solicitor-General appears to have borne no part*.

On the impeachment of Dr. Sacheverell, in 1709-10, Sir Simon Harcourt, in his character of leading Tory lawyer, was selected for the chief conduct of the defence. His services, however, were necessarily withdrawn before the end of the trial; just as he concluded his opening speech for the defence, he had notice that he was returned to Parliament for Cardigan; it was said indeed by some that he knew it before he began. He engaged in the case with a zeal and acrimony doubled by resentment of his recent extrusion from the House of Commons. His speech was necessarily rather that of a rhetorician than an orator, but it deserves the praise of having made the

* If poetical evidence might be trusted, we might conclude that Sir Simon enjoyed a considerable equity practice. The second book of Philips's poem on Cyder (published in 1706) opens with an invocation to the younger Harcourt, then in Italy, to return and grace his native land with "Latian knowledge:"—

> "Return, and let thy father's worth excite
> Thirst of pre-eminence; see how the cause
> Of widows and of orphans, he asserts
> With winning rhetoric, and well-argued law!"

The monument to Philips's memory in Westminster Abbey was erected at Lord Harcourt's expense, as the stone itself rather ostentatiously informs us.

best of an indifferent case. He urged, in the first place, that the doctor's assertion of the illegality of resistance, on any pretence whatever, to the supreme power, was in fair construction to be understood as applying only to the supreme *legislative* power, in which sense there was no resistance even at the Revolution; but even if it must be understood as said of the executive, he had not in terms applied it to the particular case of the Revolution; that while inculcating the general rule of obedience, he had not deemed it necessary to express the particular exceptions for extraordinary occasions which might lawfully be made out of it, and which were more properly to be implied, as was the case in every other general rule; thus the apostles, enjoining obedience to rulers, masters, and parents, did not consider it necessary to specify the cases in which such obedience might be unfit or even sinful, but left them to justify themselves when they occurred. He then proceeded to insist, on the authority of citations from the homilies and articles of religion, from the writings of divines of almost every age, and from numerous statutes, that the doctrine thus propounded by his client had the sanction of both church and law. The doctor himself evinced the high value he set upon his counsel's services, by presenting him with a massive gilt bason (for washing after dinner), having a complimentary Latin inscription engraved on the inside of the bottom, which was modelled in the form of an altar*. He

* "Viro honoratissimo,
universi juris oraculo,
Ecclesiæ et regni præsidi et ornamento,
Simoni Harcourt equiti aurato,
Magnæ Britanniæ sigilli magni custodi,
et serenissimæ Reginæ è secretioribus consiliis;
Ob causam meam coram supremo senatu
in aulâ Westmonasteriensi
nervosâ cùm facundiâ et subdolâ legum scientiâ
benignè et constanter defensam;
Ob priscam ecclesiæ disciplinam,
inviolandam legum vim,
piam subditorum fidem,
et sacrosancta majestatis jura,
contrà nefarios perduellium impetus
feliciter vindicata,

had even a better title to the doctor's gratitude, for he shortly afterwards (ineffectually indeed) solicited a bishopric for him from the queen. The speech delivered by Sacheverell himself is said to have been the joint composition of Drs. Atterbury, Smalridge, and Friend, revised by Harcourt and Sir Constantine Phipps.

These ill-advised proceedings gave the *coup-de-grace* to Godolphin's ministry, which had so long been tottering, and the road to power was once more open to the displaced Tories. In the general election this year (1710), Harcourt was once more returned for Abingdon; but before he could be summoned to take his seat, he was called to repose on one more coveted and better *stuffed*. The determination with which the Lord Chancellor Cowper resisted Harley's persuasions to remain in office after the expulsion of his colleagues, gave hopes of a speedy vacancy on the woolsack, the succession to which Sir Simon had long regarded as his own. Swift, in his Journal to Stella, under the date of Sept. 14, writes, "We hear the Chancellor is to be suddenly out, and Sir Simon Harcourt to succeed him." Harley determined, however, not yet to relinquish the hope of effecting a compromise between the two parties, and a few days afterwards, Harcourt found himself obliged to accept for the present his old place of Attorney-General, on the resignation of Sir James Montague. This was on the 19th; on the 23rd, the Chancellor, having opposed in vain the issuing of the proclamation to dissolve the Parliament, absolutely refused to retain the seals. They were accordingly, after much ineffectual remonstrance, received by the Queen; but instead of being delivered over to the expecting Attorney-General, were put into the hands of Commissioners. Harley still, it seems, cherished a lingering hope that some of the Whig leaders might be brought to terms, and St. John was therefore kept out of his promised secretaryship of state, as Harcourt was held back from the woolsack. The

votivum hoc manulavacrum,
perpetuum fortitudinis pignus,
D. D. D.
devinctissimus cliens
Henricus Sacheverell S. T. P.
Anno salutis MDCCX."

two mortified expectants accordingly laid their plans together to defeat this unwelcome arrangement. They expressed their determination to withdraw their services altogether, unless their claims were attended to; and prepared to go down into the country forthwith, leaving instructions with Granville (afterwards Lord Lansdowne), an intimate acquaintance of both parties, to forward their designs by shewing himself cool and reserved to Harley, which he engaged to do. The same evening, however, Granville posted to Harley, and gave him notice of their determination. The result was, that "they were satisfied, and stayed in town:" on the 18th of October the great seal was delivered to Harcourt, with the title of Lord Keeper, and the next day he was sworn of the Privy Council; but neither he nor St. John forgot that their appointments had been extorted rather than bestowed.

On the meeting of Parliament in November, the new Lord Keeper had the misfortune ignorantly to offend against the etiquette of the peerage, and to incur the solemn reproof of the old Earl of Rochester, (the Queen's maternal uncle and president of the council), for having presumed, not being himself a peer by patent, to introduce the Scotch representative peers to the Queen's presence. Lord Cowper good-naturedly came to his assistance, and maintaining that he had a right as Lord Keeper to act as he had done, and had committed no breach of etiquette, no further notice was taken of the matter. Being unable to take part in the debates, except to put the questions, the only occasion on which his oratory was called into exercise during the session was that of presenting the thanks of the House to Lord Peterborough for his successes in Spain, in the course of which he took occasion to throw out an ungenerous taunt against Marlborough:— "The present I am now offering to your lordship is the more acceptable as it comes pure and unmixed, and is unattended with any *other* reward, which your lordship might justly think would be an alloy to it." Swift's journal and correspondence afford us at this period an amusing insight into the daily life of the ministerial leaders, who, whatever were their secret causes of dissatisfaction, lived on external terms of the most cordial familiarity. After Harley's escape from the knife of Guiscard, the "Old Saturday Club" was formed,

consisting of a few of his most intimate political associates, who met every Saturday to dinner at his house, and discussed state matters over the wine. The only original members were Harley himself, the Lord Keeper, St. John, Lord Rivers, and Lord Peterborough. Swift was very early added to the number, and for some time the *entrée* was confined to these; by and bye, other persons of rank of the Tory party were admitted, and the meetings became less and less devoted to politics, and at last of an entirely Bacchanalian character. Harley's devotion to the bottle is well known, and Harcourt appears to have borne it an almost equal affection. Even Swift's shrewd observation was for a time deceived into the belief that all this show of good fellowship arose out of a sincere and cordial good understanding among the three ministers. He says, in a letter to Lord Peterborough, Feb. 1711, "I am sometimes talked into frights, and told that all is ruined, but am immediately cured when I see any of the ministry. . . . . My comfort is, they are persons of great abilities, and they are engaged in a good cause. And what is one very good circumstance, as I told three of them the other day, they seem heartily to love one another, in spite of the scandal of inconstancy which court friendships lie under." But the scene was speedily changed. In a letter to the same nobleman, dated no later than the 4th of May following, he writes, "Our divisions run farther than perhaps your lordship's intelligence has yet informed you of; that is, a *triumvirate* of our friends I have mentioned to you; I have told them more than once, upon occasion, that all my hopes of their success depended on their union; that I saw they loved one another, and hoped they would continue it, to remove that scandal of inconstancy ascribed to court friendships. I am not now so secure." And in the journal to Stella, (Aug. 21), "The Whigs whisper that our new ministry differ among themselves, and they have some reason for their whispers, although I thought it was a greater secret. I do not much like the posture of things; I always apprehended that any falling out would ruin them, and so I have told them several times." It was indeed little likely that there should be any cordial communion between the suspicious, dissembling, procrastinating coldness of Harley, and the brilliant and fiery ambition of St.

John. And although the necessities of public business compelled the Treasurer to admit the Secretary of State to as much confidence as their uncongenial spirits would admit, this was never extended to Harcourt, whose unseasonable determination to possess himself of the great seal had never been forgotten. Even after he became Chancellor, he complained in bitter terms to Lord Lansdowne, that he knew no more of the measures of the court than his footman; that Lord Bolingbroke had not made him a visit of a year, and Lord Oxford did not so much as know him. In return for this distrust, he appears to have studiously confined his support of the government in Parliament to his votes, for we scarcely find him opening his mouth in its cause while he was a member of it. In the "Inquiry into the behaviour of the Queen's last Ministry," Swift admits the full extent of his own credulity. "There could hardly be a firmer friendship in appearance than what I observed between these three great men, who were then chiefly trusted; I mean the Lords Oxford, Bolingbroke, and Harcourt. I remember, in the infancy of their power, being at the table of the first, where they were all met, I could not forbear taking notice of the great affection they bore to each other. . . . . I did not see how their kindness could be disturbed by competition, since each of them seemed contented with his own district; so that, notwithstanding the old maxim which pronounces court friendships to be of no long duration, I was confident theirs would last as long as their lives. . . . . But it seems the inventor of this maxim was a good deal wiser than I, who lived to see this friendship first degenerate into indifference and suspicion, and thence corrupt into the greatest animosity and hatred; contrary to all appearances, and much to the discredit of me and my sagacity."

On the elevation of Harley to the peerage, it was generally expected that the Lord Keeper would be his companion in dignity; and a lively *jeu d'esprit* of Swift's is extant, addressed to St. John, in which, "being convinced," as he informs him, "by certain ominous prognostics, that his life is too short to permit him the honour of ever dining another Saturday with Sir Simon Harcourt, Knight, and Robert Harley, Esquire," he begs to be allowed to take his last farewell of those gentlemen on the following day. The expected coronet was

however withheld a little while longer from his grasp; Harley was ennobled alone, and at the same time received the staff of Lord Treasurer. When he came to take the oaths of office in the Court of Chancery, the Lord Keeper addressed him in a speech remarkable for the happiness with which the compliments were turned. The allusion to the ancestry of the new peer came with peculiar effect from one, who himself also had some of the blood of the Veres flowing in his veins. The speech is too well known, if it were not too long, for transcription. A few months afterwards (Sept. 3rd, 1711) the Lord Keeper was himself advanced to the peerage, by the title of Baron Harcourt of Stanton Harcourt. The preamble to his patent was drawn up at considerable length, and in terms of the most exaggerated eulogy. Collins is however of opinion that it "sets forth his eminent abilities *without hyperbole*;" —our readers may judge from the sample transcribed below*.

Not only had his Lordship, as his eulogist has recorded, advanced the glory of his family, but he had managed tolerably

* "He suffered in his paternal inheritance, which was diminished by the fury of the civil wars; but not in his glory, which being acquired by military valour, he, as a lawyer, has advanced by the force of his wit and eloquence; for we have understood that his faculty in speaking is so full of variety, that many doubt whether he is fitted to manage causes in the lower court, or to speak before a full Parliament: but it is unanimously confessed by all, that among the lawyers he is the most eloquent orator, and among the orators the most able lawyer .... Whom, therefore, furnished with such great endowments of mind, all clients have wished to defend their causes, not without reason we preferred to be one of our counsel at law; whom we a second time called to be our Attorney-General, which office he had once before sustained with honour as far as it was *thought convenient*; whom, lastly, since we perceived that all these things were inferior to the largeness of his capacity, we have advanced to the highest pitch of forensical dignity, and made him Supreme Judge in our Court of Equity. He still continues to deserve higher of us and of all good men; and is so much a brighter ornament to his province, as it is more honourable than the rest he has gone through: he daily dispatches the multitude of suits in Chancery, he removes the obstacles which delay judgment in that Court, and takes special care that the successful issue of an honest cause should cost every plaintiff as little as need be: Therefore, that the most upright asserter of justice may not be without a vote in the most supreme Court; that he who can think and speak so excellently well, should not be silent in an assembly of the eloquent, we grant him a place among the Peers," &c.

to repair its damage; for in the same year he purchased from the Wemyss family, for the sum of £17,000, the manor and advowson of Nuneham Courtenay, in Oxfordshire, where his successor built and laid out the splendid mansion and park which have been ever since the principal residence of the family.

While the stability of the new administration was endangered by internal dissension, it had become also the object of distrust to the thorough-going Tories, who were satisfied with nothing short of a "clean sweep" of the Whigs out of every remnant of place, and demanded not only ascendancy for their own party, but retaliation and persecution upon their opponents. To compel the ministry into these measures, they formed themselves into an association of about a hundred, under the name of the October Club. Swift's pen was employed to reason with the intemperate zeal of these dangerous allies, and the "Advice to the October Club, by a Person of Honour," was accordingly published in the winter of 1711. Its title, and certain allusions to the supposed writer's previous personal efforts to persuade the parties into moderation, caused the pamphlet to be attributed (as was the intention of those in the secret) to Lord Harcourt, and it is accordingly ascribed to him by most of the contemporary historians. The peace of Utrecht buoyed up the unsteady ministry for a time, but their increasing dissensions made it manifest that their league could be of no long duration. In the midst of these, however, Harcourt, whom it probably became desirable for the Treasurer to endeavour to conciliate in some degree, was gratified (April 7th, 1712) with the dignity of Lord Chancellor. There is little doubt, although the proofs are not so direct with regard to him as some other members of the government, that all this while he was secretly leagued in the interests of the Pretender, although, on the accession of the House of Hanover, when the connexion became one of probable personal danger, or perhaps rather sooner, he abandoned it for other views. In the spring of 1713-14, a circumstance occurred which drew upon him the suspicion of indirect dealing in his official capacity, as to the securities provided by law for the Protestant succession. The Regency Act, passed in 1705, provided that three copies of the instrument for the

nomination of regents by the next successor should be deposited with the Archbishop of Canterbury, the Lord Chancellor, and the Hanoverian resident for the time being (whose credentials were to be inrolled in Chancery), and sealed up by them. It was now for the first time discovered, that to two of these documents the seals of the late Chancellor and resident, instead of the present, still remained affixed, so that in case of the Queen's demise they could not have been regularly opened; and moreover, that the Baron de Bothmar, in whose hands, as resident, one of them was deposited, had never been duly accredited in that capacity. A messenger was dispatched with all speed to Hanover, new instruments were prepared, and the resident demanded to have his credentials inrolled as required by the act. The Chancellor promised that they should be ready for him in a few days; a week having elapsed, he made a more peremptory application, and then obtained, not the properly attested credentials, but a copy only on a plain sheet of paper. Hereupon the Lord Chief Justice Parker, who had been consulted throughout, undertook to press the Chancellor upon the subject; he shifted the blame upon the inexperience of a newly-appointed officer; and at length, not however until the end of March, the documents were duly attested, and deposited in the proper custody.

The breach between the two ministerial chiefs, which had been long widening, had now grown utterly irreconcileable; nay, the unrestrained bitterness of open and contumelious reproach had taken the place of their former friendship. Each tampered separately with the Whigs, with the scarcely disguised purpose of supplanting the other; each maintained a private correspondence with the Hanoverian court, and secretly accused the other to the Elector and his agents of a treacherous adherence to the views of the Pretender. Through all these intrigues and animosities, the star of Oxford's ascendancy declined daily. The Queen, sufficiently cold-hearted by nature, and always enslaved by female influence, was easily alienated from her minister by the jealous insinuations and complaints of Lady Masham, to whom he had given some real causes of offence, and had been maliciously represented as the author of many more. Lord Oxford him-

self says in a letter to Swift, that from the 28th of July, 1713, when he wrote to Bolingbroke a long letter "containing his scheme of the Queen's affairs, and what it was necessary for Lord Bolingbroke to do," he had been without any substantial power in the cabinet. The Chancellor, the third in the ministerial triumvirate, as it was commonly termed, moved at once by resentment and interest to desert the falling fortunes of the Treasurer, attached himself openly to the interests of Bolingbroke, who now admitted him to the closest confidence. Their scheme, when they should have succeeded in their colleague's overthrow, was, it seems, to establish the Hanoverian succession, to replace Marlborough at the head of the army, and if the Duke of Ormond acquiesced in this change, to allow him the post of Lord Lieutenant of Ireland, otherwise to break with him entirely, and dismiss him from all his employments. They had now, therefore, if this statement be well founded*, satisfied themselves that the restoration of the Stuart dynasty was a hopeless case. Swift, having exhausted persuasion and entreaty in vain endeavours to solder up the breach, retired in disappointment and vexation into the country, and vented his chagrin in satirical verse. In "The Faggot," applying to the contentious ministers the fable of the old man and the bundle of sticks, he bids them bind together their wands of office, which ran so great a risk of being broken by disunion. The Chancellor comes in for a not over complimentary notice:—

"Come, courtiers, every man his stick;
Lord Treasurer, for once be quick;
And that they may the closer cling,
Take your blue ribbon for a string.
Come, trimming Harcourt, bring your mace,
And squeeze it in, or quit your place;
Dispatch, or else that rascal Northey
Will undertake to do it for thee.
And be assured the court will find him
Prepared to *leap o'er sticks*, or bind 'em."

The doctor's correspondence with Erasmus Lewis, the secre-

* It is given in Carte's memoranda subjoined to Macpherson's collection of Original Papers.

tary and a staunch adherent of the Lord Treasurer, portrays amusingly the last scenes of the intrigue. Thus, under the date of July 17 (1714), Lewis writes:—"The great attorney who made you the sham offer of the Yorkshire living*, had a long conference with the Dragon† on Thursday, kissed him at parting, and cursed him at heart. He went to the country yesterday; from whence some conclude that nothing will be done soon." The Queen, however, having been made acquainted with Oxford's negotiations with the Whig lords, Lord Harcourt was sent for in great haste to town; and at a cabinet meeting in the Queen's presence the following day, the most vehement reproaches passed between the Treasurer on the one side, and Lady Masham and the Chancellor on the other,—the former declaring that "he had been foully wronged and abused by lies and misrepresentations, but he would be revenged, and leave some people as low as he found them." Lewis writes, July 22nd:—"They eat and drink and walk together, as if there were no sort of disagreement; and when they part, I hear they give one another such names as nobody but ministers of state could bear without cutting throats." And two days afterwards,—"The moment I had turned this page, I had intelligence that the Dragon has broke out in a fiery passion with my Lord Chancellor; sworn a thousand oaths he would be revenged, &c." On the 27th Lord Oxford was deprived of his staff: but the Queen, who had been long in a weak state of health, shaken and enfeebled by these scenes of violence and animosity, was in three days more upon her death-bed. On the 1st of August she died, and the whole scheme of treachery and selfishness was shattered to pieces. "The Earl of Oxford was removed on Tuesday," writes Bolingbroke a few days afterwards to Swift,—"the Queen died on Sunday.—What a world is this, and how does fortune baffle us!"

On the arrival of the new sovereign, the Chancellor, who had exercised during an interval of six weeks the dignified

* Swift had been led to expect a presentation to a valuable Yorkshire living, out of the patronage of the Chancellor.

† A nickname expressive of the wily and dissembling character of the Treasurer. Bolingbroke's common appellative, Mercurialis, was no less applicable to him.

functions of head of the regency, repaired in all state to meet him at Greenwich, carrying with him, as some possible passport to favour, the patent for the young Prince of Wales's peerage; but he was received with the most mortifying coldness, and was one of the few lords who, when the king had retired to his chamber, were not called in to pay him their personal congratulations. Scarcely had his majesty set foot in St. James's, than, without further communication of any sort with the Chancellor, Lord Townshend arrived at his house to demand the great seal, which was instantly transferred to Lord Cowper; and the same day his name was struck out of the list of privy councillors.

The consideration of Lord Harcourt's judicial character and qualifications need not detain us long. His professional learning, never very assiduously cultivated, was undoubtedly not of the first order. Lord Brougham has estimated him truly as "a respectable lawyer, but not to be ranked with the Parkers, the Finches, or the Hardwickes." He appears, indeed, to have been not entirely unconscious of his deficiency of legal knowledge, since we find him on several occasions seeking support in the judgment of the Master of the Rolls, Sir John Trevor. In one case, for instance, having expressed an opinion that certain process issued against a wife during her husband's absence abroad was irregular, but being met by an observation from counsel which staggered him, "my Lord Keeper said, he would ask the Master of the Rolls his opinion, *and be governed by that.* Afterwards the Master of the Rolls coming into Court, was clearly of opinion that the process was regular, and said the practice of the Court *had been constantly so,*"—and so accordingly the case was determined. In another matter, on which the Master of the Rolls had already adjudicated, "my Lord Keeper coming into Court, and being asked his opinion, said he was of the same opinion, *to prevent a rehearing*" before himself. Not a few instances occur in which the reporters express the dissatisfaction of the bar at his decrees, and an unusual number of them were reversed upon appeal, or have been overruled by subsequent authorities. Nor did he compensate for these deficiencies by any extraordinary assiduity in despatching the business or reforming the abuses of his Court. The number

of his decisions does not much exceed the half of those pronounced during the same period of time, immediately before and after his four years' occupation of office. Of any attempts to remedy the grievances of the Court, even in the department within his own direct control, that of its *practice*, he was as guiltless as any of his predecessors. Mr. Parkes observes, in his History of the Court of Chancery, that "there is a singular interregnum or chasm in the collection of orders, with the exception of two which are immaterial, from the year 1701 to 1721. One short order only, by Lord Harcourt, appears in Mr. Beames's volume. As these corrective mandates were the only partial reform and improvement in the practice, the absence of all addition to them is a proof of the culpable negligence of the Chancellors of that period, and a presumption that the abuses of the Court not only were continued, but by such neglect materially increased."—By those, however, who speak most unfavourably of his character, the virtue of judicial integrity is conceded to him. On Lord Macclesfield's impeachment in 1725, when some inquiry took place into the alleged sale of two Masterships in Chancery in Lord Harcourt's time, it clearly appeared, that in neither case the funds of the suitors had been invaded or endangered, nor were the sums paid greater than long usage—however indefensible—had sanctioned: and it was not in an age of almost universal corruption and venality that any special exercise of self-denial in such a case was to be expected.

Lord Harcourt was now of course leagued heart and hand against the government which had so unceremoniously displaced him. Perhaps, however, amidst the retaliatory measures adopted against his party, he did not feel himself so perfectly secure as to take at once any very openly active part in opposition; for we scarcely meet with his name in the debates, until the proceedings on the impeachment of Lord Oxford (June, 1717) furnished him with an opportunity of cancelling some portion of his old injuries towards his fallen colleague. For the purpose of raising an issue between the two Houses which might serve as the ostensible cause of defeating the proceedings altogether, and representing that it would be a great hardship upon the noble prisoner to appear every day at the bar as a traitor, and be at last probably found guilty, if at all, only of high crimes and misdemeanors,

he moved that the Commons should not be admitted to proceed to proof of the articles for high crimes and misdemeanors, until judgment had been first given upon the articles for high treason. The motion, by the connivance of the government, was carried without difficulty; the Commons, as had been foreseen, insisted on their right to proceed after their own course, and refused to be parties to that laid down for them: the form of a trial was gone through, no accuser appearing, and the Earl took an easy leave of his two years' sojourn in the Tower.

The discussion of the Mutiny Bill, in the following session, gave rise to frequent and warm debate, in which Lord Harcourt appeared on several occasions in vehement opposition to the measure, especially to the clauses investing courts-martial with power over the life and person of the soldier: uttered much patriotic declamation in praise of trial by jury, and inveighed against the dangerous and unconstitutional designs to which alone the establishment of this extraordinary judicature, and the maintenance of so large a standing army, could reasonably be attributed. His name, however, is affixed to few of the protests which crowd the journals at this period, and which served to distinguish those of the opposition peers who desired to be understood as uncompromising and irreconcileable adversaries of the ministerial policy. We shall see presently that this was a character to which *his* opposition had indeed little title.

In the year 1720, he sustained a severe blow in the death of his only son, of whom we have before spoken, and whose talents and accomplishments appear to have been such as might justly make his early loss a subject of deep regret. We learn that he bore an extraordinary personal resemblance to his father. Gay, in his poem addressed to Pope on the completion of his Homer, in which he describes all the poet's friends as assembled to welcome his return from Greece (an imitation of the 46th Canto of the Orlando Furioso), introduces among them the two Harcourts—

> "Harcourt I see, for eloquence renown'd,
> The mouth of justice, oracle of law!
> Another Simon is beside him found,
> Another Simon, like as straw to straw."

Pope's epitaph, inscribed upon his monument at Stanton

Harcourt, is known to every reader of poetry. It received divers corrections at the hands of Lord Harcourt, who appears to have been but indifferently satisfied with it when first submitted to his criticism. For instance, the sixth line—

"Since Pope must tell what Harcourt cannot speak"—

stood originally—

"Harcourt stands dumb, and Pope is forced to speak"—

until recast by his lordship's desire, his ear being especially displeased with the inharmonious participle "forced." The "father's sorrows" recorded in the epitaph had doubtless tolerably subsided during the two years which had elapsed since his loss, otherwise some imputation might not unreasonably have rested upon the sincerity of a sorrow, which could busy itself in the trivialities of verbal criticism over the grave of an only son.

We now arrive at the period of Lord Harcourt's political life which most of all needs an apology, if indeed any apology could avail to excuse the prostitution of public any more than of private character and honour. Sir Robert Walpole, who, if he rated public virtue at somewhat too cheap an estimate when he affirmed that every man had his price, at least had a special faculty of discovering those who *had*, thought he perceived some symptoms which indicated that Lord Harcourt's opposition was not so inexorable as to be proof against the persuasives he had it in his power to apply to it. He was not mistaken. On the 14th of July, 1721, his lordship, advanced to the dignity of a viscount, with a pension swelled from two to four thousand a year, transferred himself without difficulty from the opposition to the ministerial bench, and was heard in ready defence of the self-same measures which he had denounced not long before as destructive of his country's liberties. To see political virtue weighed in a different scale from personal integrity, even by men of the highest dignity of rank and station, —to see the hand that would reject with indignant scorn the bribe of the suitor, close without difficulty upon the pension of the minister,—is a spectacle too common to excite our surprise, however deeply it may challenge our reprobation, and however degrading the estimate which its frequency has fixed upon the character of public men in this country. It would

seem that Lord Harcourt's conduct was foreseen by his friends. Prior writes to Swift, in April, 1721, "The bishop [Atterbury, who was also, but with less justice, suspected of a design to go over to the ministry] cannot be lower in the opinion of most men than he is; and I wish our friend Harcourt were higher than *he* is." His first piece of service to the court consisted in an ineffectual attempt to screen Aislabie, the corrupt abettor of the South Sea frauds, from the penalties of his delinquency. On all the questions agitated in the following session—the Navy Debt, the Spanish Treaty, the Quarantine Act, &c. &c.—he was a frequent speaker in support of the administration. The very Mutiny Act, on which three years before he had expended so much indignant patriotism, he now discovered to be necessary to the support of the government, and forgot that it was an invasion of the rights of the people. Not long afterwards came the proceedings against Atterbury, no less objectionable in their character and tendency, and even more destitute of foundation in legal proof, than those which Harcourt had himself denounced with such zeal and force in the case of Sir John Fenwick. Here, however, we find him recording his practical denial of the principles for which he then contended; and that against the intimate associate of his former life, whose bishopric had been conferred at his own solicitation, in reward of those very principles and opinions which now *he*, at least, could only accuse the bishop of having followed up more consistently and unflinchingly than himself.

From the view of his political career, thus sullied by an unworthy abandonment of principle, it is far more grateful to turn to that of his private life, passed in familiar communion with almost all the wit and genius of his time. His intimacy with Swift has been already seen; with all the other literary ornaments of that age, from whom the divisions of party did not absolutely estrange him,—Pope, Prior, Gay, Parnell, Arbuthnot, &c. &c.—he lived on terms of no less familiar intercourse. Of these, Pope at least, and probably most of the others, owed their acquaintance with him to Swift's introduction. "Of my later friends," Pope writes to the Dean, in 1723, "the greater part are such as were yours before; Lord Oxford, Lord Harcourt, and Lord Harley, may look upon me as one entailed

upon them by you." At the old mansion-house at Stanton Harcourt, which had remained unoccupied by the family since Sir Philip's death in 1688, but of which a few rooms continued habitable, Pope fixed his retreat during the summers of 1718 and 1719, and translated there the latter volumes of his Iliad. Gay was at the same time domiciled at Lord Harcourt's neighbouring house of Cockthorpe, and they were almost the only visitors admitted to interrupt the poet in his laborious seclusion. It was here that the melancholy incident occurred of the death of two rustic lovers by lightning in the harvest field, which is described by Pope, with rather too much poetical finery, in a letter to Lady Mary Wortley Montague, and which Thomson afterwards wrought up into his ornamental episode of Celadon and Amelia. In the society of these distinguished friends, adorned also by the eloquent philosophy of Bolingbroke, the cheerful wit of Peterborough, the accomplished taste of Orrery, Lord Harcourt had far higher enjoyments within his reach than could reward him for a continued agitation in the strife of politics, at the expense of consistency and honour, even with the additional gratifications of a pension doubled in amount, and the precedency of a viscount. That he was himself a man of polished taste and manners, and highly accomplished in general literature, although deficient probably in the more profound acquirements of scholarship and science, is discernible even in the few specimens which remain of his composition, and is abundantly confirmed by the testimony of his contemporaries*.

Although the minister had thus deemed it desirable to silence Lord Harcourt's opposition, he was never so far valued or trusted as to be again put in possession of any office under the crown; he was re-admitted, indeed, to the council board, and on three several occasions appointed one of the Lords Justices for the administration of the government during the

* He has been himself quoted as possessed of no mean powers in poetry, on the strength of the commendatory verses bearing his name, which were prefixed to Pope's collected poems; we have little doubt, however, that the property in them belongs to his son, whom we have already seen in the character of a versifier. Lord Harcourt became possessed by bequest of Lord Chief Justice Herbert's library, said to have been a very valuable collection, particularly in law books.

King's absence in his German dominions. He was the chief ostensible negotiator of Bolingbroke's recall from exile in 1725. The Duchess of Kendal, whose influence had been propitiated by a bribe of no less than £11,000, had secured the King's concurrence, and Harcourt, who had for some time maintained a confidential correspondence with the illustrious exile, was employed to move the matter in council. Walpole's urgent remonstrances were of no avail against the influence of the favourite; and that proud and restless spirit returned, to exhaust itself in vain yearnings after the station and power from which it was excluded, and of which, amid the tranquil enjoyments of philosophic leisure, it affected to have abandoned the pursuit

"To low ambition, and the pride of kings."

The sudden death of George I. left Walpole's tenure of power for a time extremely precarious, and it seemed probable that his trusty adherent, Lord Harcourt, might again be driven into the ungenial climate of opposition. Scarcely had he time to find this apprehension groundless, and to pay his homage at the court of the new sovereign, before he was himself hurried from the scene by the same stern summons. On Sunday, the 23rd of July, 1727, as he was proceeding in his coach to visit Sir Robert Walpole at Chelsea, he was seized with a paralytic fit; and although he recovered so far as to regain the power of speech, and was even considered by the physicians to be out of immediate danger, he survived only until the following Friday, when he expired at his house in Cavendish Square, in his 67th year. His remains were conveyed to the vault of his ancestors at Stanton Harcourt.

The review we have taken of Lord Harcourt's public life furnishes the best estimate of his character. Of the vague praises of contemporary pamphleteers and poets, assiduously engaged in lauding those of their own party who had anything to bestow, little account is to be made. A shrewd and not uncandid observer of character, who could at least have no personal prejudices or resentments to gratify by misrepresentation (Speaker Onslow), while he speaks with high eulogy of Lord Harcourt's talents, pronounces a severe, but we can scarcely say an unjust, judgment on his principles and con-

duct:—"He was afterwards Lord Chancellor, with no character in any station but for his abilities, saving that of integrity in causes, which I never heard doubted. He had the greatest skill and power of speech of any man I ever knew in a public assembly."

There exists, so far as we are aware, no printed work from Lord Harcourt's pen. Among the Harleian MSS. in the British Museum, there is a small quarto volume of about 500 pages, entitled in the Catalogue, "Sir Simon Harcourt's Common-Place Book for a Justice of Peace," and having the signature "Sim. Harcourt, 13 August, 1724," pasted into the first page*, evidently in the same handwriting with the manuscript itself. It consists of a collection of authorities on criminal law and practice, arranged under alphabetical heads, after the manner of Burn's Justice. Many of the titles, however, are left in blank, and not more than about a third of the whole volume is written through. Under the title "Alehouses," for instance, eight blank pages occur; under "Attainder," "Homicide," "Bastardy," &c. six or seven; and the whole appears a miscellaneous sort of compilation, without much attention to the arrangement of the subjects. In the same volume are bound up the charges to the Buckinghamshire grand jury, to which we have before referred.

Lord Harcourt was thrice married. By his first wife, Rebecca, the daughter of a Mr. Clark, he had three sons, Simon, whose death we have already mentioned, and two others who died in their infancy; and two daughters. By his other ladies he had no issue. He was succeeded in his titles and possessions by his grandson, who many years afterwards (Dec. 1st, 1749) was advanced to an earldom. On the death of *his* grandson, the last venerable and gallant earl, without male issue, in the year 1830, all the honours of the family became extinct, and its possessions passed into the hands of the Vernons. In them, however, in compliance with his direction, the name of Harcourt survives, and may yet possibly confer lustre upon a new line of nobility.

* The date assigned to the MS. in the Catalogue is 1705; the autograph date above mentioned was most probably transferred from some other document.

LORD MACCLESFIELD.

HISTORY, it has been often said, teaches no less by its warnings than by its examples. Fortunately for our country, the time has long been past when she had cause to fear the taint of judicial corruption poisoning the pure sources of justice, or the solicitations of personal ambition or aggrandizement casting their shadow over "the broad, pure, and open path" of the judges of England. Amid the multitudinous complaints of governmental and official abuses, and not least of the grievances inflicted by the law and its ministers, to which a thousand tongues and pens are daily giving currency, no voice is heard to breathe a whisper of imputation against the unblemished purity of the judicial ermine. While the ascendancy of public opinion excludes from the high places of the profession those among its members whose character or practice would have dishonoured it; while the responsibility to public opinion—were no higher principle in action—secures the exercise of an unswerving integrity in those who have attained them,—the warning to be derived from the life of a Bacon or a Macclesfield can find no application. But though this is happily the case, the spectacle of great talents and a noble mind, overpowered by the temptations of a venal age, and betrayed to reproach and uselessness, will scarcely be viewed with the less interest, because we may fear no longer to fall into the same condemnation.

Thomas Parker, Earl of Macclesfield, was born on the 23rd of July, 1666, at the town of Leek, in Staffordshire, where his father, of the same name, was a practising attorney. He was descended from a junior branch of an ancient and

respectable family, which had originally borne the name of Le Parker, traced its descent as far back at least as the reign of Richard II.*, and had at one period enjoyed a considerable estate in the counties of Stafford and Derby. Of his early years or course of education we have no further account, than that he was sent at the usual age to perfect his studies at Trinity College, Cambridge; which, however, if we may trust the accuracy of the "Graduati Cantabrigienses," he quitted without taking any degree. A copy of adulatory verses, addressed to him when Lord Chancellor by the poet-laureate Eusden (who was himself a fellow of Trinity), would lead us to infer, if poetical evidence commanded implicit credit, that he was not a little distinguished as a university student:

> "Prophetic Granta, with a mother's joy,
> Saw greatness omened in the manly boy,
> Who madest thy studies thy beloved concern,
> Nor could she teach so fast as thou couldst learn.
> Still absent thee our groves and Muses mourn,
> Still sighing echoes the sad sound return,
> And Cam with tears supplies his streaming urn."

That he was designed from an early age for the bar is manifest from the period of his admission to the Inner Temple,—14th February, 1683, when he was not yet seventeen. Hutton, in his History of Derby, affirms that he practised for some years in that town as an attorney, and finally ceased to reside there only on his appointment to the chief-justiceship; a story disproved at once by the date of his call to the bar, as it appears on the records of the same Inn—24th May, 1691, not many months after the expiration of the required term of studentship. It is very probable that he settled there in the outset as a provincial counsel; a personage so much less frequent in those days than at present, that the worthy antiquary may well be excused for his misconception. He proceeds to describe to us, with laudable preciseness, the dwelling occupied by our lawyer in the good town of Derby: "in Bridge-gate, at the foot of the bridge, in the house next the Three Crowns." On the Midland Circuit, which Mr.

* We find the name of Le Parker among the gentry who volunteered to accompany Edward I., when Prince of Wales, to the Holy Land, in 1270.—*Excerpta Historica*, p. 271.

Parker chose as the first field of his professional labours, his local connexions speedily introduced him to business; nor was it very long before his reputation both as a lawyer and an advocate became so high, as to advance him to leading practice: such, indeed, were his powers of persuasive oratory, as to procure for him the appellation of the "silver-tongued counsel." It is not, however, until the first year of Queen Anne's reign (1702), that the occurrence of his name in the Reports leads us to conclude that he had transferred the exercise of his talents and attainments to the more conspicuous arena of the metropolitan courts: after that period it is frequently to be found, and almost always in connexion with cases of some importance and extent;—we may particularise, out of many, the elaborate legal defence of Tutchin, the obnoxious publisher of the Observator (1704), and the case of Kendall v. John (1707), an action brought by a candidate, who was seated on petition, against the returning officer for a false return,—an experiment which doubtless grew out of the decision in the case of Ashby and White.

At the period of the general election in 1705, when the Whig party, to which Parker had warmly attached himself, was almost universally successful, he had acquired sufficient local influence to be returned, in conjunction with a member of the Cavendish family, for the town of Derby, of which he had some years before been elected Recorder; and this seat he retained without interruption until his elevation to the bench five years afterwards. The government had, about the same time, apparently discovered either his usefulness as a partisan or his claims as a lawyer; for in the month of June in the same year, he was at once called to the degree of the coif and appointed Queen's serjeant, and not long afterwards honoured with knighthood. What degree of reputation he acquired in parliament we have no means of judging from contemporary testimony; for neither is he noticed on a single occasion as a speaker, in the meagre outlines which are preserved to us of the debates, nor, so far as our researches have informed us, is he made mention of by any of the annalists or reminiscents of his time: most probably his reputation as a lawyer was the chief distinction which attended him through his parliamentary as well as his professional career. The only occasion on which

he is recorded as having conspicuously distinguished himself, was one much more of a forensic than a parliamentary character; we mean the impeachment of Sacheverell, against whom he was named, in conjunction with Walpole, Jekyll, Stanhope, King, &c, one of the managers for the Commons. Burnet particularises him as having acquitted himself more ably than all these eminent colleagues; a distinction the more remarkable, since it appears that he was suffering under indisposition at the time. He was assigned to maintain the fourth article of the charge, which was by much the most general of them all, and alleged against the Doctor that he had falsely charged the Queen and her functionaries, civil and ecclesiastical, with a general mal-administration, tending to the subversion of the constitution; had excited her subjects to faction and violence, and, to serve these purposes, had wrested and perverted texts and passages of Scripture. To support these allegations, it became the accuser's duty to dissect the obnoxious sermons paragraph by paragraph, and shew their general character and design to be a virulent attack on all, in whatever station, who, however well-affected and obedient to the established sovereign and government, deemed the resistance of the Revolution lawful, and were not prepared to assert, for all future cases, the absolute doctrine of passive obedience:— a task which he undoubtedly performed with great force and effect. The scriptural passages which the doctor had pressed into his service, he shewed to have been perverted to a sense, in many cases, absolutely opposed to their true meaning: and he closed with a forcible denunciation against the abuse of the pulpit to factious and partisan purposes, which we transcribe as a specimen at once of his oratory and his orthodoxy:

"My Lords, the Commons have the greatest and justest veneration for the clergy of the Church of England, who are glorious through the whole Christian world for their preaching and writing, for their steadiness to the Protestant religion when it was in the utmost danger. They look upon the order as a body of men that are the great instruments through whose assistance the Divine Providence conveys inestimable advantages to us all. They look upon the Church established here as the best and surest bulwark against popery, and that therefore all respect and encouragement is due to the

clergy; and it is with regret and trouble that they find themselves obliged to bring before your lordships, in this manner, one of that order. But when we consider Dr. Sacheverell stripping himself of all the becoming qualities proper for his order, nay, of all that peaceful and charitable temper which the Christian religion requires of all its professors, deserting the example of our Lord and Master and of his holy Apostles, and with rancour and uncharitableness branding all who differ from him, though through ignorance, with the titles of hypocrites, rebels, traitors, devils; reviling them, exposing them, conducting them to hell, and leaving them there; treating every man that falls in his way worse than Michael the archangel used the devil; coming himself more near the character in St. Jude, part of which he would apply to others, 'despising dominion, speaking evil of dignities, like raging waves of the sea foaming out his own shame;' forgetting (when his text and his doctrine led to it) to recommend the peace of the country, in a time when all Europe is in war, and nothing can preserve us from falling into the hands of the grand enemy and oppressor, but our unanimity under her majesty; then labouring to sap the establishment, and railing and declaiming against the government; crying to arms, and blowing a trumpet in Zion, to engage his country in sedition and tumult, and overthrow the best constitution and betray the best queen that ever made a nation happy; and this with Scripture in his mouth!

"The Commons looked upon him, by this behaviour, to have severed himself from all the rest of the clergy, and thought it their duty to bring to justice such a criminal; and are in no fear of being thought discouragers of those who preach virtue and piety, because they, in the supreme court of justice, prosecute him who preaches sedition and rebellion; or to have any design to lessen the respect and honour that is due to the clergy, by bringing him to punishment that disgraces the order."

In his reply, he inveighed with even greater warmth against the evasion and hypocrisy of the defence; and thus noticed the Doctor's own exhibition before his judges:—

"My Lords, he has made an appearance before your lordships in a manner very extraordinary, not only as in a defence of a

prosecution, but as in a most solemn act of devotion, before the most august judicature on earth, and appealing to a yet greater in heaven. But with what sincerity, what candour, or what sense of that which he has done?

"I am amazed, that a person in holy orders, in his distinguished habit, before this awful assembly, should dare to take the tremendous name of God into his lips, and appeal to him for the sincerity and integrity of his heart, at that very time when he stands charged with this black crime, and is neither able to repel it, nor has the sincerity and honesty to repent,—to take shame upon himself in the most public manner, and to ask pardon of God and the world for it.

"But while he can thus, with such assurance as your lordships have seen, and now see, face out such a crime, and be equivocating and playing double with your lordships, with God Almighty, and his own conscience, what regard is to be had to his most solemn protestations? His manifest insincerity in this plain point gives him no credit in anything; and his having taken the abjuration oath gives me not the least difficulty, after what I have observed of his more solemn oath before your lordships.

"My Lords, the just veneration we owe to the Divine Majesty (for the Doctor's behaviour has now made that part of the case), the honour of Christianity, the Church, and its holy order, the security of the present establishment and the Protestant succession, the safety of her majesty's person, the quiet of her government, the duty we owe to her as sovereign, the gratitude for her most gracious administration, the honour of our prelates, the obligations we are under to prevent seditions and tumults, to undeceive the people, to quiet the minds of the Protestant Dissenters, and convince them the toleration allowed them by law is not to be taken away from them; to secure at present, and transmit to our posterity, as far as in us lies, our religion and liberties, and vindicate the Revolution, which is the foundation on which they stand, and the glory of our late deliverer, to whom, under God, we owed it; and to banish sedition from the pulpit, which is, and ever ought to be, sacred to divine purposes,—require the Commons to demand your lordships' judgment on this offender."

In the course of this trial occurred the death of the Lord

Chief Justice Holt; and the ministry lost no time in recommending as his successor the lawyer who had so pre-eminently vindicated the principles of their government, and had been so instrumental in calling down punishment upon an offender politically and personally so obnoxious to them. Sir Thomas was accordingly appointed without delay to the vacant office, and took his seat in the Court of Queen's Bench on the first day of the ensuing Easter Term. His elevation was hailed by the scribes of the Whig party as an additional triumph of their cause, and a pledge of the Queen's sincerity in upholding it. Defoe thus apostrophizes on the occasion the "street gentry," as he terms them,—the High-Church mob who had formed the Doctor's riotous retinue:—"You are desired to take particular notice of her majesty having severely punished Sir Thomas Parker, one of the managers of the House of Commons, for his barbarous treatment of the Doctor, in pretending in a long speech to shew, as he called it, the impertinence and superficial jingle of the Doctor's speech. Her majesty being, as you know, heartily concerned for this prosecution, hath testified her care of the Doctor's character, in most justly punishing that forward gentleman, having condemned him for his boldness to perpetual confinement, being appointed to the constant drudgery of Lord Chief Justice of the Queen's Bench; a cruel and severe sentence indeed!" Lord Dartmouth indeed informs us, that the promotion (which, Tory as he was, he terms a wise and judicious one) was made to please the Duke of Somerset, who was too necessary at that time to be contradicted, "and had taken into his head that he could govern Parker, which nobody that knew either could believe." It would have been difficult, however, to name a lawyer of Whig principles who had at that period higher professional, as well as political, claims to the advancement; and the vigour and ability which he applied to the discharge of his judicial functions well justified the choice.

Almost the first duty imposed on him was that of presiding at the trials of Dammaree, Willis, and Purchase, the leaders of Sacheverell's mob, on a charge of constructive high treason, in designing the riotous demolition of *all* dissenting meeting-houses within the realm;—a wide principle of interpretation, which had only once before been clearly applied to the

Statute of Treasons, in the case, namely, of the apprentices convicted and executed in the year 1680, as traitors by levying war against the king in a general armed assault on all the *brothels* of the realm. Swift insinuates, in a somewhat uncanonical passage of his Letter to Bishop Fleetwood, that these two objects of attack were not very unlikely to coincide:—"How pathetically does your lordship complain of the downfall of Whiggism, and Daniel Burgess's meeting-house! The generous compassion your lordship has shewn on this tragical occasion makes me believe your lordship will not be unaffected with an accident that had like to have befallen a poor w—— of my acquaintance about that time, who being big with whig, was so alarmed at the rising of the mob, that she had like to have miscarried upon it; for the logical jade presently concluded (and the inference was natural enough) that if they began with pulling down meeting-houses, it might end in demolishing those houses of pleasure where she constantly paid her devotions; and indeed there seems a close connexion between extempore prayer and extempore love." The direction given by the Chief Justice to the jury on Dammaree's trial, that it was a clear case of levying war, if they should find the prisoner guilty of aiding the attack at one of the meeting-houses, and thence leading and tempting the rioters to others, was held to be correct at a subsequent conference of all the judges, and the same doctrine has been promulgated as undoubted law by the principal text-writers since that period, in particular by Mr. Justice Foster; though it has been strongly questioned also by lawyers of repute, especially by Mr. Luders, in an elaborate investigation into the general principles of the law of treason. No parallel case has since occurred, the enactments of the Riot Act, and subsequent statutes of the same class, having provided remedies more consonant with the milder spirit of our age, and more proportioned to the character and danger of such offences.

The return of the Tories to power, which occurred within a few months after Parker's advancement, mitigated in no degree the sternness of his Whiggism. There is reason to believe that an offer of the great seal was made to him by Harley, after his unavailing efforts to retain Lord Cowper in the possession of it; and that he peremptorily refused, even

for so high a prize, to compromise his opinions or desert his party. We are not disposed, however, to ascribe so much honour as some have rendered to an act of self-denial such as this; considerations of a much less heroic character may suggest to the most worldly politician the danger of ascending, in a period of a warm conflict between two great and not unequal parties, to a precarious eminence, on which he must sit associated with colleagues whose opinions and measures are in daily conflict with his own real sentiments; and for which, too, he must leave a post of almost equal honour, and of secure enjoyment. Certain it is, that Sir Thomas did not fail to launch all the rigours of the law against the Tory pamphleteers whose intemperance or personality brought them within its range. Swift, indeed, hints that this zeal of prosecution was not ventured upon until there appeared (at the close of the year 1711) a strong probability of the breaking up of the Harleian ministry; it was persevered in, however, long after that crisis had passed over. Among others, Morphew, the publisher of Swift's "Conduct of the Allies" (against which the government had been obliged to make a show of displeasure, by offering a reward for the discovery of the author), was summoned before the Chief Justice, threatened with severe punishment if he persisted in concealing the writer's name, and ultimately bound over to appear in the following term to answer a charge of seditious libel. The Dean repaid these proceedings, as might be supposed, with a hearty hatred. "I was to-day (he writes in his Journal to Stella, under the date of October 28, 1712) at a trial between Lord Lansdowne and Lord Carteret, two friends of mine, in the Queen's Bench. I sat under Lord Chief Justice Parker, and his pen falling down, I reached it up. He made me a low bow, and I was going to whisper him, that I had done good for evil, for he would have taken mine from me. Parker would not have known me, if several lords on the bench and in the court, bowing, had not turned every body's eyes, and set them a whispering. I owe the dog a spite, and will repay him in two months at farthest." Defoe, also, (whom we have seen celebrating Sir Thomas's elevation with such an exulting strain of Whig triumph, but who became, on the exaltation of the Tories, a retainer of their camp), when he fell under the com-

pelled prosecution of the government for the publication of his Jacobite letters, in 1713, found reason to abate his admiration of the Chief Justice's merits. When brought before him to be admitted to bail, Parker expressed, not very decorously, his gratification that the government had at length fallen foul of so notorious a libeller; a compliment for which Defoe took vengeance in the two succeeding numbers of his "Review," in hearty vituperation of his lordship's conduct and opinions.

Notwithstanding all these demonstrations of zeal in behalf of the cause of Whiggism, Sir Thomas did not wholly escape the imputation, which was levelled also, with about as much foundation, against Cowper and Murray, of having been a secret well-wisher to the designs of the exiled family. "I would fain," says Swift, in the "Public Spirit of the Whigs," "ask one single person in the world one question—why he hath so often drank the abdicated king's health upon his knees?" That he was not disposed to abate anything from the most rigorous construction of the laws which the fears of that age had deemed necessary for the preservation of Protestantism, was shewn in a case which excited much interest at the time*; in which he stood alone in strenuous dissent from the opinions of Lord Chancellor Harcourt, and several of the other judges, as to the interpretation of the recent statute (11 & 12 W. 3, c. 4) disabling papists from acquiring real estate by purchase. His opinion, that the word *purchase* was used in its legal sense, as contradistinguished from a succession by descent, and therefore comprehended a taking by *devise* (notwithstanding a former section, which expressly excluded non-conforming papists above the age of eighteen from taking by "descent, *devise*, or limitation"), was subsequently maintained by him with equal determination when the case was brought by appeal to the House of Lords, and was affirmed by a great majority of the peers, and by the opinions of six judges to five. Speaker Onslow informs us that he got great credit by his argument, "with some reflections upon the Chancellor, whose construction would in effect have made the act useless by an easy evasion of it." Nor did he in his place

* Roper v. Ratcliffe, 9 Mod. 167, 181; 10 Mod. 230; 1 Bro. P. C. 450.

at the council-table disguise his opinions on the policy, foreign or domestic, of the government. He offered all the resistance which his individual voice could oppose to the measures of pacification which terminated in the treaty of Utrecht. We have mentioned in a former memoir the pains he took to defeat a scheme of which the Lord Chancellor Harcourt was made the instrument, whose object was to prevent the security provided by the Regency Act for the Hanoverian succession, by the appointment of regents nominated by the Elector, from being made legally available. Of the regents so appointed, the Chief Justice was of course one. It was not, however, until some time after the accession of the new sovereign that he received any testimony of court favour. On the 10th of March, 1716, he was elevated to the peerage, with the title of Lord Parker, Baron of Macclesfield. The preamble of his patent informs us, and we find it also affirmed by a contemporary writer, that it was in consequence of his own reluctance to assume the dignity that he had not been earlier ennobled: but it is probable that the expressions to that effect in the former constituted only the usual laudatory garnish of such instruments, and were all that gave occasion to the statement of the latter. In point of fortune, the emoluments of his office were at that period, more amply than at present, adequate to the fulfilment of all the duties, and the maintenance of all the necessary splendour, of his new dignity. He received, however, in augmentation of them, a life pension of £1200 a year.

In the proceedings of the upper, as formerly in the lower, House of Parliament, he appears, so far as can be gathered from the imperfect records remaining to us, to have taken no frequent or conspicuous part. Indeed, almost the only occasion on which we find him named as a speaker, is in resistance to the proposition of Lord Harcourt, in the course of Lord Oxford's impeachment, which sought to sever those articles of the charge that amounted to an allegation of high treason from those which accused him only of high crimes and misdemeanors, and to enter upon the former in the first instance. The hardship was urged, of subjecting the Earl to a long and harassing inquiry in the odious character of a traitor, when he might ultimately be found guilty, if at all, of offences of

a much less aggravated character. To this the Chief Justice replied—he was little aware how nearly his words would one day receive an application in his own case—that "as for the prisoner's appearing in the abject condition of a traitor, it was only a piece of formality, which did him no manner of hurt, and to which persons of the highest rank had ever submitted, in order to clear their innocence."

If his legislatorial career furnishes few incidents to dwell upon, neither does his character or conduct as a common-law judge afford much ground of comment. Little can be said of him in his capacity of Chief Justice, more than that he executed its duties with seriousness, temperance, and firmness; bringing to the discharge of them,—if not the intellectual elevation, and immoveable disdain of external influences, which had obtained for his great predecessor the admiration and reverence of his country,—an acute understanding, a mind well stored with legal principles and professional knowledge, and a capacity and disposition (so far as we can judge from his determinations) to apply them rightly and honestly. The cases of Dammaree and his fellow rioters of 1710 were the only trials for high state offences over which it fell to his lot to preside: but in such other criminal cases tried before him as we have any account of, we find him represented as manifesting all the fairness and patience towards the accused that could be desired; exhibiting in this respect a worthy imitation of the admirable example of his predecessor, from which, indeed, only the ignorant brutality of a Page could retain the bold baseness to relapse.

In the spring of 1718, the final retirement of Lord Cowper from the chancellorship again opened the way to that unsteady pinnacle of legal ambition. After an interval of a few weeks, during which the seals were in the hands of commissioners, they were committed (May 12) to the keeping of the Chief Justice, with the title of Lord Chancellor. He now accepted them without much difficulty or reluctance: their tenure appeared, indeed, considerably less precarious than when he formerly declined the dangerous or unwelcome dignity. The contest for power now lay mainly between the two sections of the Whig party, differing indeed widely enough on individual points of policy, but professing the same

general principles of civil and ecclesiastical administration: he might therefore hope, by a course of discreet moderation, and without any vehement offence to his opinions or his conscience, to retain the good things of office whichever of the scales of party was depressed, whether Stanhope or Walpole kicked the beam. We find, accordingly, that when the latter regained his ascendancy, the Chancellor had no difficulty in acting along with him, as comfortably, and perhaps as cordially, as with the statesmen he had displaced. We shall see in the result, that there were even weightier reasons than have usually influenced the occupiers of that seat, to dissuade him from quitting it except upon the most immitigable necessity.

Almost the last judicial act of Lord Parker, in his office of Chief Justice, was to pronounce upon the important question then at issue between George I. and his son, in which of them lay the right of guardianship, and the control over the education and marriage of the younger branches of the royal family; the prince claiming those rights in his paternal, the sovereign in his kingly, character. The judges differed on the question; ten of them, however, with Parker at their head, and considerably influenced, it was said, by his arguments and authority, certified their unqualified opinion that all the contested rights were vested by law in the crown: a decision by which he purchased, and in the end bitterly experienced, the persevering enmity of the prince. The same question, however, many years afterwards, when the Royal Marriage Act was under the consideration of the legislature, received the same determination from the concurrent opinion of all the judges.

The decisions of Lord Macclesfield (we anticipate somewhat in giving him the title by which he is best known) in the Court of Chancery, have ever since commanded an authority second only to that of the most illustrious judges who have filled the seat of equity—of a Hardwicke or an Eldon. They appear to have been held in no less consideration in his own time: we have looked through the Reports of Peere Williams, which comprehend a regular series of all the more important cases heard before him during the seven years of his chancellorship, and find scarcely a single instance of a successful

appeal from his judgment to the House of Lords*. This is a testimony to his accuracy of understanding, familiarity with legal principles, and devotion to his duties, the more unquestionable, because his studies and practice at the bar could scarcely have prepared or qualified him for the administration of equity. In his judicial fitness for his seat, indeed, he excelled rather than fell short of his predecessor †, whom he somewhat too flatteringly panegyrised as "that great master of equity:"—his personal deportment towards the practitioners of his court afforded them less reason to be gratified with the change. The undisguised favouritism which he displayed towards some of them, more particularly the all-fortunate Sir Philip Yorke, and the petulance which he too often directed towards counsel less in his good graces, contrasted unhappily with the graceful and dignified amenity of Lord Cowper, and raised him up enemies within the walls of his court, whose hostility he was doomed to experience to his cost.

Whomsoever else he might have the fortune to displease,

* It may deserve notice, that he was the first judge who asserted the jurisdiction of the Court of Chancery to interfere with the parental control over the child, in a case where the parent was living. Eyre v. Countess of Shaftesbury, 2 P. Wms. 118.

† The Duke of Wharton, nevertheless, in that witty *brochure* referred to in another part of this volume, (Life of Lord Hardwicke, *post*), does not scruple to include in the catalogue of impossibilities, on the happening of which he engages that he will

"cease his charmer to adore,
"And think of love and politics no more,"

the occasion "when Parker shall pronounce one right decree." He did not, indeed, do the Chancellor the discourtesy of leaving him alone on the bad eminence of ignorance or dishonesty to which he had exalted him; he disparages no less the understanding and character of the two chief justices, Pratt and King. Lord Macclesfield was however evidently regarded with extreme dislike by the duke, who, in one of the numbers of his "True Briton," even draws a covert parallel between him and Jefferies (anticipating therein the more elaborate hostility of a periodical of much greater pretension against a chancellor of later days) for covetousness, ambition, party spirit, anger, and peevishness; and expresses his surprise, still under a pretended allusion to Jefferies, that the gentlemen of the bar "should have suffered themselves to be so overrun by him." Wharton's name is to be found at the head of the dissentient peers who had sought to aggravate Lord Macclesfield's punishment on his impeachment.

the Chancellor had been lucky enough to secure to himself no small portion of the royal favour, which heaped upon him increase of honour and aggrandisement almost without stint. In 1719, he was nominated Lord Lieutenant of Warwickshire, and also, within a few months afterwards, of Oxfordshire, in which latter county he had purchased the old castellated mansion of Shirbourn, near Watlington, with a small circumjacent property; and in November 1721, he was advanced to the honours of a Viscount and Earl, by the titles of Viscount Parker, of Ewelme, in Oxfordshire, and Earl of Macclesfield, with remainder, in failure of his direct male issue, to that of his only daughter, the wife of a Hampshire baronet, Sir William Heathcote. At the period of his elevation to the woolsack, the reversion of a Tellership of the Exchequer had been secured to his son, with a pension of £1200 until it should fall into possession; and he himself had then received from the bounty of the Crown, in addition to his former pension, a gift of a gross sum of £14,000, (the accustomed outfit of the Great Seal being £2000), together with an annual allowance of £4000 in augmentation of the ordinary emoluments of his office. His lordship did not repay this profuseness of favour by any very zealous furtherance of the measures of the government: in all the important questions which at this period occupied the consideration of Parliament, we find the administration in which he filled so prominent a station obtaining far less frequent or active support at his hands, than it received from the purchased advocacy of the renegade Tory, Harcourt. Nor did the minister, on his part, make any troublesome effort to avert or soften the fall of so unserviceable a colleague, when the storm of popular indignation burst over his head. To that unhappy period of his history the course of our narrative now leads us.

Shortly after the lamentable and ruinous catastrophe of the South Sea Frauds, whispers had begun to circulate of deficiencies in the funds of the suitors in equity, in the hands of the Masters in Chancery*; one of them, Mr. Dormer, had

* Up to this period the usage was, when an order was made to deposit any sum of money in a cause, for the Chancellor to direct it to be paid into the hands of the Master in Chancery whose turn it was to be in court at the time.

speculated in that stock to a desperate extent, and had applied, as afterwards appeared, the suitors' money in payment of losses to the amount of more than thirty thousand pounds. It was not for some time that these rumours assumed any distinct shape of accusation or inquiry, or involved the Chancellor himself in any suspicion of corrupt or irregular practices. They became at length, however, so loud and general, as to convince him (after several vain attempts to solder up the grievance, or disguise its extent) of the impossibility of retaining his office in the face of them, either with any satisfaction to the country, or with safety to himself. Accordingly, in January, 1724-5, he surrendered the great seal into the reluctant hands of the King, and it was transferred to the hands of Sir Joseph Jekyll, the Master of the Rolls, Mr. Baron Gilbert, and Mr. Justice Raymond, with a special injunction to take into their immediate consideration the accounts of the defaulting Masters, and the means of making restitution to the despoiled suitors. But the Chancellor was not permitted to fall so softly as he had hoped. The party of Leicester House were now supplied with an ample opportunity of at once inflicting annoyance on the Court, and gratifying the resentment of their master, and that under the specious and popular guise of patriotic attack upon corruption and mal-administration in the highest judicial office. In an age when political venality was all but universal—when the sale of ministerial favour and public employment (not to speak of the purchase of political character) was so flagrant and shameless, that, as the Duchess of Marlborough assures us, "no person who was in any office at Court, with places at his disposal, made any more scruple of selling them, than of receiving his settled salary or the rents of his estate,"—it would be ridiculous to attribute to the eloquent invective which was poured out upon the misdeeds of Lord Macclesfield, much inbred purity of patriotism, or affectionate reverence for the sanctity of justice. But little as we may see cause to respect the motives which influenced his prosecution, we cannot therefore question either its justice or its fitness. It was high time to cleanse the fountain of equity of some portion at least —the worst and most offensive—of the impurity and rankness which had so long been gathering over it, and fitting to

visit with an exemplary chastisement the reckless cupidity, the criminal and interested negligence, which to the old evils of delay, expense, extortion, and uncertainty, had added that of wholesale and ruinous spoliation. But we are anticipating the order of our narrative.

Lord Macclesfield's resignation of the seals took place on the 4th of January. On the 23rd, the presentation to the House of Commons of a petition from the Earl of Oxford and Lord Morpeth, as guardians of the person and estates of the Duchess Dowager of Montagu, a lunatic, complaining of a heavy deficiency in monies belonging to her estate in the hands of one of the Masters in Chancery, gave occasion to a long debate, in the course of which much severe animadversion was cast on the conduct of the ex-Chancellor. It was ultimately adjourned, for further and still more serious consideration, to the 12th of February; the purpose being, as was manifest from the result, to concert the plan of some proceeding directly criminatory of the Earl of Macclesfield. On that day, accordingly, after reading certain Reports from a Committee of the Privy Council which had been appointed to examine into the subject, Sir George Oxenden, an influential member of the prince's party, concluded a highly accusatory speech, the charges of which he founded upon the statements of the Reports, by moving to impeach the Earl of high crimes and misdemeanors in his office of Chancellor. His delinquencies, he said, were many and of various natures, but might be resolved into three heads; first, that he had taken into his own hands the estates and effects of many widows, orphans, and lunatics, and either had disposed of part of them arbitrarily to his own profit, or connived at the officers under him making advantage of them; secondly, that he had raised to an exorbitant price* the offices and places of the Masters in Chancery, and, in order to enable them to pay him those high prices and gratuities for their admission, had trusted in their hands large sums of money belonging to suitors in Chancery; and thirdly, that in several cases he had made divers irregular orders. "So that," the orator concluded,

* The absolute illegality of the receipt of money on the appointment to the office was not therefore, at this stage of the proceedings, alleged against him.

"in his opinion, that first magistrate in the kingdom was fallen from the height of the dignities and honours to which he had been raised by the King's royal bounty and favour, to the depth of infamy and disgrace." The motion having been warmly supported by several members of the same party (among whom was that mirror of political purity, Doddington, then one of the Lords of the Treasury), the government, not venturing in the present aspect of the subject to give it their unqualified resistance, made a half show of opposition, in a proposal to refer the whole matter anew to a Select Committee; Pulteney, who then filled the office of cofferer of the household, alleging that it was derogatory to the dignity and prerogative of the House to found an impeachment upon the Reports, without a previous examination into the proofs that were to support it. This motion, however, was even opposed by several subordinate members of the government, and the impeachment was carried by a majority of 273 votes to 164: and in pursuance of that resolution, Sir George Oxenden, on the following day, solemnly impeached the Earl at the bar of of the House of Lords.

Walpole, though he bore no great love to his displaced colleague, on the score of "several ministerial passages," had no anxiety to see the weapon of parliamentary impeachment against obnoxious ministers leave the sheath too often, nor desired to risk, by too ready a participation in the proceedings, the displeasure of his royal master, in whose good graces he knew the Earl to stand as high as ever; he found, however, that the current of popular feeling set too strongly against the reputed author of so many abuses, for him to oppose it with safety or credit, and persuaded the king of the necessity of giving the proceedings the concurrence of the government. Out of doors (to adopt the parliamentary phrase) the impeachment was of course abundantly popular, as aiming a bold assault against corruption in high places, avenging the wrongs of the oppressed and despoiled, wounding the personal feelings of an unpopular sovereign, and exhibiting the public virtue and disinterested sympathies of the representatives of the people. The press did not fail to discharge its daily shower of obloquy upon the great delinquent; he was even classed in the same catalogue with the cutpurse

heroes of the Newgate Calendar; Staffordshire, it was said, had produced three of the greatest rogues that ever existed—Jack Sheppard, Jonathan Wild, and Lord Chancellor Macclesfield; and the same exalted fate which had rewarded the public labours of the two former worthies, was not very obscurely indicated as the fitting recompense of his. Amid this tempest of popular outcry, on the 18th of March, the articles of impeachment were reported to the House of Commons from the committee appointed to draw them up. It appeared that two of them related to offences alleged to have been committed before the Act of Indemnity passed in 1721; a circumstance of which the Earl's friends, Sir Philip Yorke among the number, endeavoured to avail themselves to obtain the recommittal of the articles, and at least to thrust off for a while the evil day. Serjeant Pengelly and the Solicitor-General, Sir Clement Wearg, two of the Chancery practitioners least friendly to their late chief, strongly resisted this proposition, insisting that the indemnity applied only to offences against the crown; and their opinion was backed by so large a majority of the House, that the motion for recommittal was abandoned, and the articles were read and adopted, and presently afterwards delivered at the bar of the House of Lords. They were twenty-one in number, headed by a preamble which set forth the favours and dignities which had been heaped upon the accused, and the oath he had taken duly to administer his office, and "well and truly to serve the king and his people, poor and rich, after the laws and usages of the realm;" and were reducible to five distinct heads of accusation. The first ten charged the impeached Earl with specific acts of corruption, in the admission to their offices of divers Masters in Chancery*, from one of whom he was alleged to have extorted, as the price of his appointment, no less a sum than £6000; from two others the sum of five thousand guineas each; and from the rest, different sums varying in amount from eight to fifteen hundred guineas: aggravated in one instance by the circumstances, that the Master in whose room the

* With the exception of the ninth, which charged him with demanding and receiving a sum of a hundred guineas from one of the Masters, on his transfer of an office he had previously held—the Clerkship of the Custodies.

corrupt appointment was made had died insolvent, deeply in debt to the suitors of the Court, and that the office was trafficked for without any provision for securing the satisfaction of those debts. The eleventh and twelfth articles charged him with admitting to the office of Master, for the purpose of increasing his corrupt profit from the sale of their places, persons of inconsiderable substance and credit, altogether unfit to be entrusted with such a responsibility, and falsely representing them as persons of adequate respectability and fortune; and with conniving at the payment of the purchase-money of their offices out of the suitors' monies transferred to their hands, whereby the price of their admissions was grossly enhanced, and persons of little property or credit were encouraged to contract for the purchase of a lucrative place, upon the prospect of so easy a method of raising the purchase-money, and great deficiencies had in consequence been incurred, and extensive embezzlements practised, in the offices of several of the Masters so admitted. The seven following articles accused him of various practices and artifices for the purpose of evading the discovery of and inquiry into these defalcations, especially with attempting to compel the Masters to raise among them money to cover the immediate demands of the suitors who pressed for a settlement of their claims, refusing to adopt plans proposed to him for the future security of the funds, and inducing several of the Masters to support each other in false representations of their ability and credit, so as to set up a colourable answer to the inquiry directed by the crown into the state of their accounts, and prevent, if possible, a parliamentary investigation. The twentieth article charged him with borrowing of the Masters for his own use large sums out of the suitors' monies; and the last made a particular charge against him of a corrupt and improper appointment of the receiver of the estates of an infant heir, to the exclusion of the receiver nominated by the testamentary guardian, and in contravention of the statute of Charles II. abolishing the court of wards and liveries.

After the lapse of a few weeks, the Earl presented to the House of Lords his answer to the articles of impeachment. After acknowledging the favours bestowed upon him by the crown, and setting forth in terms his oath of office,

he went on to declare that "during his continuance in the office of Lord Chancellor, he never once had a design, or view, or wish, to raise to himself any exorbitant gain or profit, much less used or even thought of using any unjust or oppressive methods to extort or obtain any sum whatsoever, as in the said articles was suggested; but such views and practices were inconsistent with the whole tenor of his life and actions; and that in case it should be thought proper to lay before their lordships an account of his estate and fortune, and of the considerable sums of money he had distributed for the relief of others, it would appear that he was not such a designing, avaricious, and oppressive man, as in the said articles he was represented." By way of general answer to the charges relating to the receipt of money on the admission to the office of Master, he first alleged the long usage to receive such presents, which had ever been reckoned among the ancient and known perquisites of the Great Seal, and the acceptance of them notorious to all the world, and never before considered or complained of as criminal; and that, "as he humbly hoped," the giving or receiving of a present on such occasions was not criminal in itself, or prohibited by common law or statute. He then proceeded to answer to each of those articles, that the sums received were freely and voluntarily given; that in two instances, on a subsequent representation from the Masters who had paid them that they were thereby disabled from answering so much of the balances due from them to the suitors, he had delivered the money over in open court to be applied for the suitors' benefit; and that of one of the sums of five thousand guineas so presented to him he had retained no more than £1850. To the articles charging him with the appointment of persons of insufficient ability for the proper discharge of the office, and with connivance at the practice of paying for their places out of the suitors' funds, he gave little more than a general denial. To the next class of charges he replied with a protestation of his belief that Dormer's deficiency would in due time have been made good; that the plans of administering the funds which had been proposed to him had been rejected, as being, some impracticable, some insufficient, some inconsistent with the complete regulation he had it in view to establish: he denied

that he had entertained any design or expectation of evading inquiry; asserted that it was on his own application that the crown had deputed a committee of the Privy Council to inquire into the accounts, in order to the establishment of such regulations as might tend to the honour of the Court and the advantage of the suitors; that believing the representations of the Masters to be true, that they had effects sufficient to answer their whole balances, he had advised them so to declare before the Committee, and told them "that at a time when so many mouths were open against them as insolvent, it would be for their honour and interest to make it appear that they were able and sufficient, as he believed them to be," and had suggested that some of their own brethren might supply them with money for the purpose, till they could raise it some other way: but was in no respect privy to any purpose of exhibiting a false show of their ability or credit. He gave also specific answers to the charges of the two last articles: upon them, however, no evidence was given by his prosecutors. Lastly, he insisted on the benefit of the Act of Indemnity as to any of the alleged offences committed before its passing. The Commons replied in general terms, that although the answer was so evasive, inconsistent, and contradictory, that they might upon the face of it demand judgment forthwith, they were ready notwithstanding at the time appointed to maintain their charge by evidence, and demonstrate the guilt of the accused of the high crimes alleged against him.

After an ineffectual attempt on the part of some of the Peers most hostile to the Earl, to have the place of trial the more public and accustomed area of Westminster Hall, it was appointed to take place at the bar of the House of Lords, on the following 6th of May. The managers named to conduct the prosecution on the part of the Commons were no fewer than nineteen—the most conspicuous names among them being those of Sir George Oxenden, Sir Clement Wearg, Sir Thomas Pengelly, Onslow (afterwards Speaker), Doddington, Sandys, &c.—Sir Philip Yorke, then Attorney-General, with difficulty obtained a remission from the painful employment of prosecuting his intimate friend and most constant patron. The counsel assigned to the Earl at his request were Mr. Serjeant Probyn (afterwards Chief Baron of the

Exchequer), Dr. Sayer, Mr. Lingard (Common Serjeant), Mr. Robins, and Mr. Strange, afterwards Master of the Rolls. On the day appointed, the trial accordingly commenced with all the solemn and dignified pomp of a parliamentary impeachment. The charge having been opened generally by Sir George Oxenden and the Solicitor-General, and proof given of the administration to the Earl of the oaths of a Privy-Councillor and Chancellor, of the value of his office, and the duties and official income of the Masters in Chancery, the managers proceeded to adduce evidence to support the specific charges of corruption in the appointments of those officers; the Solicitor-General and Serjeant Pengelly assuming the chief conduct of the evidence on the part of the Commons, and the Earl assisting and frequently directing the examinations and objections of his counsel, with great acuteness and self-possession. Without entering into any detail of the evidence, which was supplied, under the protection of an Act of Indemnity, principally from the mouths of the offending Masters themselves, it is enough to say that upon these as well as the other articles of charge, it went to an extent which inferred a heavy amount of criminality, both of commission and omission, against the noble defendant. It was shewn but too satisfactorily, that through his secretary, a Mr. Peter Cottingham, his great agent in this unworthy traffic, he had demanded from many of the Masters—had bargained, stood out, and haggled for—grossly exorbitant sums for his own use, as the condition of the transfer to them of their offices; that these sums, as well as those paid to the retiring Masters as the direct price of the office, were in almost every instance either deducted or replaced out of the suitors' monies; that although this system of peculation went on for such a length of time, and was conducted under such circumstances, as must of necessity have brought it to the knowledge of the Chancellor, he took no measures to reform or restrain the abuse, but permitted it to go on for his own interested purposes: that needy persons had in more instances than one been thus encouraged to bid for, and had obtained the office, in whose accounts heavy defalcations had in consequence taken place; that on the apprehended inquiry into these deficiencies, he had used every effort to conceal the desperate nature of the case, to persuade the Masters into a

mutual contribution to stop the most immediate and pressing sources of complaint, and stave off a parliamentary investigation, which, as he told them, "he could not say how far it might affect him, but would affect them much more;" and that, on the inquiry before the Privy Council, repeated attempts were made both by Cottingham and Lord Macclesfield himself to induce them to assist each other with money, or obtain it by loan from the goldsmiths, to make a show of sufficient assets for the satisfaction of the balances. We transcribe a passage or two from the evidence of the Masters in Chancery, which exhibit an amusing picture, if it were not so miserably degrading, of these respectable dealings. The first narrator is Mr. Thomas Bennet, appointed in June 1723.

"I applied to Mr. Cottingham, and desired that he would acquaint my Lord Chancellor I had agreed with Mr. Hiccocks to succeed him in his office, and desired him to let me know my Lord Chancellor's thoughts, whether he approved of me to succeed Mr. Hiccocks. Soon after that, I believe the next day or a day after, he met me, and told me he had acquainted my lord with the message I sent; he said my lord expressed himself with a great deal of respect for my father, Mr. Serjeant Bennet, and that he was glad of this opportunity to do me a favour and kindness, and that he had no objection in the world to me; that was the answer Mr. Cottingham returned; he then mentioned that there was a present expected, and he did not doubt but I knew that; I answered, I had heard there was, and I was willing to do what was usual; I desired to know what would be expected; he said he would name no sum, and he had the less reason to name a sum to me, because I had a brother a Master, and I was well acquainted with Mr. Godfrey, who had recommended me, and I might apply to them, and they would tell me what was proper for me to offer. I told him I would consult them; accordingly I did, and I returned to Mr. Cottingham, and told him I had talked with them about it, and their opinion was a thousand pounds (but I believe I said I would not stand for guineas) was sufficient for me to offer. Upon this, Mr. Cottingham shook his head, and said, that won't do, Mr. Bennet, you must be better advised; why, said I, won't that do, I think it is a noble present; says he, a great deal more has been given; says I, I am sure my

brother did not give so much, nor Mr. Godfrey; and those persons you advised me to consult with told me it was sufficient, and I desire you to acquaint my lord with the proposal; says he, I don't care to go with that proposal, you may find somebody else to go; says I, I don't know whom to apply to; says he further, sure, Mr. Bennet, *you won't go to lower the price*, (these were his very words, at least I am sure that was the meaning of them), I can assure you Mr. Kynaston gave 1500 guineas. I said, that was three or four years ago, and since that time there have been several occasions of lowering the prices; the fall of stock hath lowered the value of money; and I think I mentioned Dormer's deficiency, and I did not know what the consequence of that might be; and therefore I thought, at this time of day, when stock and everything was fallen, 1000 guineas was more now than 1500 when Mr. Kynaston gave it. He still insisted he did not care to go with that message. Says I, only acquaint my lord with it, and if he insists upon more, I will consider of it; says he, there is no haggling with my lord; if you refuse it, I don't know the consequence; he may resent it so far as not to admit you at all, and you may lose the office. Then I began to consider, and was loth to lose the office, and told him I would give £1500; he said Mr. Kynaston had given guineas. Then I asked whether it must be in gold; he said, *in what you will, so it be guineas*. In a day or two after, he came and told me that my lord was pleased to accept of me, and he should admit me as soon as opportunity served, and he would give me notice. Accordingly, on the first of June, he sent and desired me to come immediately, and to come alone, and bring nobody with me, for my lord would swear me in that morning. Accordingly I went, and the first question Mr. Cottingham asked me was, if I had brought the money? I told him to be sure, I should not come without it. He asked what it was in? I told him in bank bills, one of £1000, and the other £575. He took them up and carried them to my lord: he returned back, and told me my lord was ready to admit me. I was carried up stairs, and then sworn in in his bed-chamber."

This same worthy gentleman admits, in another part of his evidence, that when appointed he was a younger brother with an income of £250 a year or thereabouts, and that he had not

bought the place had it not been for the cash of the suitors. The next witness was another master, Mr. Elde, who gives a no less graphic account of the negotiation upon his admission. Hearing of the vacancy of one of the offices, he waits upon the Chancellor to solicit the appointment:—

"His lordship said he had no manner of objection to me, he had known me a considerable time, and he believed I should make a good officer. He desired me *to consider of it*, and come to him again, and I did so. I went back from his lordship, and came again in a day or two, and told him I had considered of it, and desired to know if his lordship would admit me, and I would make him a present of £4000 or £5000; I cannot say which of the two I said, but I believe it was £5000. My lord said, thee and I, or you and I (my lord was pleased to treat me as a friend), must not make bargains. He said, if I was desirous of having the office, he would treat with me in a different manner than he would with any man living. I made no further application at all, but spoke to Mr. Cottingham, meeting him in Westminster Hall, and told him I had been at my lord's, and my lord was pleased to speak very kindly to me, and I had proposed to give him £5000. Mr. Cottingham answered, *guineas are handsomer* [he had, it is plain, a true professional distaste for *pounds*]. . . . . I immediately went to my lord's: I was willing to get into the office as soon as I could. I did carry with me 5000 guineas in gold and bank notes. I had the money in my chambers, but could not tell how to convey it; it was a great burthen and weight; but recollecting I had a basket in my chamber, I put the guineas into the basket and the notes with them. I went in a chair and took the basket with me in my chair. When I came to my lord's house, I saw Mr. Cottingham there, and I gave him the basket, and desired him to carry it up to my lord. I saw him go up stairs with the basket, and when he came down he intimated to me that he had delivered it. [Cottingham subsequently states that he carried it up to Lord Macclesfield, and left it covered up in his study without saying a word.] When I was admitted, my lord invited me to dinner, and some of my friends with me; and he was pleased to treat me and some members of the House of Commons in a very handsome manner; I was after dinner sworn in before them.

Some months after, I spoke to my lord's gentleman, and desired him, if he saw such a basket, that he would give it me back; and some time after he did so.

"*Q.* Was any money returned in it? *A.* No, there was not."

The evidence in support of the impeachment having been ably and minutely summed up by one of the managers, Mr. West (appointed a few weeks afterwards Lord Chancellor of Ireland), the Earl, on the fifth day of the trial, entered upon his defence. It was rested, so far as it was founded in evidence, on several grounds. He relied, in the first place, upon the constant usage of his predecessors to receive money on the admission to the offices, his disposal of which was brought into question. The only instances, however, which he was able to make out in proof, were three, one in Lord Cowper's and two in Lord Harcourt's time, the largest amount received being £800, and the money having been paid in every case out of the private funds of the parties before their admission, without invasion or endangerment of the suitors' monies*. To account for the exorbitant amount to which the *presents* had been advanced under his own auspices, he next adduced evidence to shew that other offices in the Court of Chancery, particularly those of the sworn and waiting clerks, had also risen greatly in price of late years. The repayment by him, after his dismissal from office, of the money (£3000) received on the appointment of two of the masters whose accounts were in default—various attempts to effect a settlement of the deficiencies on what he considered advantageous terms for the creditors—instances of his endeavours from time to time to compel the Masters to bring in their accounts, (but which never appeared to have been seriously enforced)—the

* Lord Townshend, arguing against the production of this species of evidence, shewed that his residence in Ireland had not been thrown away upon him. He objected that, if admitted, "it would only shew that this sort of corruption *was hereditary*."—The legislature itself had, in truth, been accessory to the continuance of the practice; for when, in the debate on the bill for enabling the Lords Commissioners of the Great Seal to execute the offices of Lord Chancellor and Lord Keeper, (1 W. & M. c. 21), a clause was proposed prohibiting the sale of the office of Master in Chancery, it was directly negatived in the Lords.

payment by him out of his own pocket of a sum of £1000 to one of the suitors who were sufferers by Dormer's embezzlements;—constituted the principal facts urged in his behalf, rather in extenuation than absolute negation of the subsequent charges of the impeachment. It was then sought to remove from his conduct the stain of personal avarice, by calling witnesses to attest the munificent extent and disinterested character of his private charities; his frequent remission of fees to the poorer clergy on their presentation to livings; numerous instances of the generous and unsolicited bestowal of money or preferment on persons of learning and character in reduced circumstances; and munificent donations for public or religious uses. After the evidence in defence had been closed and summed up, his counsel were desirous of giving further proof of the purely private sources of his charities, and the limited extent of his personal income; this, however, was objected to and disallowed, as irregular at this period of the proceedings.

The noble defendant himself, after an adjournment of a few days allowed him to prepare himself, and to recover from the bodily and mental exhaustion of the long inquiry already gone through, then entered upon his personal defence, in a speech of great length, ability, and judgment; in which, after contending that the receipt of a gratuity on the admission to an office connected with the administration of justice was not necessarily criminal in itself, unless an unfit person were admitted, nor was an offence at common law, or under either of the statutes to which reference had been made*; and combating the argument, that there was an inconsistency in pleading innocence and claiming at the same time the protection of an act of indemnity,—he went in detail into the charges against him, and the voluminous evidence in support of them, and exerted all the efforts of an acute and well-trained understanding to shade down the harshness of the proof, and place in the strongest light the explanations and palliatives which had been offered on his part; ab-

* 12 R. 2, c. 2, prohibiting the Chancellor, &c. from making justices of the peace or other officers "for any gift or brocage, favour or affection;" and 5 & 6 Edw. 6, c. 16, which avoids all bargains for the sale and purchase of offices touching the administration of justice.

staining judiciously from any attempt at mere ornamental oratory, and almost from any appeal to the favourable consideration of his judges. That he did not succeed in altering materially the aspect of the facts, was soon shewn by the result. Serjeant Pengelly and Mr. Lutwyche having replied for the Commons, and some brief supplementary evidence in reply having been given and commented upon by both sides, the proceedings in accusation and defence terminated with the tenth day of the trial; and on the following morning (May 25) the noble judges pronounced their unanimous verdict, ninety-three peers voting on the occasion, that the accused was guilty of the crimes and misdemeanors charged upon him by the impeachment. Being brought to the bar, and formally acquainted with the determination of the House, he addressed them in a short deprecatory speech, in which he urged upon their compassionate consideration the "cruel distemper" which the fatigue and anxiety of the trial had brought upon him, the loss of his office, the public censure and reproach he had undergone, and the fact of his having already paid back a sum of £10,000 towards the liquidation of Dormer's deficiency. When he had withdrawn, a fine of £30,000 being proposed as the sentence, a motion was made to refer to the opinion of the judges the question, whether the sale of an office having relation to the administration of justice were an offence at common law. This proposition was negatived almost at once, and the imposition of the fine agreed to without a division:—a punishment which, whether we consider the magnitude and danger of the offences, or the amount of individual injury and suffering they had mainly contributed to inflict (for the whole deficiency in the suitors' monies amounted to no less a sum than £81,000), we cannot pronounce to have been disproportionately or unreasonably severe. Two subsequent propositions, which, following the precedent in Lord Bacon's case, sought to declare the Earl for ever incapable of any office or employment in the state, and to exclude him from sitting in parliament or coming within the verge of the court, were negatived by very small majorities; on the former indeed there was an actual equality of voices, although by the usage of the House it passed thereupon in the negative.

The usual message having been communicated to the Commons, that the Peers were ready to give judgment on the impeachment when they with their Speaker should come to demand it, it appeared that the noble culprit still had in that assembly friends who had the courage to raise their voice in his behalf; for a warm debate, which lasted for six hours, ensued upon the question whether they should so demand judgment; which was at length carried in the affirmative by a majority of 136 voices against 65. The thanks of the House were then presented to the managers of the impeachment; the Speaker, Sir Spencer Compton, characterising their efforts as almost "above all Greek, above all Roman fame," and congratulating them that "that sword of vengeance," the power of impeachment, which, "when drawn by party rage, directed by the malice of faction, or wielded by unskilful hands, had too often wounded that constitution it was intended to preserve, had now, by their able management, turned its edge to a proper object, a great offender;" hinting at the same time a little disappointment at the unsatisfactory depth of the wound it had inflicted, in the hands of the noble but too merciful executioners of its terrors. The judgment having been formally demanded and pronounced, the noble prisoner was conducted to the Tower until payment of the fine. He remained there but a few weeks, by which time the money was raised by a mortgage of his Oxfordshire property to his son-in-law, to whom it was repaid by degrees after his death by the second earl. The king, well aware that it was mainly on his account that his favourite's delinquencies had been made the mark of prosecution, sighed as he struck his name out of the council-book, and communicated to him, through Sir Robert Walpole, his intention to repay him the amount of the fine out of the privy purse, as fast as he could spare the money; accompanying the message with gracious expressions of his sympathy and continued favour. Within a year, accordingly, the Earl was paid a sum of £1000 by the royal command. In the course of the next year (1727) Sir Robert sent him word that he had the King's directions to pay him £2000 more whenever he should apply for it. Unwilling to risk the forfeiture of the royal bounty by clutching it too eagerly, he let a month pass without making any application, when the

unwelcome intelligence arrived of the king's sudden death on his way to Hanover. Lord Parker thereupon lost no time in waiting on Sir Robert to receive the money on his father's behalf; but obtained for answer that "his late majesty and he (Walpole) had a running account, and at present he could not tell on which side the balance was, and therefore he could not venture to pay the £2000." Whether the wary minister was apprehensive of embarrassing in any degree the difficult game he had then to play, in order to retain his ascendancy in the councils of the new sovereign, or whether he was mean enough to seize this opportunity of gratifying his personal pique against his fallen colleague, it is difficult to pronounce; the promised payment, however, was never made, and here ended of course all hope of reimbursement from royal gratitude or favour.

The two Houses of Parliament applied themselves without delay to repair, so far as they could, the evils occasioned by these extensive defalcations, and to prevent the recurrence of similar delinquencies. By the statute 12 G. 1, c. 32, the office of Accountant-General of the Court of Chancery was created, and subjected to a series of checks and responsibilities which may be said to have precluded the possibility, with ordinary vigilance, of fraud or abuse in the management of the funds and securities of the suitors; which, withdrawn from individual keeping or control, were thenceforth, the instant they were brought under the authority of the Court, deposited in the Bank of England, to be transferred only by a process which affords a complete security against their misappropriation. Another act, passed at the same time, imposed an additional stamp duty of sixpence on original writs for sixteen years, for the indemnification of the defrauded suitors*. But no remedies were yet applied, nor even any immediate inquiry directed, to the general defects and abuses of the Chancery jurisdiction. The government, meantime, displayed *their* sense of the unlawfulness of the acts charged against the displaced functionary, by granting to his successor, Lord

* Lord Macclesfield's fine was also lent out at interest for the benefit of the suitors until the extent of the deficiencies was ascertained, when a distribution of it was made amongst them.

King, an addition to his salary of £1500 a year out of the Hanaper office, by way of recompense for the loss his office would sustain by the judgment of the House of Lords on the impeachment.

The unfortunate Earl of Macclesfield, bankrupt in reputation and almost in fortune, retreated to the seclusion of Shirbourn Castle, and there, withdrawing himself altogether from the embittered intercourse and painful recollections of public life, found his chief occupations in the meditations and exercises of religion, the distribution of charity, and the cultivation of literature and science. Partly for the purpose of directing the studies of his son, who manifested an extraordinary capacity for scientific and philosophical inquiry, and partly from a benevolent kindness towards the individual, he received and maintained in his house the father of the celebrated Sir William Jones, a mathematician of considerable eminence, but whose scientific attainments constituted his chief wealth. This blameless and useful retirement he continued to enjoy for nearly seven years, until his death, which—as in the case of all the distinguished lawyers, his contemporaries, whom we have recently commemorated—removed him before he could be said to have declined under the decay or pressure of old age. He had for some years been subject to attacks of strangury; and his friend Dr. Pearce coming to visit him one day, when he was staying at his son's house in Soho Square, in the month of April, 1732, found him suffering under an access of that complaint, which had come upon him in the night before, so violent and painful that he was already impressed with the conviction that it would prove mortal. His mother, he said, had died of the same disease on the eighth day, and so should he. On the eighth day, accordingly, his friend, who had visited him constantly during the interval, found him past hope of recovery, and given over by his medical attendants; his half-superstitious belief having perhaps contributed to produce its own accomplishment. He felt himself, he said, drowning inwardly, and dying from the feet upwards. He retained to the last the perfect possession of his faculties; applied himself with pious resignation to the exercises of devotion, and bade adieu to his family and household with the same calm cheerfulness as if

he were setting out upon a journey; and about ten o'clock at night, having inquired whether the physician was gone, and being told that he was, he replied faintly—"and I am going too, but I will close my eyelids myself;" he did so, and in a few moments peacefully breathed his last, April 28, 1732, in the 66th year of his age. "This was the end," says Dr. Pearce, who relates this touching scene, "of this great and good man, who, during all the time that I had the happiness of knowing him, seemed to live under a constant sense of religion as a Christian, at his hours of leisure reading and studying the Holy Scriptures, more especially after his misfortunes had removed him from the business and fatigues of his office." His body was opened by the celebrated surgeon Cheselden, when the malady which carried him off was found to have had its origin in extensive and long-seated ravages of the stone.

The fatal taint of judicial corruption, to expiate which Lord Macclesfield paid the forfeit of station, influence, and reputation, formed almost the only serious blemish in a character distinguished by many excellent and noble qualities. The very wealth thus discreditably added to his income was not hoarded to aggrandize his family, but was as liberally diffused as it had been ignobly acquired:

> "Tho' he were unsatisfied in getting
> (Which was a sin), yet in bestowing
> He was most princely."

He was a munificent and discerning patron of science and literature, at a period when the former at least was lamentably neglected by men of power and influence in general. When the Saxon types, which had been used in 1709 for printing St. Gregory's Homily, were burnt in the fire of Bowyer's printing office, he bore the whole expense of cutting a new set of types to be employed in printing Mrs. Elstob's Saxon Grammar. He suggested to Bentley the editing of variorum editions of the classics for the use of Prince Frederick, to be executed on a more correct and scholarlike plan than the Delphin editions, and undertook to obtain from the government a remuneration of £500 a year during the progress of the undertaking; but the doctor refusing his services for a less consideration than a pension

of £1000 a year for life, the project fell to the ground. We have formerly mentioned that, at the personal request of Lord Cowper, he retained the poet Hughes in the office of secretary for the commissions of the peace, which formed his whole provision; an obligation enhanced by the courteous assurance, that the personal merits of the party recommended constituted of themselves a sufficient passport to his favour*. Another Whig bard, Rowe, was placed at the same time in the comfortable sinecure of secretary to the presentations. Of his general beneficence sufficient proofs were adduced upon his trial. The ecclesiastical patronage at his disposal he bestowed with the sincere design of rewarding learning and piety, and sustaining the interests of the church of which he was a zealous and devout communicant. Zachary Pearce, the learned and excellent Bishop of Rochester, was entirely unknown and unpatronised, until he obtained his notice by dedicating to him, when Chief Justice, his edition of Cicero De Oratore, and laid thereby the whole foundation of his future fortune. By Lord Macclesfield's recommendation to Bentley, Mr. Pearce was speedily chosen into a fellowship of Trinity; on his patron's elevation to the woolsack, he was received into his house as his chaplain; a few years afterwards he presented him to the valuable living of St. Martin's in the Fields, in despite of the claims of a rival candidate for preferment (Dr. Clagget, afterwards Bishop of Exeter), who had actually kissed hands at the Court of Hanover on his nomination to it; and put him into the course of further advancement by procuring for him an appointment as one of the royal chaplains. Other instances are recorded of the

* The following effusion, from a copy of verses on the Chancellor's birthday, may serve as a specimen of the eulogistic gratitude with which the poet repaid his patronage.

"Not fair July, tho' Plenty clothe his fields,
Tho' golden suns make all his mornings smile,
Can boast of aught that such a triumph yields,
As that he gave a Parker to our isle.

Hail, happy month! secure of lasting fame!
Doubly distinguished thro' the circling year:
In Rome a hero gave thee first thy name,
A patriot's birth makes thee to Britain dear."

Chancellor's disinterested and judicious distribution of church patronage. Notwithstanding the faults of temper which he exhibited on the bench, in the intercourse of private life he was accessible and affable, a warm and constant friend, a pleasing and instructive companion; not possessed of that temperament of universal courtesy which attracts the good-will of many, but acquiring and retaining the warm and enduring attachment of a few. The well-known lines we have just quoted are not the only portion of honest Griffith's character of the fallen Wolsey which might be applied to him:—

> "Lofty and sour to them that loved him not,
> But to those men that sought him, sweet as summer.
> * * * * * *
> His overthrow heaped happiness upon him,
> For then, and not till then, he felt himself,
> And found the blessedness of being little.
> And, to add greater honours to his age
> Than man could give him, he died fearing God."

Lord Macclesfield had by his wife Janet, the daughter and coheir of a gentleman of the name of Carrier, of Wirkworth, in Derbyshire, who survived him but a few months, one daughter, Elizabeth, whom we have already mentioned as the wife of Sir William Heathcote; and one son, George, who succeeded to the title, deriving from his father an estate of little more than £3000 a year, incumbered too with a heavy debt. He distinguished himself by a devotion to the pursuit of abstract science, of which his rank has afforded few instances before or since; acquired the reputation of one of the first mathematicians and astronomers of Europe, and was chosen, by a unanimous vote, President of the Royal Society. He had the principal share in framing the bill for the reformation of the Julian calendar, and spoke upon it, as Lord Chesterfield informs us, with infinite knowledge, and all the clearness that so intricate a matter would admit of; although Chesterfield himself, who introduced the bill into the House of Lords, conceived himself to have carried away, from his more graceful elocution and more popular mode of treating the subject, all the applauses of his noble auditory,

and to have imposed himself upon them as fully master of all its details, while, says he, "I could just as soon have talked Celtic or Sclavonian to them as astronomy, and they would have understood me just as well."

The only literary production ascribed to the Lord Chancellor Macclesfield is a tract, which is printed in the second volume of Gutch's "Collectanea Curiosa," entitled "A Memorial relating to the Universities," being a series of propositions the main object of which was to cure the jacobite tendencies displayed by those bodies on the accession of George I., by alterations in their course of study and discipline, and in the succession to college offices, fellowships, and livings. He proposes, for instance, that the heads of houses should be chosen, not by the societies over which they were to preside, but by the great officers of state and some of the bishops; that the fellows should hold only for twenty years at all events; that they should have more extensive opportunities of intercourse with the world, by a more liberal dispensation with their residence in college; he suggests the foundation of a professorship of the law of nature and nations, and the institution of courses of lectures in chymistry, anatomy, experimental philosophy, and other branches of more general knowledge than fell at that period within the prescribed course of academical instruction. By such methods he proposed to render the Universities "more useful to the nation, by the increase of learning, and augmenting the number of those who might have the benefit of a learned education, as well as by bringing those seats of literature to a better sense of their duty to their king and country."

We shall conclude this imperfect memoir by expressing our belief, in the words of a more illustrious judicial delinquent, that Lord Macclesfield's criminality and degradation proceeded not "from the troubled fountain of a corrupt heart, in a depraved habit of taking rewards to prevent justice, however he might be frail, and partake of the abuses of the times." His fate not only presented a seasonable aad salutary warning, but was immediately beneficial to his country, in stopping up, by the application of legislative remedies, the sources in which the same corruptions might otherwise have been again engendered.

LORD KING.

PETER KING, the only son of Mr. Jerome King, a substantial grocer and dry-salter in the city of Exeter, descended from a respectable family which had been settled for a considerable period at Glastonbury, in Somersetshire, was born at Exeter in the year 1669. Being designed by his father for the same useful though inglorious occupation which had secured himself a comfortable income, young King, after acquiring the rudiments of an ordinary provincial education at the grammar school of his native city, was introduced behind the counter, to learn the thriving business to which he was to owe his future support. Who (says a biographer) that had stept into the shop of Mr. Jerome King, and had there seen his son up to the elbows in grocery, could have perceived in him a future Chancellor of Great Britain? But the thirst of knowledge, and doubtless the glimpses of ambition, visited him even through this ungenial atmosphere. All the pocket-money he could hoard was devoted to the purchase of books, and every hour of leisure to the eager perusal of them. Bred up chiefly among dissenters—although it does not appear that his parents were themselves actually separatists from the Church, or that he was educated in the principles of dissent,—it was not surprising that his studies should assume the direction of inquiry into the religious questions which, at the period of the Revolution, occupied and divided the country; but it cannot be doubted, that his relationship and intercourse with the illustrious Locke, who, if not his maternal uncle, was at least his near kinsman by the mother's side, contributed not a little to impress his mind, young as it was, with the superior

importance and interest of such subjects of investigation. Be this as it may, the fruits of his studies were shortly made apparent, in a manner which not only astonished his friends but introduced him at once to the general and admiring notice of literary men. Before he completed his twentieth year, he had put the finishing hand to a work of some extent—an "Enquiry into the Constitution, Discipline, Unity, and Worship of the Primitive Church that flourished within th first 300 years after Christ: faithfully collected out of the extant writings of those ages:"—a title which of itself implied the expenditure of much research and learning, of a kind that would have been supposed least likely to attract the pursuit of a young man in his condition of life.

The question of a comprehensive union between the Established Church and the Dissenters, by the mutual concession of some of the points of external discipline and ritual in difference between them, had at several periods occupied the attention of the legislature and the clergy. The occurrence of the Revolution appeared to the Dissenters to furnish them with a desirable occasion of reviving this project. They were by no means satisfied with the relief then afforded them by the passing of the Toleration Act, which they regarded less as an extension of favour, than as an injurious invasion of their right to an *equality* of religious profession. They had warmly recommended themselves to the countenance of the new sovereign by the assistance they had rendered him in his enterprise; while, on the other hand, a large portion of the hierarchy and clergy of the Establishment had denied his right and abjured his supremacy. They drew up, accordingly, divers plans of accommodation or *comprehension*, in all of which they were to be treated as the equals in every respect of the Church; and the proposed terms were such as to imply a preference in the frame of their own constitution, discipline, and worship, over the established forms. The same question was also, by the king's recommendation, submitted to the discussion of the bishops and clergy in convocation.

It was at this conjuncture, and in order to render all the aid in his power to this design of a comprehension, that our young author employed himself upon the inquiry which formed the subject of his work. Its purpose was to shew, out of the

writings of the early Fathers, that the primitive church, in its constitution, discipline, and worship, was founded upon a model of which presbyterianism, more than episcopacy, was the legitimate descendant: that the primitive *bishop* was no more than a pastoral minister—his *diocese* no more than a parish or cure, where he resided constantly in discharge of his pastoral functions towards his *church* or flock;—being elected by the whole body of the people, church and lay, and his election confirmed by institution from the neighbouring bishops. A *presbyter* he collects from the same authorities to have been also a person in holy orders, differing from the bishop only in the circumstance of his not having a particular parish appropriated for the exercise of his ministry,—like parson and curate, equal in order although not in degree. He proceeds to consider the constitution and jurisdiction, spiritual and temporal, of the ancient presbytery, and to contend for its non-conformity with the frame and spirit of the modern episcopalian government. The *unity*, again, of the primitive church, he affirms, consisted not in a uniformity of rites, or an agreement in the non-essential points of Christianity, but only in a consentaneous belief in the fundamental articles of faith and doctrine. In prosecution of the same argument, he goes on to vindicate the claim of the presbyterians against the Established Church, in respect to primitive antiquity in the article of their *worship*, and contends that no adherence to set forms of liturgical or sacramental ritual was demanded of the early worshippers. This outline, imperfect as it is, is sufficient to attest the extent of reading and closeness of study which must have been demanded for the production of such a work, profusely illustrated as it was throughout with citations from a vast number of original authorities: and though we may admit that some of these were afterwards shewn to have been misinterpreted, and not a few of the reasonings to be immature and inconclusive, it may well have been deemed an extraordinary undertaking for a youth of nineteen, gleaning his information "by stealth and morsels" behind the desk of a grocer's counting-house, or during the brief leisure which most young men of his age and situation, relieved from the drudgery of an irksome occupation, and not pressed by the necessities of poverty, would have been too happy to spend, if not in mere amusement, at least in the

enjoyment of social intercourse. The work was published anonymously, in the spring of 1691-2, and at once excited attention and interest. There was a becoming air of youthful ingenuousness and diffidence pervading it; and the author, in a modest preface, solicited the correction, public or private, of any errors he might be shewn to have fallen into, professing that his only purpose was to elicit inquiry and promote the cause of truth*. A correspondence was commenced, in consequence of this invitation, between him and a Mr. Edmund Elys, which was published by the latter a few years afterwards, but seems to have left the questions between the disputants pretty much in the same position as it found them: and the work received no formal answer until some twenty years later, when, on the agitation of the question as to the repeal of the Schism Bill, being quoted as an unanswered and therefore unanswerable vindication of the separation of the dissenters from the Church, it was replied to by a nonjuring clergyman of the name of Sclater, in a volume entitled "The Original Draught of the Primitive Church," which is reported to have contained so complete a refutation as to have made a convert even of King himself; who, however, having then attained knighthood and judicial dignity, was doubtless a much more willing subject of conversion, than when pursuing the obscure studies of his boyhood amid the quiet circle of the Exeter dissenters.

The production of this work sealed the emancipation of the young author from the unwelcome occupation to which he had been destined. At the earnest recommendation of his illustrious kinsman, his father acquiesced in his desire to seek, in the profession of the law, the field in which his talents and knowledge might be applied with the best prospect of finding their due reward. As Locke bore, from his own experience, little love towards the maternal discipline of the English universities—where, perhaps, the subscription of the Articles formed also an obstacle to the introduction of the

* Whiston charges him nevertheless with a disingenuous suppression of facts which were stated in the very authorities cited in the margin of his book,—e. g. the fact that water was mixed with the wine in the Eucharist, in the first ages of the Church; and with garbling passages of the original authors to suit his own views.

young champion of presbyterianism—he advised that he should repair, for the prosecution of the necessary preparatory studies, to the University of Leyden. There, accordingly, King took up his residence in the same year, 1692; his name having in the meantime been entered on the books of the Inner Temple. After three years spent in diligent and profitable study under his Dutch teachers, he returned to settle himself in the learned precincts of the Temple, and applied himself with equal assiduity to the acquisition of legal knowledge in its more strictly professional departments. In Easter Term, 1698, being then in his twenty-ninth year, he was called to the bar.

It would appear that either the reputation of his attainments, or the recommendation of his distinguished relative, procured him almost immediately an introduction to practice. Locke writes to him, in a letter dated the 3rd July in that year: "I am glad that you are so well entered at the bar; it is my advice to you to go on so gently by degrees, and to speak only in things that you are perfectly master of, till you have got a confidence and habit of talking at the bar." He lived already in the enjoyment of no common acquaintanceship: his letters to Locke shew him in communication with Newton and Somers, and in even familiar intercourse with the Lords Peterborough, Shaftesbury, Pembroke, &c. To these advantages it was, doubtless, that he owed also his introduction into Parliament; being returned at the general election in 1700 for Beeralston, in conjunction with Cowper, a few years afterwards Lord Chancellor. For this borough he continued to sit without interruption through all the Parliaments of Queen Anne's reign; a zealous partisan throughout, as might be inferred from his early pursuits, of the Whig principles of that day. It is evident that Locke regarded his kinsman's success in this arena, and the fulfilment of his duties as a representative, as of much more importance than his devotion to professional engagements. He writes to him, on the commencement of the session of 1700-1, strongly pressing him to remain in town instead of going the circuit—advice not very palatable to a barrister of hardly two years' standing, already launched into practice:—"I am as positive as I can be in anything that you should not think of going the next circuit. I do not in

the meantime forget your calling; but what this one omission may be of loss to you, may be made up otherwise. I am sure there never was so critical a time when every honest member of Parliament ought to watch his trust, and that you will see before the end of the next vacation. I therefore expect in your next a positive promise to stay in town. I tell you you will not, you shall not, repent it*." The election of a Speaker has been lately alleged as an unfair or unseemly occasion on which to test the strength of parties: not so thought our philosophic moralist. In a letter a few days later in date, he writes: "It is my private thought that the Parliament will scarce sit even so much as to choose a Speaker before the end of the term; but whenever he is chosen, it is of no small consequcnce which side carries it, if there be two nominated, or at least in view, as it is ten to one there will be, especially in a Parliament chosen with so much struggle. Give all the help you can in this, which is usually a leading point, shewing the strength of the parties." The same letter conveys some excellent advice to the young senator, which we transcribe for the especial benefit of aspiring lawyers, burning to unveil the maiden charms of their eloquence within the walls of St. Stephen's:—"My next advice to you is, not to speak at all in the House for some time, whatever fair opportunity you may seem to have; but though you keep your mouth shut, I doubt not you will have your eyes open, to see the temper and observe the motions of the House, and diligently to remark the skill of management, and carefully watch the first and secret beginnings of things, and their tendencies, and endeavour, if there be danger in them, to crush them in the egg. You will say, what can you do who are not to speak? It is true, I would not have you speak in the House, but you can communicate your light or apprehensions to some honest speaker who may make use of it, for there have always been very able

* We borrow these extracts from the letters printed in the late Lord King's Life of Locke, and stated to have been selected from a great number remaining amongst the Chancellor's papers at Ockham. We should have been glad if his Lordship had drawn much more largely from the same source: those with which he has enriched his work are equally admirable for sentiment and expression.

members who never speak, who yet by their penetration and foresight have this way done as much service as any within those walls. And hereby you will more recommend yourself, when people shall observe so much modesty joined with your parts and judgment, than if you should seem forward, though you spoke much." This advice, as might have been foreseen, found but a cold observance: only a month afterwards we find the writer giving a fresh caution;—"I am glad the ice is broke, and that it has succeeded so well; but now that you can speak, I advise you to let them see you can hold your peace; and let nothing but some point of law which you are perfectly clear in, or the utmost necessity, call you up again."

Although, in this instance, the "unruly member" found the temptation too great to be resisted by good counsel, our young lawyer appears to have resorted habitually to the wisdom and experience of the philosopher for advice and guidance: and in return, to have been regarded by him with the warmest esteem and affection. In a letter dated in June, 1704, a few months before Locke's death, he presses his young friend in the most affectionate terms to pay him a visit, as the highest gratification which could console his decline:—"All appearances concur to warn me that the dissolution of this cottage is not far off. Refuse not, therefore, to help me to pass some of the last hours of my life as easily as may be, in the conversation of one who is not only the nearest but the dearest to me of any man in the world. I have a great many things to talk of to you, which I can talk to nobody else about. I know nothing at such a time so desirable and so useful, as the conversation of a friend one loves and relies on." He died in the following October, having by his will bequeathed to King half his library, and a considerable portion of his property.

The writer of a biographical account of the Locke family, in the Gentleman's Magazine, alludes to his having heard a collateral relative of the philosopher treat the name of King with some reproach, as having supplanted the rightful inheritors in the affections and property of their illustrious kinsman; although this person admitted that he was not himself the heir, and could not tell who was. This, however, is a species of reproach which—even had it been better founded

than it appears in this case to have been—the fortunate party generally finds it no great hardship to endure.

Notwithstanding the double claims upon his time, from his professional and parliamentary duties, our lawyer did not yet altogether forego the theological studies which had formerly occupied his attention so exclusively. While consulting the original authorities in the composition of his "Enquiry," he had been led to investigate the origin and history of the several Creeds promulgated at different periods for the assent of the early Christians, especially that known by the title of the Apostles' Creed, and the design of the primitive fathers in the composition of them. Pursuing the same train of inquiry more systematically, the result was the publication by him, in the year 1702, of a volume entitled "The History of the Apostles' Creed;" its purpose being, not to furnish a theological exposition of the several articles, but to trace historically how much of them was in truth referable to the immediate sanction of the Apostles themselves, and upon what occasions the rest had been from time to time added, for the purpose of meeting different heretical opinions as they sprung up: a task requiring little less research and application than his former work, although it dealt less, perhaps, with disputable matter, and was less calculated to provoke hostile criticism. It obtained for him a considerable increase of literary reputation, and was in the course of a few years translated into the Latin and several of the continental languages. Peter de Costa, sending an abstract of the work in French for publication in the "Nouvelles de la Republique de Lettres" for November 1702, relates that a certain English prelate, distinguished for his erudition, fancying it could only be a compilation from several treatises already published, or perhaps an abridgment of Bishop Pearson on the Creed, began to read it with that disadvantageous impression, but was quickly convinced of his mistake, and surprised to find so many curious things not to be met with in Pearson, and to observe so little borrowed from that writer. This, indeed, ought scarcely to have been matter of surprise, the design and frame of the two works being essentially different.

Besides these productions, his title to which is unquestionable, King has been commonly reputed the author of a con-

troversial correspondence with Walter Moyle, an antiquarian and critic of great repute, on the subject of the supposed miraculous victory obtained through the prayers of the Christian soldiers in the army of the Emperor Antoninus, during the Marcomannic war, (narrated by Eusebius, and vouched as true by Tertullian and other Christian writers), commonly called the miracle of the Thundering Legion*: King contending for, his adversary impeaching, the authenticity and veritableness of the miracle, with a great display of classical and biblical learning, and not without an occasional infusion of the tartness with which religious controversy is usually seasoned. But we are disposed to consider his claim to the authorship of this correspondence as at least very doubtful. The letters ascribed to him are distinguished by the initial letter of his name only; and in a subsequent page of the volume of Moyle's works, in which they are collected, we find another letter on a scientific subject, apparently from the same Mr. K—, dated so long afterwards as the year 1721, to which Moyle replies by professing, in the first place, his gratification at the resumption of their correspondence after the lapse of so many years. The latter initial could by no means designate the distinguished person who had then presided for years over one of the supreme courts of judicature. If, however, he was the author, it must be allowed that he came out of the controversy sufficiently worsted both in argument and learning.

Though it seems, from the letters we quoted a few pages back, that King's first attempt in the House of Commons had procured him some distinction as a speaker, and though it is apparent from other parts of the same correspondence that he did not fail to follow up this success on several subsequent opportunities, no record has survived of his parliamentary attempts, until we come to the debates on the Aylesbury case, when he spoke with spirit and effect in support of the right of the electors. We quote a passage in which he replied happily and conclusively to the argument derived from the entire novelty of the action against the returning officer:—

"Gentlemen say this is a new action, never heard of before.

* See Gibbon, ch. 16, vol. ii, p. 446.

It is true, this particular action was never brought before; but actions of the same kind and nature, and grounded on the same principles and reasons of law, have been brought before; *et ubi eadem est ratio, idem jus.* I could give you many instances of the kind. Was it ever heard until the 20th or 21st of Charles II., that an action lay against an officer for denying a poll to one who stood candidate for a bridge-master? The mayor denied the poll, and said he was judge of the election; and upon this the person injured brought his action, and recovered. At the same time it was said, there was no such action heard of before; it is true, not that *species*, but the *genus* was heard of. Another action was brought, 30th Charles II., which was never heard of before, against a mayor for refusing the plaintiff's vote for a succeeding mayor. I believe everybody knows, that all the law books for four hundred years say that the reversioner has liberty to go into an estate of a tenant for life, to see if he commit waste: and yet no action was ever brought till the 16th James I. by a reversioner against a tenant for life, for refusing to let him in to see whether waste was committed. No action was ever brought against a master of a ship for the negligent keeping and loss of goods on board his ship, till about the 24th Charles II.; and yet the action lay. There was another action in King Charles I.'s time brought for a false and malicious prosecution of an indictment of a man for treason. There was the same objection; and it was said that this would deter people from prosecuting. And nobody ever dreamt of it before, it is true; but it stood upon the general reason of the law—if you do me a wrong, I must have a remedy."

But amidst these recollections of politics and authorship, we are almost forgetting the more immediate claims which Mr. King prefers to *our* notice as a lawyer. The letters from which we have been quoting lead us to conclude, that, as early as about the year 1703, he had found his way into so much circuit and term business, as to have very little leisure at his command. A glance into the Modern or Lord Raymond's Reports amply confirms this conclusion, and shews him to have been in possession of an extensive and profitable practice, before he was of more than four or five years' standing at the bar. It was some time, however, before

he attained legal rank of any kind. His first preferment took place in 1705, when he was made Recorder of Glastonbury, whence, as we have said, his family had come; his second in 1708, when he was elected to the important office of Recorder of London, vacant by the death of Sir Salathiel Lovel, and received in consequence, a few months afterwards, the honour of knighthood. At the general election of 1708, there was an expectation among the Tories that the court interest would have been divided between Sir Peter King and another Whig candidate (Sir Richard Onslow) in the election of a Speaker, and the former party thereupon contemplated putting up a candidate of their own; but Sir Peter's pretensions being withdrawn, Onslow was elected without opposition.

He had now attained an established reputation with his party as a debater; and in the following year (1709-10) was one of the managers named to conduct the prosecution against Sacheverell, being appointed to maintain the second article of the impeachment, which accused the reverend seditionist of broaching covert attacks against the toleration granted at the Revolution, charging all as "false brethren with relation to God, religion, and the church, who defended toleration or liberty of conscience," and alleging that it was the duty of superior pastors "to thunder out the ecclesiastical anathemas against persons entitled to the benefit of the toleration, which sentences he insolently dared and defied any power to reverse." For the discussion of topics such as these King was well prepared by his theological learning, a department of knowledge not usually very familiar to lawyers; and he distinguished himself accordingly, but more by information and research than eloquence. Not long afterwards, the same advantages again came prominently in aid of his professional duties, in defence of the celebrated Whiston, when under prosecution before the Court of Delegates for his anti-trinitarian heresies. Not only did Sir Peter (as did his junior, Mr. Lechmere) decline to receive a fee for his exertions in this case, but by his spirited conduct of it he was the means of rescuing his client from a threatened exercise of grossly arbitrary and illegal authority. When none of the common-law judges would concur in a sentence against the accused,

the rest of the Court, composed of bishops and civilians, were on the point of determining to proceed without them, until King, declaring that his client should then proceed against *them*, and sue them to a *præmunire*, which a sentence so pronounced would incur, alarmed them by that courageous remonstrance into an acquittal. About the same time, he distinguished himself in the House of Commons as one of the most strenuous advocates of Bishop Fleetwood, when visited by the wrath of the now dominant Tories for the unpalatable doctrines promulgated in the preface to his sermons. The annalists of the time record him also to have borne a prominent part in the opposition to the pacification of Utrecht, and other measures of Oxford's ministry; but of his speeches scarcely a word survives.

On the expulsion of Walpole in 1712, Sir Peter is represented by Tindal as having joined in the attack upon his brother Whig, and even to have condemned him in terms of more acrimonious censure than were employed by his avowed enemies; a strange contradiction out of the mouth of a warm Whig partisan, and not very reconcileable with the cordiality which continued to subsist for so many years between him and Walpole, not only as assertors of the same principles, but as colleagues in the same cabinet. The representation is doubtless founded upon a misconception of a paragraph in one of the Tory speeches against Walpole (the only portion of those debates which has been preserved) in which the speaker refers to King, as having expressed an opinion that the criminated minister "deserved as much to be hanged" as he deserved the two punishments—expulsion and imprisonment in the Tower—which the House had voted against him; meaning thereby, as we understand it, that he deserved no punishment at all. The honours with which Sir Peter was shortly afterwards rewarded at the hands of the new sovereign, indicated anything rather than a questionable fidelity to the cause and the champions of Whiggism. On the arrival of the King at St. Margaret's Hill, the boundary of the borough of Southwark, after his landing at Greenwich, he was received by a procession of the corporate body of the metropolis, and addressed by their learned Recorder in a congratulatory speech; the last duty he was called upon

to perform in that capacity. A few weeks afterwards, (Nov. 14, 1712), Lord Trevor being displaced from the chief-justiceship of the Common Pleas, Sir Peter was elevated to the vacant seat, and in the month of April following sworn of the Privy Council.

Of the qualifications he exhibited in the exercise of his duties as a common-law judge, it is difficult to derive any judgment from legal testimony: the decisions of the Court, during his presidency, are nowhere collectively reported, and the few that are to be found scattered in the books furnish little ground for an opinion on his merits or defects. If, however, we may believe the encomiums lavished on him by a writer, whose praise and vituperation were both, it must be allowed, bestowed with the most bountiful profusion—we mean the Duke of Wharton,—the character and qualifications of the new Chief Justice shone with a lustre which commanded the concurring applause and admiration of all parties. "The Lord Chief Justice King," says his Grace, in the thirty-ninth number of the True Briton, "was preferred to the Common Pleas under yet greater disadvantages than my Lord Cowper to the seals; for his great predecessor had the happiness, as a judge between man and man, to be universally admired and beloved by both parties; so that the difficulty of pleasing after so able a man seemed in a manner insuperable; for my Lord Chief Justice laboured not only under the prejudice which one party had entertained against him, as supposing he differed from them in principles of government; but the united good opinion of both parties, so justly conceived in favour of his predecessor's great qualifications and merits; which very few of either side expected could be ever equalled by any person that might succeed to his place in this age. Yet, under all these difficulties, which would have overwhelmed another, with the eyes of all the kingdom upon him, hath this truly great man acquitted himself in his high office to the universal satisfaction of both parties; contrary to the expectations of the one, and even beyond the hopes of the other. And if he had not been indeed a prodigy of learning and wisdom, it would hardly have been possible for him to surmount so many disadvantages, and to appear in the same illustrious light with my Lord Trevor." Without suffering

ourselves to be carried away by such a torrent of eulogy as this, we can hardly doubt that the praise was thus far well founded, that Sir Peter King discharged the duties of an office, for which a long career of successful and industrious practice had fully qualified him, with learning, efficiency, and impartiality.

Of the criminal trials at which he presided, there is one to which we may advert, because it excited at the time a very general interest, and because the doctrine laid down in it by the Chief Justice gave occasion to a good deal of criticism, and some division of opinion amongst lawyers. It was an indictment against Mr. Coke, a Norfolk country gentleman, and one Woodburne, his farm-servant, for slitting the nose of a gentleman named Crispe, the brother-in-law of the prisoner Coke, with intent to maim and disfigure him—the first case prosecuted under the Coventry Act, 22 & 23 Car. 2, c. 1. The facts necessary to constitute the offence having been abundantly proved by the crown witnesses, and being indeed admitted in detail by Woodburne, Coke, with a hardihood of atrocity of which even the records of criminal jurisprudence have furnished few examples, insisted that he ought to be acquitted under the statute, for that his intention was—as indeed the evidence made it more than probable—not merely to disfigure but to murder the unfortunate gentleman who was the object of his brutality; and even after his conviction, he repeated the same argument in arrest of judgment. The Chief Justice, in summing up the case to the jury, disposed of this extraordinary plea in the following terms:—

"There are some cases where an unlawful or felonious intent to do one act may be carried over to another act done in prosecution thereof; and such other act will be felony, because done in prosecution of an unlawful and felonious intent. The prisoner insists that their intention was to murder and not to maim; and that if they did maim or slit the nose, it was with an intention to kill, and not with an intention to maim or disfigure. On the other side it is insisted on by the king's counsel, that though the ultimate intention might be to murder, yet there might be also an intention to maim and disfigure; and though the one did not take effect, yet the other might: an intention to kill doth not *exclude* an intention to

maim and disfigure. The instrument made use of in this attempt was a bill or hedging-hook, which in its own nature is proper for cutting and maiming; and where it doth cut or maim, doth necessarily and by consequence disfigure. Besides, the manner of perpetrating the fact is proper to be considered; that it was done by violence, and in the dark, where the assailant could not well make out any distinction of blows, but knocked and cut on any part of Mr. Crispe's body where he could, till he had struck him down, and done to him whatever else he pleased. And if the intention *was* to murder, you are to consider whether the means made use of to effect and accomplish that murder, and the consequences of those means, were not in the intention and design of the party; and whether every blow and cut, and the consequences thereof, were not intended, as well as the end for which it is alleged those blows and cuts were given."

This, which we venture to pronounce an eminently sound and clear exposition of the doctrine of criminal intent, as applied to the facts then under consideration, gave occasion, as we have said, to a good deal of legal criticism; and we learn that several of the judges, on a conference in a subsequent case of the same nature, expressed some dissatisfaction with the Chief Justice's conclusions, and thought at all events that the construction adopted by him ought not to be carried further*.

Naturally of a mild and benevolent disposition, the Chief Justice King administered the criminal law in a spirit of patient and cautious humanity. A circumstance much to his credit is disclosed in the evidence given before the committee of the House of Commons, for inquiring into the state of the gaols, in the year 1729. Some years before, when he sat in the Common Pleas, a complaint was preferred to him from the prisoners in the Fleet, that they were immured in close and unwholesome confinement within the prison walls. The warden urged in answer, that from the insecurity of the prison there was continual danger of the prisoners escaping. "Then you may raise your walls higher," was the reply of the Chief Justice; "but there shall be no prison within a prison."

* Willes, J., and Eyre, B., in Carrol's case, 2 East, P. C. 400.

Sir Peter King continued to occupy his seat in the Common Pleas for upwards of ten years, until the crimination and disgrace of Lord Chancellor Macclesfield opened the way for his advancement to a higher, and, as it proved, equally secure elevation. On that nobleman's resignation of the great seal, in January, 1724-5, Sir Peter was appointed Speaker of the House of Lords, and in that character presided at the ex-chancellor's trial. As soon as the issue of it rendered the return of the disgraced favourite to office impossible, he received the seals from the hands of the Commissioners, to whom they had in the meantime been committed, with the title of Lord Chancellor; and was at the same time (May 25, 1725) raised to the peerage by the title of Lord King, Baron of Ockham, in the county of Surrey, where he had, many years before, purchased from the Sutton family a handsome mansion and considerable estate. A pension of £6000 a year, payable out of the Post Office, was settled upon him in addition to the ordinary emoluments of his office; and in consideration of the loss of income which the chancellorship had sustained by the judgment of the House of Lords, declaring the sale of subordinate offices in the Court illegal, an additional allowance of £1200 a year was granted to him, issuing out of the Hanaper Office.

In a Diary in which he noted most of the political movements of the cabinet of which he was a member, he has deemed the proceedings, on the important occasion of his introduction into the House of Lords and at court, worthy of minute record:—"1725. Tuesday, June 1. Monday the 31st May, being the last day of the sitting of Parliament, I was introduced into the House of Lords as Lord King, Baron of Ockham, in the county of Surrey. My introducers were Lord Delaware and Lord Onslow. Baron's robes were lent me by Lord Hertford. And this day at noon I went to St. James's, and being called into the King's closet, he delivered the seals to me as Lord Chancellor; and soon after I went to the council-chamber, carrying the seals before him. The first thing that was done was to swear me Lord Chancellor, after which I took my place as such."

On the report of his approaching advancement to the peerage, a gentleman of the name of Whatley, a friend and neighbour of Sir Peter, addressed to him a long letter on the choice

of a motto for his coat of arms, which is preserved among the Somers Tracts, and is no small curiosity in its way. The writer, having informed him that on hearing he was to be made a peer, "the thought came into his mind to find out a motto for his Lordship's arms, which he conceived too trifling a subject for his own consideration"—passes in review a vast number of the mottoes of existing peerages, with an appropriate commentary upon each, as to its applicability to Sir Peter's peculiar excellences and deserts. Referring in the first place to the list of *punning* mottoes, although he admits that one might be not inaptly formed out of his correspondent's name (as for instance, *A rege pro rege*), he dismisses that class with a condemnation almost as decisive as might have been pronounced by Johnson, who laid it down that the man who would make a pun would pick a pocket:—"But I consider them as in very bad taste indeed, there being nothing more decayed, as to matters of writing or speaking in the present age, nor I think more justly, than anything founded on a pun!" Having exhausted the peerage, living and extinct, he comes at length to submit for his Lordship's selection four sentences, the long considered products of his own invention and research; one of which, however, he reminds himself is unfortunately inadmissible, not being altogether a novelty, as he remembered to have seen it on the Electoral coin. The three others of which he kindly tenders the choice are, *Est modus in rebus*, *Discite justitiam*, and *Vincit ratio*: none of them, we should have thought, particularly recondite or expressive, although he enlarges eloquently on the peculiar applicability of each to the qualifications and virtues of the peer elect; confessing his preference for the last, as being entirely the offspring of his own inventive genius. His Lordship, however, somewhat ungratefully rejecting all the rich materials of choice provided for him by his correspondent, selected a motto of his own, far more felicitously expressive of the self-rewarding assiduity which had distinguished him throughout his professional career:—*Labor ipse voluptas.* The choice gave occasion to his being addressed in a happy paraphrase of poetical compliment:—

"'Tis not the splendour of the place,
The gilded coach, the purse, the mace,

Nor all the pompous train of state,
With crowds that at your levee wait,
That make you happy, make you great.
But whilst mankind you strive to bless
With all the talents you possess;
Whilst the chief joy that you receive
Arises from the joy you give;
This takes the heart, and conquers spite,
And makes the heavy burthen light;
For *pleasure*, rightly understood,
Is only *labour to do good**."

The first duty which devolved upon Lord King in the Court of Chancery, was to provide securities against the recurrence of frauds similar to those which had led to the disgrace of his predecessor. Accordingly, a voluminous set of orders was drawn up under his superintendence, in November 1725, providing for the deposit and transfer of the suitors'

* Lord King himself is said to have occasionally sacrificed in sportive mood to the muses; but the only specimen of his poetical composition that has survived to us is the following facetious epitaph on the carpenter to the family, which is still to be read upon his grave-stone in the church-yard at Ockham:—

"Who many a sturdy oak hath laid along,
Fell'd by death's surer hatchet, here lies Spong;
Posts oft he made, yet ne'er a place could get,
And lived by railing, tho' he had no wit;
Old saws he had, although no antiquarian;
And stiles corrected, yet was no grammarian;
Long lived he Ockham's premier architect;
And lasting as his fame a tomb to erect
In vain we seek an artist such as he.
Whose pales and gates were for eternity.
So here he rests from all life's toils and follies;
O spare awhile, kind Heaven, his fellow-labourer Hollis[1]."

A passage in the fourth book of the Dunciad appears to point, maliciously enough, at one of Lord King's sons, as belonging to the race of scribblers:—

"Great C**, H **, P**, R**, K*,
Why all your toils? your sons have learned to sing;
How quick ambition hastes to ridicule!
The sire is made a peer, the son a fool!"

[1] The bricklayer to the family.

monies, in such a manner as to render any misappropriation at least a matter of the greatest difficulty; and in the following session of parliament, this plan was legalized by statute, with the additional security derived from the creation of the office of Accountant-General. This service performed, the catalogue of his lordship's deservings as the dispenser of equitable jurisprudence—excepting always a strict and unimpeachable integrity—may almost be said to be complete: in all the other requisites for the formation of an equity judge, he fell far behind the qualifications and attainments of his predecessor. Neither his practice nor his experience had been such as to prepare him for the administration of equity, nor was his intellectual strength, or even his physical powers, sufficient to enable him, like Lord Macclesfield,—although, with the unremitting diligence which had always distinguished him, he laboured zealously and painfully, even to the injury and ultimate sacrifice of his health, — ever satisfactorily to supply his deficiencies. The intensity of his mental labour at length brought upon him, about the year 1730, a lethargic disease, partaking doubtless of an apoplectic character, which used frequently to oppress him even while sitting on the bench. Mr. Bentham, in a letter printed among Cooksey's Memorials of Lord Somers, assures us that this was the occasion of no prejudice at all to the suitors; for that "Sir Philip Yorke and Mr. Talbot were both men of such good principles and strict integrity, and had always so good an understanding with one another, that although they were frequently and almost always concerned for opposite parties in the same cause, yet the merits of the cause were no sooner fully stated to the court, but they were sensible on which side the right lay; and accordingly the one or the other of these two great men took occasion to state the matter briefly to his lordship, and instruct the registrar in what manner to minute the heads of the decree." We may observe that the great majority of cases were at that time of day heard at the Chancellor's house, where such arrangements might be carried into effect much more snugly than before the larger auditory of Westminster Hall or Lincoln's Inn. If, however, we may judge by the number of appeals that were prosecuted from Lord King's decrees, more of which

were reversed than of any other Chancellor during the same period of time, this equitable and compendious mode of dispatching the business of the court was not so perfectly satisfactory to the suitors as it is represented to have been. Many of his judgments will also be found to have been impeached or qualified by subsequent authorities. His decisions are extant in the Reports of Peere Williams and Kelynge; the principal cases heard before him, from 1726 to 1730, were also collected by a reporter of the name of Moseley, in a volume which has generally been estimated as of very questionable authority. In the copy belonging to Mr Hargrave, now in the British Museum, that gentleman has written the following testimonial in favour of the book:—"Lord Mansfield, in 5 Burr. 2629, says this book should not be quoted; and in Myddleton v. Lord Kenyon, Lord Chancellor Loughborough observed to Mr. Fonblanque, upon his citing a case from it, that he had not heard it cited. But I took the liberty of saying, that I had often heard it cited, and that I had found very good matter in it." It appears to have been published at Dublin, and without the *imprimatur* of the judges.

Although, by the judgment against Lord Macclesfield, a severe check had been administered to the more flagrant and pernicious evils of official peculation and corruption, the publications of the time abound with as loud and frequent complaints as ever, of the delay, expense, and grievance of the equity jurisdiction. In the successive sessions of parliament, from 1729 to 1733, committees of the House of Commons were employed in obtaining returns of all the fees and emoluments of the several courts of justice, and examining into their origin and reasonableness, with the purpose of applying some general and comprehensive remedies. The ultimate result of their inquiries was the appointment of a body of Commissioners, who, after a protracted and not very laborious investigation, produced at length, in the year 1740, a Report upon the subject, of which, imperfect and unsatisfactory as were the remedies or rather palliatives it suggested, nothing at all was in fact effected or attempted. On the memory of Lord Hardwicke rests the censure of having perpetuated evils, whose existence and magnitude he admitted, and the redress of

which his influence and exertions could have found no difficulty in accomplishing.

With the gratified or still hoping candidates for patronage and advancement, in the poet's phrase,

"A judge is just, a chancellor juster still:"—

in the mouth of disappointed and dissatisfied expectants the judgment is very different. The Chancellor's quondam friend and client, Whiston, on applying to him for the gift of some preferment to a friend, was no less mortified than surprised at the revolution which, according to his account, the seductions of wealth and power had wrought in the character and feelings of the once independent and conscientious advocate. "Upon my application to him," says he, "I found so prodigious a change in him, such strange coldness in matters that concerned religion, and such an earnest inclination to money and power, that I gave up my hopes quickly. Nay, indeed, I soon perceived that he disposed of his preferments almost wholly at the request of such great men as could best support him in his high station, without regard to Christianity; and I soon cast off all my former acquaintance with him. Now, if such a person as the Lord King, who began with so much sacred learning and zeal for Christianity, was so soon thoroughly perverted by the love of power and money at Court, what good Christians will not be horribly affrighted at the desperate hazard they must run, if they venture into the temptations of a Court hereafter? *Exeat aulâ,*" concludes the disappointed moralist, "*qui vult esse pius!*"—A consolatory reflection for all our legal dignitaries withdrawn from the temptations of office!

This sweeping bill of indictment against the Chancellor's probity and consistency was perhaps a little aggravated by personal disappointment and vexation: the writer, however, relates an anecdote containing a more specific charge, and one which tells heavily against the sincerity of his lordship's religious professions:—"When I was one day talking with the Lord Chief Justice King, one brought up among the dissenters at Exeter, under a most religious, Christian, and learned education, we fell into a dispute about signing articles which we did not believe, for preferment; which he openly justified, and

pleaded for it, that we must not lose our usefulness for scruples. Strange doctrine in the mouth of one bred up among dissenters, whose whole dissent from the legally established Church was built on scruples! I replied, that I was sorry to hear his lordship say so; and desired to know whether in their courts they allowed of such prevarication or not. He answered, they did not allow of it. Which produced this rejoinder from me, 'Suppose God Almighty should be as just in the next world as my Lord Chief Justice is in this, where are we then?' To which he made no answer. And to which the late Queen Caroline added, when I told her the story, 'Mr. Whiston, no answer was to be made to it.'"

On Lord King's appointment to the chancellorship, George I. had made a struggle to retain in his own hands the distribution of ecclesiastical patronage. His lordship, however, opposed a stout and ultimately successful remonstrance against this unwelcome invasion of one of the most attractive appurtenances of his dignity. He thus relates the matter in his Diary. "About July 8th, the King told me that he expected to nominate to all benefices and prebendaries that the Chancellor usually nominated to. I told him, with great submission, that this was a right belonging to the office, annexed to it by act of parliament and immemorial usage, and I hoped he would not put things out of their ancient course ... Sunday, July 16. I then saw him again: he seemed now very pleasant; he told me I should go on as usual." If Whiston's account of the manner in which the Chancellor discharged his trust in this respect be at all correct, his majesty would hardly have done the state disservice by persevering in his original design.

Lord King retained his office for several years, through the gradual decay of his bodily and mental faculties, until at last, his health being entirely broken, he was compelled, at the close of the year 1733, to relinquish the possession of the seals. He lingered in a hopeless decline for some months longer, and at length expired in the evening of the 29th July, 1734, having been struck speechless by an apoplectic fit some hours before, in the 66th year of his age. His remains were deposited in the parish church of Ockham, where, a few years afterwards, a costly monument was erected to his memory,

consisting of a handsome marble statue upon a pedestal of marble, bearing an inscription of less exaggerated eulogy than generally speaks from the tomb. By his wife, Anne, the daughter of Richard Seys, Esq., of Boverton, in Glamorganshire, with whom, according to that record, "he lived to the day of his death in perfect love and happiness," he had four sons, all of whom successively enjoyed the title, and two daughters. Of the youngest son, Thomas, who alone had male issue, the present Earl of Lovelace is the lineal descendant in the fourth degree.

LORD TALBOT.

THE uneventful life of this accomplished lawyer and most estimable man, scarcely otherwise marked than by the successive steps of his elevation in the profession he adorned, and by his advance in the esteem of all good men, however admirable the example it supplies for the imitation of the legal student, must be admitted to furnish little of incident or amusement to the reader of biography. But our list of distinguished lawyers would be indeed imperfect, if *his* name were omitted, who perhaps above them all, by a rare union of the highest professional acquirements with the calm and dignified exercise of virtues almost unblemished even by frailty or error, commanded the universal reverence of his country while he lived, and her deep and abiding regret, when a premature death removed him from the sphere of his honours and his usefulness. So few, however, are the recorded *facts* of his life, that our brief notice will necessarily wear the appearance rather of a panegyric than a biography.

William Talbot, a gentleman of some fortune in Staffordshire, descended from a younger branch of the ancient and renowned house whose fame some centuries before had resounded throughout Europe, was the father of an only son, William, who entered the church, and through the interest of his kinsman, the well known Charles Talbot, Duke of Shrewsbury, became successively Dean of Worcester, Bishop of Oxford, and Bishop of Salisbury, until, in the year 1722, he settled upon the summit of clerical advancement, in the princely dignities of Durham. By his second wife, Catharine, the daughter of a Mr. King, an alderman of London, he had

eight sons, and several daughters. Of those who lived to maturity, the eldest was Charles, the subject of this memoir. He was born in the year 1684, his father being then the incumbent of an Oxfordshire living; and having gone through the usual course of preparatory study, and acquired more than the usual substratum of classical knowledge, was entered, in Michaelmas term 1701, a gentleman commoner of Oriel College, Oxford. There also, as well as at school, he distinguished himself by his successful application to the prescribed studies; and having, in right of his rank as the son of a bishop, proceeded to his bachelor's degree at the end of three years' residence, was almost immediately afterwards (November, 1704) elected to a fellowship of All Souls' College; for which the statutory qualification is to be "bene natus, bene vestitus, et moderatè in arte cantandi doctus." His original purpose had been to take orders; and it is said to have been by the earnest advice and request of Lord Chancellor Cowper, and not without some reluctance and apprehension, that this destination was abandoned, and he applied himself to the study of the law. Having, however, made his final choice of a profession, he at once entered zealously on the acquisition of the knowledge necessary to its successful prosecution; and even during his under-graduateship, legal reading formed a regular head of his studies.

He was entered of the Inner Temple on the 28th of June, 1707, and on the 11th of February, 1710-11, was called to the bar by that society. In the same year, he vacated his fellowship by marrying Cecil, daughter and heiress of Charles Matthews, Esq., of Castle Mynach, in Glamorganshire, and great-grand-daughter by the mother's side of the celebrated Welch judge, David Jenkins, whose zeal and sacrifices in behalf of the royalist cause were so conspicuous in the great rebellion, and who made so gallant a resistance to the tyranny of *privilege*. From him she inherited, and conveyed to her husband, the estate of Hensol, in the same county, from which he afterwards took the title of his barony.

Supported by his talents and assiduity, and aided by the countenance of his patron, and the influence of his illustrious connexions, he advanced rapidly in professional estimation, and grew, after a very few years, (and before he received any legal

rank) into leading practice in the equity courts, to which he had from the first devoted himself. His professional industry was, indeed, taxed to support an expense not less unusual than it was, in this instance, unbecoming. The splendid revenues of the see of Durham were insufficient to maintain the profuse and magnificent expenditure of his father, the bishop, even though, to the great injury of his popularity and usefulness, he increased them considerably by advancing the fines on the renewal of leases held under the see; and his son was compelled, on two several occasions, to apply large sums to the satisfaction of his debts.

In the first parliament of George the First's reign, Mr. Talbot had been elected for Tregony, and sat for that borough until 1722; at the general election in that year he was returned for Durham city, his father having just then been advanced to the bishopric. On the death of the Solicitor-General, Sir Clement Wearg, in April 1726, he was appointed to succeed him; and on that occasion, as also at the general election which followed in 1728, he was re-elected for Durham, and retained that seat until his elevation to the woolsack. His parliamentary duties were probably made subordinate to his professional; at all events, hardly a record survives, beyond the testimony of general panegyric, to shew that he escaped the common fate of eminent lawyers within the walls of St. Stephen's. Yet he appears early to have attained some standing with his party; since he was selected in 1722 to second the re-election of Sir Spencer Compton to the speakership, the mover being Lord Stanhope, afterwards the celebrated Earl of Chesterfield. We believe there are but one or two other occasions on which he is mentioned in the collections of the Parliamentary History, as a speaker in either house *.

* In the year 1736, although then Chancellor, he strongly opposed, in conjunction with Lord Hardwicke, some severe clauses of a bill for the repression of smuggling; but his speech is not reported. The protest of the dissentient peers on that occasion stated, as one of its main grounds of justification, that "as two noble and learned lords, who presided in the two greatest courts in the kingdom, had shewn by the strongest arguments that the bill, as it stood, might be dangerous to the liberty of their fellow-subjects, they (the lords) could not agree to the passing of it, however expedient or necessary it might be supposed in other respects." Mr. Hallam cites this as a remarkable proof of the rigorous

Nor was the reign of George II., until the occurrence of the disastrous rising of 1745, a period in which the law officers of the crown found occupation, or could acquire distinction, in the conduct of important state prosecutions. Mr. Talbot (he had not received the rank of knighthood with his patent of Solicitor-General) appears in the State Trials twice only—on the occasion of the prosecutions directed by the Gaol Committee of the House of Commons, in 1729, against the keepers of the Fleet and other prisons, for the murder of prisoners in their custody by confinement in cold and pestilential cells; and also on the trials of one Hales for extensive forgeries, in the same year. The great arena of his learning and talents was the Court of Chancery, where himself and the no less eminent Attorney-General, Yorke—*magis pares quam similes*—divided almost the whole business of the court, and even (if an anecdote we quoted in a former memoir may be credited) at times stood in the place of the court itself. So extensive a practice, and so acknowledged a reputation, could not fail, independently of his claims as one of the law officers of the government, and of those derived from his high personal estimation and unblemished character, to recommend him as pre-eminently fitted for advancement even to the highest judicial rank.

By the contemporary events, of the resignation of Lord Chancellor King and the death of Lord Raymond *, the two chief prizes of the profession fell at the same time to the disposal of the minister. The general expectation was, that according to the usual routine of promotion, the great seal would be transferred to Sir Philip Yorke, and the post of chief justice given to Talbot. But as the duties of the former had withdrawn him more from that exclusive attendance on the courts of equity to which the latter had devoted himself, although both were equally qualified to occupy the bench of the Court of Chancery, yet the Attorney-General was more per-

restraints imposed by our fiscal code upon the personal liberty of the subject, which could create such alarm in the "not very susceptible" mind of a regularly bred crown lawyer, and one always disposed to hold very high the authority of government.

* Lord Raymond died in the Hilary vacation of 1733; Lord King did not resign until the following October; but the chief justiceship was not filled up in the interval, probably in expectation of the latter event.

fectly fitted to discharge the more varied duties belonging to the presidency of a common-law court. There was indeed some small difficulty on a subject which lay pretty close to Sir Philip's heart,—the respective *incomes* of the two offices; but this was satisfactorily obviated, by an increase of the salary of Chief Justice from two to four thousand a year, by the assurance of a peerage, and by the consideration of the much less precarious tenure of the latter post;—for Sir Robert Walpole was already exposed to the assaults of an unrelenting and formidable opposition: Yorke, therefore, took his seat in the King's Bench, and entered the House of Peers as Baron Hardwicke; Talbot, with the unanimous assent and applause of the profession, received the Great Seal, and with it the dignity of the peerage, by the title of Lord Talbot, Baron of Hensol. His patent bears date Dec. 5th, 1733. On this elevation, he resigned the office of Chancellor of the diocese of Oxford, which had been given him by his father, when bishop of that see, with the view of his resigning it in favour of his younger brother Edward, had not the bishop been removed to Salisbury before the latter became qualified for the office.

It was on the occasion of Lord Talbot's taking leave of the Society of the Inner Temple as a bencher, upon his advancement to the Chancellorship, that the last of those solemn *revels*, which were wont of old to grace the halls of the Inns of Court, and whereon the venerable Dugdale dilates with such a grave complacency, was celebrated in the Inner Temple Hall. We cannot refrain from paying our humble tribute to the memory of these departed scenes of "exquisite fooling," by transferring to our pages the narrative of this, the last of them, as we find it specially recorded in the notes to Wynne's Eunomus. Alas! all things are become new:—not even the dignified solemnities which erst accompanied the investiture of the coif, not even the venerable ceremonial of *counting*, has now escaped the ruthless edge of innovation; the very purple robes, in which the learned personages we speak of still rejoice to involve themselves, ere long, we fear, will have faded from our view, or hang the empty mementos of departed honours, at length to all intents and purposes

"hoc *inane* purpuræ decus*!"

* It will be obvious that this passage was written before the warrant of William IV., by which the exclusive right of audience of the Ser-

But our regrets must not be suffered to detain us from our history.

"On the 2nd of February, 1733-4," says the historian, who evidently writes *con amore* of the inspiring subject, "the Lord Chancellor came into the Inner Temple Hall, about two of the clock, preceded by the Master of the Revels, Mr. Wollaston, and followed by the Master of the Temple (Dr. Sherlock, Bishop of Bangor),—[what a truly canonical and episcopal exercitation!]—and by the judges and serjeants who had been members of that house. There was a very elegant dinner provided for them and the Lord Chancellor's officers; but the barristers and students of the house had no other dinner provided for them than what is usual on *grand days;* but each mess had a flask of *claret* [the times have degenerated in this respect], *besides* the common allowance of port and sack. Fourteen students waited at the bench-table, among whom was Mr. Talbot, the Chancellor's eldest son, and by their means any sort of provision was easily obtained from the upper table by those at the rest. A large gallery was built over the screen, and was filled with ladies, who came, for the most part, a considerable time before the dinner began; and the music was played in the little gallery, at the upper end of the hall, and played all dinner-time.

"As soon as dinner was ended the play began, which was *Love for Love*, with the farce of *The Devil to Pay*. The actors who performed in them all came from the Haymarket in chairs, ready dressed; and, as it was said, refused any gratuity for their trouble, looking upon the honour of distinguishing themselves on this occasion as sufficient*. After the play, the Lord Chancellor, Master of the Temple, judges, and benchers, entered into their parliament chamber, and in about half an hour afterwards came into the hall again, and a large ring was formed round the fire-place (but no fire or embers were on it). Then the Master of the Revels, who went first,

jeants was abrogated, had been adjudged to be void. The learned brotherhood now flourish and increase more largely than ever.

* We learn from one of the public journals of the day that the praise of this extraordinary disinterestedness was not quite deserved :—"the societies of the Temple were pleased to present £50 to the comedians." The same authority reports, "that the ancient ceremony of the judges, &c. dancing round the coal fire, was performed with great *decency*."

took the Lord Chancellor by the right hand, and he, with his left, took Mr. Justice Page, who, joined to the other judges, serjeants, and benchers present, danced, or rather walked, '*round about the coal fire*,' according to the old ceremony, three times, during which they were aided in the figure of the dance by Mr. George Cook, the prothonotary, then of sixty; and all the time of the dance, the ancient song, accompanied with music, was sung by one Toby Aston, dressed in a bar-gown, whose father had been formerly Master of the Plea Office in the King's Bench.

"When this was over, the ladies came down from the gallery, went into the parliament chamber, and stayed about a quarter of an hour, while the hall was being put in order: then they went into the hall, and danced a few minutes [minuets]. Country dances began at ten, and at twelve a very fine collation was provided for the whole company, from which they returned to dancing, which they continued as long as they pleased; and the whole day's entertainment was generally thought to be very genteelly and liberally conducted. The Prince of Wales honoured the performance with his company part of the time; he came into the music *incog.* about the middle of the play, and went away as soon as the farce of walking round the coal fire was over."

After all, we fear this final "farce" was but a cold and degenerate resemblance of its predecessors in Dugdale's time.

The Chancellor, introduced with such august ceremonies into his office, administered its duties in such a manner as to give the most unqualified satisfaction to the practitioners, the suitors, and the country. Eminently learned and experienced in the principles and practice of equity, dignified, courteous, temperate, diligent, with intellectual powers as clear and discriminating as his mind was unprejudiced and his integrity unassailable, he appeared to unite in himself all the qualifications necessary to the formation of a perfect equity judge. The immediate consequence of his appointment was a great increase of business in his court, which, nevertheless, his learning and diligence combined to keep under, with much smaller arrears than in the time of his predecessor, who had been inefficient no less from his broken health, than from his want of those qualifications for his office

which nothing but a course of practice at the equity bar can effectually supply, at least to any but the highest order of intellectual superiority. Lord Talbot's demeanour on the bench is described in the highest terms of praise by his contemporary eulogists. "In his hearing of the bar, all gentlemen there were equally treated; none could be said to have the ear of the Court; neither rank nor personal acquaintance with his Lordship gave the counsel or his clients any advantage in the making of the decree or order, or in the countenance of the Court at the time of delivering the argument." Sensible that the judicial duties of his office in the Court of Chancery and on the woolsack were sufficient to engage all the powers and demand all the energies of a single mind, and being at the same time of a temperament little disposed to extreme opinions in politics, he did not seek to occupy a prominent position either at the council table, or in the ministerial conduct of the House over which he presided. "The Chancery," says another more enthusiastic encomiast, "was his province; he had the eloquence of a Cowper, the learning of a Somers, and an integrity peculiarly his own. He had patience in hearing, readiness in apprehending, judgment in discerning, and courage in decreeing." His decisions are reported in the volume known by the title of "Cases *tempore* Talbot," collected by Mr. Forrester, a practitioner of repute at the equity bar. They exhibit, indeed, in the form in which we have them, little of the eloquence so highly rated above, which the reporters of that day, devoted entirely to the illustration of the legal doctrines of the cases, would perhaps have deemed an incongruous and impertinent superfluity; but they display a strong and ready grasp of facts, a thorough intimacy with legal principles and authorities, and an eminently clear and logical exposition of them: his judgments being invariably accompanied by a statement, more or less in detail, of the reasons upon which they were grounded. They retain an authority almost untouched by the dissent of later judges.

Great as was the satisfaction with which the elevation of Lord Talbot was generally regarded, we find that there was one person, and that one of no inconsiderable note, who saw his advancement, and viewed his public conduct, with a dislike and suspicion for which it is difficult to account, except on the

supposition of some personal favour refused, or *job* suppressed. This was the old Duchess of Marlborough, whose restless and virulent spirit—

> "From loveless youth to unrespected age,
> No passion gratified, except her rage,"—

still found its most congenial food in the strife and personality of politics. Perhaps, as a member of Walpole's cabinet, the Chancellor was involved as of course in the bitter hostility she waged against the minister himself. We suspect she found reason before long to abate the admiration with which (as it appears from one of the paragraphs we are about to quote) Lord Hardwicke—not yet the dispenser of patronage—had inspired her. In a letter to Lord Marchmont, of the date of June 1734, she writes (referring to the complaints of corrupt interference in the election of Scotch peers)—"There will be vast numbers of petitions in the House of Commons, of the same sort, in the elections of this country, as has been practised in yours; and one against my Lord Chancellor, who has done most unbecoming and unjustifiable things to make a return for his son against Mr. Mansell for Glamorganshire. This is a step very bad to begin his reign with; but it is certain he is a man of no judgment, whatever knowledge he may have in the law; nor does he know anything of the world or the qualities of a gentleman." In a letter a few months later in date, she entertains her noble correspondent with the following narrative: "I had an account lately, which I will write, because I do not think it is printed, that my Lord Chief Justice Hardwicke has got great credit in his circuit to Norwich. There was a Yarmouth man in the interest of Sir Edmund Bacon, who, upon pretence of a riot at the entry of the courtiers, the mayor ordered to be whipped. This man brought his action, and my Lord Hardwicke said it was very illegal and arbitrary, and directed the jury to find for him, which they did, *and gave damages*, though the foreman of the jury had married a daughter of Sir Charles Turner, who I take to be a near relation of Sir Robert's. I do not think this made the poor man amends, who was whipped wrongfully; for I would have had those that occasioned the whipping doubly whipt themselves. But I suppose the judge could go no fur-

ther; and I liked it, because my Lord Hardwicke is a great man; and I hope from this action, as well as from his independency, that he will have some regard to the proceedings in Scotland when represented: but remember that I prophesy, that the man that is one step above him will have no regard but to his present interest. I know the man perfectly well." From another letter in the same collection (the Marchmont Papers) we learn that towards the latter end of the same year, 1734, a rumour prevailed that the Chancellor had taken "extreme disgust" at some conduct of the ministers, who were stated to have used him so ill that a man of honour and spirit could not brook it. Whatever was the cause of this dissension, of which we find no hint elsewhere, it was by some means repaired before it widened into an avowed breach. Possessing at once the confidence of the sovereign and the good opinion of the nation, he could not, indeed, easily have been made the victim of ministerial jealousy or cabal*.

He continued in the occupation of his high office, and the assiduous discharge of its duties, and had, as we are assured, almost matured his plans for an extensive and efficient reform of the imperfections and abuses of the equitable jurisdiction†, when a sudden and premature death hurried him, after an illness of only five days, from the scene of his laborious and honourable exertions. His constitution, always delicate, had suffered much from the fatigue he had encountered in the despatch of the business of his Court; and though the immediate cause of his death was an attack of inflammation on the lungs, it was found, on his body being opened by Mr. Cheselden, that a polypus of considerable extent adhered to his heart, which must of course have proved mortal after no long

* It is stated in the Biographia, "that it was generally said, that had the Chancellor lived a little longer, he would have had the lead in the ministry;" and the writer in the Craftsman hints at a similar expectation: "Under the influence of such a man, we had reason to hope for a complete coalition of parties, or at least for a re-union of such as wish well to their country." It is impossible to ascertain what truth there was in these surmises.

† This probably means no more than that he was a leading member of the Commission which had then been for some years prosecuting its inquiries on this subject, and which made a Report in 1740.

period of time. He resigned himself to death with the calmness and composure derived from a long course of sincere religious observance, and expired, the subject of universal regret, at his house in Lincoln's Inn Fields, on the 14th of February, 1736-7, not having yet completed his fifty-second year. The last official act of his life was the affixing the seal to the *congé d'elire* for the elevation of Dr. Potter to the primacy, on the evening but one before he died. His remains were conveyed to his seat at Barrington, in Gloucestershire, and deposited in a vault under the chancel of that church.

The public organs of both political parties united in encomiums on his virtues and lamentations for his loss. The Craftsman, which, under the auspices of Pulteney and Bolingbroke, was conducted in a spirit of unrelenting and systematic hostility to Sir Robert Walpole's government, vied with the ministerial press in its praises and regrets; although even a more unequivocal sign of the general esteem with which he had been regarded is afforded by the fact, that during the continuance of his life and power, when the publications of both parties teemed with lampoon and scurrility, the Chancellor (so far as we have been able to discover) does not appear to have been made the subject of a single personal attack. The forbearance of political enemies to a living minister is even a higher testimony than their praise of him when dead. "He is a single instance," says the writer in the Craftsman, "that real worth and integrity will not go unrewarded, even in this degenerate age, as far as the affections, and almost the veneration, of the people may be looked upon as any reward. Whig and Tory, court and country, men of all parties and persuasions, unite on this occasion, and vie with each other who shall do most justice to the memory of so extraordinary a person."

Of the personal appearance and deportment of Lord Talbot we are told no more than that they were dignified and prepossessing. We have seen no picture of him; but Houbraken's print, in Dr. Birch's collection, represents him, we believe faithfully, as of a spare countenance, dark complexioned, with a grave and thoughtful but mild and pleasing expression of features. Pope, classing him in the list of the early patrons

of his poetical attempts, designates him "the courtly Talbot," referring, doubtless, to the high-bred polish of his manners, which might possibly have contracted a little of the stateliness of official communication. As little are we admitted into the familiarities of his private life, or enabled to depict the individual shades of taste, temper, habit, or demeanour, the portraiture of which gives to biography all its personality, and by much the greater part of its interest. However eminent the subject of the narrative, however splendid or useful his career, however admirable the lesson his life may furnish, we demand the more that we shall be admitted to see and converse with him, not only in the court suit and ruffles of the statesman, or the robe and ermine of the judge, but also in the easy undress of in-door and familiar intercourse. Yet one of the writers we have already quoted, and who professes to speak from personal acquaintance, gives us a delightful, although a general, picture of the domestic life, the "household virtues," of this admirable nobleman:—"His religion was his governing principle; it was well founded and active; his piety was rational and manly. He was a sincere son of the church of England, and ready to maintain her in her just rights and legal possessions; he was an enemy to persecution, and had a diffusive, general, and Christian charity, which made him a friend to all mankind. He was a careful and indulgent father; and as no man ever deserved more of his children, no man could be more affectionately beloved by them: there was something so peculiar in this respect, that none seemed to know how to live in such friendship with his sons as my Lord Chancellor. The harmony which subsisted in his house was a very great pleasure to all who beheld it; like the precious ointment to which the Psalmist compares such a union, it was not only an ornament to the superior parts, but 'ran down to the skirts of his clothing;' it was visible among all his domestics. His servants were united in an affection for their lord, and a friendship for one another; they were restrained in their duty, not by any rash or rigorous commands, but by a certain regard to decency and order that reigned throughout the family; every one was so easy in his situation, that he was insensible of his dependence, and was treated rather as an humble friend."

The most pleasing part, also, of Thomson's elaborate poem on his patron's death, is that in which he refers to the graces of his domestic character:—

"Still let me view him in the pleasing light
Of private life, where pomp forgets to glare,
And where the plain unguarded soul is seen.
Not only there most amiable, best,
But with that truest greatness he appeared,
Which thinks not of appearing; humbly veiled
In the soft graces of the friendly scene,
Inspiring social confidence and ease.
Say ye, his sons, his dear remains, with whom
The father laid superfluous state aside,
Yet swelled your filial duty thence the more,
With friendship swelled it, with esteem, with love
Beyond the ties of blood, oh! speak the joy,
The pure serene, the cheerful wisdom mild,
The virtuous spirit, which his vacant hours,
In semblance of amusement, through the breast
Infused. * * * *
I too remember well that mental bowl,
Which round his table flowed. The serious there
Mixed with the sportive, with the learn'd the plain;
Mirth softened wisdom, candour tempered mirth,
And wit its honey lent, without the sting."

Lord Talbot did not forget the duties to knowledge and literature, which his high and influential station imposed on him. He extended a liberal patronage to literary men, in a spirit of generous good breeding which honoured him without degrading them. The poet Thomson, who was recommended to him by his early friend Dr. Rundle, was first employed in the capacity of travelling tutor to his eldest son, with whom he visited most of the continental courts; and was afterwards comfortably installed in the place of Secretary of Briefs, which he might doubtless have retained for life, had he not been too proud or too indolent to solicit a fresh gift of it from Lord Hardwicke when he succeeded to the chancellorship. The poet warmly extols the delicacy of that patronage to which he was himself so much indebted:—

"Unlike the sons of vanity, that, veiled
Beneath the patron's prostituted name,

Dare sacrifice a worthy man to pride,
And flush confusion o'er an honest cheek;
Obliged when he obliged, it seem'd a debt
Which he to merit, to the public paid."

He made it his business to assist at least with his purse, and (so far as he had the power to consult his own wishes) with the patronage in his gift, the most meritorious and exemplary of the clergy, with less regard to considerations of personal or political preference than the holder of the Great Seal has often adventured to indulge. Stackhouse, the learned and excellent author of the History of the Bible, having published proposals for printing his theological works by subscription, was invited to dinner by the Chancellor, who, after subscribing liberally himself, recommended the work so warmly to his professional friends round the table that they could not do other than follow his example, so that the worthy divine returned home with about a hundred guineas in his pocket, a fair beginning of his subscription. Lord Talbot indeed would deserve well of the Christian world, if it were only on the score of his having put in the way of promotion, and therefore of more extensive usefulness, the pious, learned, and excellent Bishop Butler. This admirable person, who was the son of a small tradesman at Wantage, in Berkshire, had been solemnly recommended by a younger brother of the Chancellor, to whom he had casually become known, to Bishop Talbot, from whom he received first the rectory of Houghton-le-Skerne, in Durham, and afterwards the valuable living of Stanhope. Lord Talbot, on becoming Chancellor, named Butler as his chaplain; and by his influence he obtained also a prebendal stall at Rochester, and the appointment of clerk of the closet to Queen Caroline, the sure introduction to episcopal honours. It was while he occupied this post that he published his celebrated Analogy.

In one case, indeed, which made no little noise at the time, the Chancellor incurred considerable censure in regard to the disposal of a bishopric. Even before he attained the woolsack, he had strongly solicited preferment for his father's friend and his own, Dr. Rundle. The see of Gloucester became vacant a few months after he received the seals,

and so warmly did he interest himself in the doctor's behalf, that the *congé d'elire* for his advancement to the bishopric was issued and gazetted, the election took place, and nothing remained to be completed but the consecration, when objections were suddenly interposed to the appointment, on the ground of the alleged heterodoxy of Rundle's religious opinions, by several of the bishops, more particularly Gibson, Bishop of London. A controversy of no small bitterness ensued between the partisans of the disputants; the Chancellor, however, after contesting the matter for some time with his right reverend opponents, was obliged to yield, and the doctor was consoled with the richer mitre of Derry, which became vacant about the same time; the same character, as one of the angry pamphleteers remarked, being deemed good enough to minister to the spiritual interests of an Irish diocese, which was proscribed as unfit to preside over an English one. Dr. Rundle, many years afterwards, made a splendid acknowledgment of the debt of gratitude he owed his patron's memory, by bequeathing to his son a legacy of £25,000.

The Chancellor's general beneficence was warm, comprehensive, and unostentatious. His seat at Barrington was at once the scene of a liberal and rational hospitality, and the centre of a diffusive and well-regulated charity. After his death, a long list of persons, the regular pensionaries of his private bounty, was found among his papers.

By his lady, already mentioned, whom he lost so early as the year 1720, Lord Talbot had five sons: Charles, who died unmarried in 1733; William, who succeeded him in the title, and was created an Earl in 1761; John, who went to the bar, sat in Parliament successively for Brecknock and Ilchester, and became a puisne justice of the Chester Circuit; Edward, who died an infant; and George, an exemplary and pious clergyman, who preferred the quiet exercise of his duties on a retired Gloucestershire living to the see of St. David's, which was offered to him in 1761. The second Lord Talbot went into warm opposition to Sir Robert Walpole's administration, and gained considerable repute as a spirited and fluent parliamentary speaker. One of his speeches, in particular, in which he opposed with much vehemence Lord Hardwicke's proposition for extending the penalties of treason, denounced

against those who should hold correspondence with the family of the Pretender, to the corruption of blood in the descendants of the offender, may be instanced as a piece of vigorous and effective declamation. Horace Walpole describes him as "a lord of good parts, only that they had rather more bias to extravagance than sense," and as a sworn enemy to the Chancellor (Hardwicke) on the score of some family jealousies.

Lord Talbot's younger brother, Edward, whom we have before passingly mentioned, a clergyman of great worth and talents, died in the year 1720, at the age of twenty-nine, being then Archdeacon of Berks, and having filled also the honourable appointment of preacher at the Rolls. He recommended to the patronage of his father, with his dying breath, three of his clerical friends, who all well justified the preference of his friendship, and every one of whom, although then unbeneficed, found that recommendation the first step towards a mitre:—Secker, afterwards primate; Benson, who became bishop of Gloucester, (both of them raised to the bench in 1734, doubtless through the good offices of the Chancellor); and Bishop Butler. His posthumous daughter and only child, Miss Catharine Talbot, acquired considerable celebrity in the literary world for her talents and accomplishments, and was one of the contributors to the Athenian Letters, and a frequent writer in the periodical publications of her time. His widow survived him for the remarkable period of sixty-three years, dying in the year 1784, at the great age of ninety-five.

We will conclude this short and necessarily very imperfect sketch by a few extracts from a well-expressed summary of the merits and character of Lord Talbot, which we find in a contemporary publication*, probably from the pen of Dr. Birch, to whom he was personally well known:—

"It is a maxim generally received, and generally true, that difficult and unquiet times form those great characters in life which we view with admiration and esteem. But the noble lord to whose merit we endeavour to pay this acknow-

* The "General Dictionary," (1739).

ledgment, obtained the honour and reverence of his country at a season when no foreign or domestic occurrence occasioned any remarkable event. Therefore, as *facts* cannot be related from which the reader may himself collect a just idea of this amiable and almost unequalled man, *words* must faintly describe those extraordinary qualities which combined to complete his character; and though future generations may imagine those virtues heightened beyond their true proportion, it is a suspicion not to be apprehended from the present age. . . . . In apprehension he so far exceeded the common rank of men, that he saw by a kind of intuition the strength or imperfection of any argument; and so penetrating was his sagacity, that the most intricate and perplexing mazes of the law could never so involve and darken the truth as to conceal it from his discernment. As a member of each House of Parliament, no man ever had a higher deference paid to his abilities, or more confidence placed in his public spirit; and so excellent was his temper, and so candid his disposition in debate, that he never offended those whose arguments he opposed. . . . . As no servile expedients raised him to power, his country knew he would use none to support him in it. When he could gain a short interval from business, the formalities of his station were thrown aside: his table was a scene where wisdom and science shone, enlivened with elegance and wit. There was joined the utmost freedom of dispute with the highest good-breeding, and the vivacity of mirth with the primitive simplicity of manners. When he had leisure for exercise, he delighted in field sports; and even in those trifles shewed that he was formed to excel in whatever he engaged in; and had he indulged himself more in them, especially at a time when he found his health unequal to the excessive fatigues of his post, the nation might not yet have deplored a loss it could ill sustain. Though removed at a time of life when others but begin to shine, he might justly be said *satis et ad vitam et ad gloriam vixisse;* and his death united in one general concern a nation which scarce ever unanimously agreed in any other particular."

The maxim is assuredly no longer true, that

> "Men's evil manners live in brass; their virtues
> We write in water:"—

the office of modern biography is more frequently to engrave the tablets of its heroes with such a crowd of excellences, that no room remains for the exhibition of their frailties. Lord Talbot was even more fortunate; for his failings appear to have been almost as much forgotten during his life, as his virtues were extolled over his tomb.

LORD HARDWICKE.

OF the numerous individuals whom the profession of the law has raised from indigence and obscurity to the possession of wealth and honours, there are few, if any, who at the outset of their career have had to contend against more powerful obstacles, or who have surmounted them with greater success, than Philip Yorke, afterwards Earl of Hardwicke and Lord High Chancellor of England. His father was an attorney at Dover, without much, or at least without lucrative practice; for though before his death he had provided for his two daughters, by marrying them, the one to a dissenting minister, the other to a tradesman or small merchant, he was reduced to such poverty as to be wholly incapable of affording his only son the means of entering the profession of which he afterwards became such a distinguished ornament. The same difficulties, however, which are sufficient to confound and overwhelm an irresolute mind or a desponding temperament, often prove nothing more than wholesome stimulants to the energies of a vigorous intellect. For as, in mechanics, the additional force applied to counteract an occasional resistance against the progress of a body, imparts to that body a momentum which urges it on with increased velocity after the resistance is overcome; so the mental powers, aroused for the purpose of struggling against adversity, continue to exert their influence after the causes which first called them into action have ceased to exist. Thus the necessity of combating impediments in the early part of life materially conduces in many instances to eventual success; and it is possible that Yorke, like many others of his own and indeed of every profession, may have

been, in a great measure, indebted for his advancement to the very obstacles which might at first appear a bar to all hope of it.

He was born at Dover, on the 1st of December, 1690. Being designed for his father's profession, and his slender means rendering it expedient for him to lose no time in qualifying himself for it, he was not suffered to remain till a late age at school. The person to whose care his education was entrusted was one Mr. Samuel Morland, a man of learning, who kept a school of some reputation at Bethnal Green. But whatever advantages in point of classical instruction Yorke might have enjoyed under his direction, he was not allowed sufficient time to make much progress. After he had attained rank and celebrity as a lawyer, there were many who asserted, and affected to believe, that he had during his youth been conspicuous for the ardour and the success with which he had devoted himself to the study of ancient literature. The tale may have been invented merely to flatter the person of whom it was told, or perhaps to support the credit of classical learning, by representing it as instrumental in raising him to eminence in his profession: in either case there certainly could have been very little foundation for it. That Yorke was distinguished for proficiency in classical acquirements beyond the rest of his schoolfellows, there is not the least reason to doubt; and it is even probable that an active mind like his might afterwards take pleasure in recurring occasionally to the pursuit he had perhaps quitted with regret; but such imperfect opportunities are not sufficient to form a finished scholar, and those who have represented him as such certainly ought not to be accounted the most judicious of his panegyrists, since they suppose him to have possessed advantages with which, in fact, the vigour and acuteness of his intellect enabled him in a great degree to dispense.

It has been said, that while he was prosecuting his studies for the bar, he contributed to the Spectator the letter signed Philip Homebred, which appeared as the paper for the 28th of April, 1712. The story appears doubtful, and probably originated in some mistake of names, since we find that one of the editors of the Spectator affirms it to have been written by him while a student at Cambridge, whereas it is very well

known that he never was a student at either of the universities. However, supposing him to have been the real author of the letter, there certainly is nothing in it, either in point of style or matter, that gives particular indications of literary taste or talent; and those who pretend to discover in such a composition the character of early genius, would probably never have thought of attributing any such quality to it, had not the eminence of its presumed author suggested the idea. A circumstance which goes much farther towards establishing the fact of his early display of talent, is the high opinion of his abilities entertained by his schoolmaster. Two letters have been preserved, written in Latin to Yorke by Mr. Morland. The first of them is dated 1706, the second 1708, and even so early as the former period, the preceptor, after dwelling with affectionate complacency on the talents of his disciple, confidently predicts his future celebrity, and declares that to have been the happiest day of his life wherein the cultivation of so happy a genius was first committed to his charge:— "Non mirandum est si futuram tui nominis celebritatem meus presagit animus. Quas tantoperè olim vices meas dolui, eas hodiè gratulor mihi plurimum cui tale tandem contigerit ingenium excolendum. Nullum unquam diem gratiorem mihi illuxisse in perpetuum reputabo, quàm quo te pater tuus mihi tradidit in disciplinam." This letter is addressed, "Juveni præstantissimo Philippo Yorkio."

His first initiation into the study of the law took place under the auspices of an eminent attorney named Salkeld, who had been agent for his father, and was prevailed upon to take the son into his office upon very easy terms. The coincidence of names afterwards occasioned the report that he had for his instructor Serjeant Salkeld. This is an error: but if we are to judge of a system of education by the fruits it produces, we may safely assert that it would have been impossible for him to have been more advantageously situated for acquiring a knowledge of his profession than in the office of Mr. Salkeld the attorney, since we know that in that very office, and nearly about the same time, were Jocelyn, afterwards Lord Chancellor of Ireland; Parker, who became Chief Baron of the Exchequer; and Strange, who died Master of the Rolls. Among such fellow-students

as these, it was likely that there would be severe and arduous competition; and it is no trifling testimony in favour of the zeal, the assiduity, and the talent of Yorke, that he recommended himself to the favour and esteem of a man who must have been in the habit of witnessing a constant and unremitting display of all these qualities. So steady, however, was his perseverance in study, and so rapid his progress in the knowledge of the law, that Mr. Salkeld did not fail to distinguish him; and with a view of procuring him a wider field for the future exercise of his abilities, he caused him to be entered of the Middle Temple, as a preparatory step towards the bar. The date of his admission, in the books of the Society, is 25th November, 1708; he being then in the eighteenth year of his age.

It does not appear that the talents of the young clerk were equally well appreciated by the wife of Mr. Salkeld, or possibly she conceived that, however distinguished they might be, they ought to be no hindrance to the exercise of the more homely qualities of personal strength and agility, which nature had conferred upon Yorke, and which she conceived the law had placed at her disposal. Making, therefore, a full use of her assumed right as a mistress over her husband's apprentice, she was in the constant habit of dispatching him from her house in Brook-street, Holborn, to the neighbouring markets, either for the purpose of carrying home her own bargains, or of acting in the double capacity of purchaser and porter. These journeys occasionally extended as far as Covent-garden, so that her emissary had to return through some of the crowded streets of London, bearing under his arm, perhaps, the ignoble burthen of a basket of fruit or a bundle of green vegetables. Such humiliation was not to be borne patiently, especially when the messenger had begun to hold a certain rank in the office of his master, and no doubt, also, to attach some degree of importance to his personal appearance, which, it must be allowed, was not likely to be benefited by the appendages just mentioned. But what was to be done? The lady laid claim to his services; and the terms on which he had been received an inmate of her house were such as might authorise her to demand of him some such compensation for the expense of his maintenance. In this

awkward dilemma, Yorke, with great presence of mind, hit upon an expedient which had the desired effect, both of saving appearances for the time, and of putting a stop to his errands in future. He proceeded as usual to market, and made his purchases as before; but, on his return, did not scruple to indulge himself and his packages with the accommodation of a hackney-coach. It may be supposed that the fare of this vehicle made a conspicuous item in the bill of charges which, on his arrival at the house, he was in the habit of presenting to Mrs. Salkeld; and that notable lady, wisely considering that it was a flagrant instance of bad housewifery to pay more for the carriage of her goods than the value of the goods themselves, resolved thenceforward to choose a messenger who would be likely to be content with a less expensive mode of conveyance.

It was after he had become a student of the Middle Temple, that Yorke formed an acquaintance to which he may be said to have been mainly indebted for the unprecedented rapidity of his advancement when called to the bar. It was altogether a remarkable illustration of Roger North's argument in behalf of the advantages to be derived from connexions originally formed from casual meetings in the hall of an Inn of Court. During the time when he was keeping his terms, it was his lot to dine more than once at the same mess with Mr. Parker, one of the sons of Lord Chief Justice Macclesfield; and his conversation was so agreeable, as to produce from his neighbour an invitation to his father's house. It is said that, about the same time, the Chief Justice, being desirous of securing for his sons a companion whose legal knowledge might be an assistance to them in their studies, applied to Mr. Salkeld to point out some young man of competent abilities for that purpose, and that Mr. Salkeld warmly recommended his pupil. Whether this took place before or after the first introduction of Yorke to his Lordship does not appear; but it seems most probable that the inquiry was made respecting Yorke himself, in consequence of his having been presented to Lord Macclesfield. At all events, it is very certain that the young student had not long obtained a footing in the house of the legal dignitary, before he secured to himself a first-rate place in his good graces. He was at that time, as indeed he remained

long afterwards, distinguished for a certain pliancy, if not suppleness of manner, which possibly went far towards finding him favour in the eyes of his new patron. He had also the advantage of a handsome person, which he improved by strict attention to his dress, insomuch that some of his contemporaries report him to have been the handsomest young man in England. Whether these minor recommendations, or the more elevated qualities of talent and proficiency in his studies, had the greater weight with Lord Macclesfield, the favourable impression he had first made was so well improved, that the result was a degree of friendship, and of almost paternal attachment, to which, as has already been intimated, the success of Yorke's after career might chiefly be attributed.

On the 27th of May, 1715, Yorke was called to the bar. Possessed as he was of much more ample stores of legal knowledge than fall to the lot of most lawyers of his years, and having the cordial support of a very eminent solicitor, besides the avowed favour and patronage of Lord Macclesfield, he acquired at the very outset an extensive practice; and it is not to be supposed that his rapid and extraordinary success was looked upon without jealousy by the other members of the bar. Indeed, the favouritism of Lord Macclesfield was so conspicuous even in court, that they might well feel themselves offended and aggrieved by it. Serjeant Pengelly, one day, was so much irritated by an observation which fell from his Lordship, that he threw up his brief, and openly protested he would no longer practise in a court where it was evident that Mr. Yorke was not to be answered. Some time after the resignation of the great seal by the Earl of Cowper, Lord Macclesfield was promoted to the woolsack (1719); and his influence, no longer confined to a court of law, was exerted to procure his young favourite a seat in the House of Commons. Accordingly, within four years after his first appearance in Westminster Hall, Yorke took his seat as member for Lewes, in Sussex, the whole expenses of his election being defrayed by the ministry, among the partisans of whom he of course enrolled himself.

The Bench did not fail to share in the astonishment occasioned by his extraordinary professional success. Mr. Justice Powys, in particular, was amazed at such a phenomenon. His

Lordship was much more notorious for certain peculiarities of manner and speech, than for penetration or clearness of intellect; so much indeed was he generally thought to be deficient in the latter qualification, that the Duke of Wharton, inditing a copy of verses, wherein he adopted the hackneyed mode of expressing his affection for his mistress, by protesting that when this, and that, and the other impossible event should occur, then and no sooner should he cease to adore her, did not hesitate to include among his enumeration of impossibilities, that of Judge Powys summing up a cause without a blunder. This ornament of the bench, then, being determined to discover, or rather thinking he had already discovered, the cause of Yorke's success, appealed to the successful barrister himself, to learn whether he had arrived at the right solution of the mystery. "Mr. Yorke," said he, at a dinner party composed chiefly of members of his own profession, "I humbly conceive you must have published some book or other, or must be on the point of publishing one; for look, do you see, there is scarcely a case before the court, but you hold a brief for either plaintiff or defendant." It may readily be supposed this explanation surprised the person appealed to, no less than the extraordinary circumstance it was meant to account for had at first surprised the judge. Yorke, however, not perhaps altogether displeased at the opportunity of quizzing his Lordship, replied "that in fact it was his intention to publish a book." Powys, all elate with this discovery, eagerly demanded to be informed of the subject. The other, keeping up the joke, answered that he was putting Coke upon Littleton into verse. A specimen was now called for. Yorke endeavoured to excuse himself, on the plea that he had made little progress in his work, but his Lordship would hear of no denial. Accordingly, finding himself compelled to recite a distich or two, he could not refrain from taking the opportunity of ridiculing some of the importunate dignitary's peculiarities of phraseology, and immediately rapt out with solemn emphasis:—

"He that holdeth his lands in fee,
Need neither to shake nor to shiver,
I humbly conceive; for look, do you see,
They are his and his heirs for ever."

The foundations of his fortune were now so securely laid, that he might without imprudence think of contracting a matrimonial alliance. At the house of Sir Joseph Jekyll, then Master of the Rolls, he had met and admired the young widow of Mr. William Lygon, of Madersfield, in Somersetshire. She was a niece of Lord Somers, who was her mother's brother, and also of Sir Joseph, who had married another of his Lordship's sisters. Her father, Mr. Charles Cocks, was a country gentleman of good estate, residing at Worcester; and to him the suitor was referred for his consent to the match. Accordingly, having surrendered his chambers in the Temple (May 1719), in contemplation of the approaching union, to which he could see no probable obstacle, he shortly after presented himself at Worcester, and made known his errand to the gentleman whom it was his wish to call father-in-law. Mr. Cocks received him with politeness, and having perused the recommendatory letter of his brother-in-law, Sir Joseph Jekyll, wherein Mr. Yorke was represented as a highly eligible match for his daughter, he forthwith requested to see what in his opinion constituted the main evidence of the aspirant's eligibility, namely, his rent-roll. To his infinite surprise, Mr. Yorke had no such document to shew. The case seemed an extraordinary one; and not being able to understand what qualities could make amends for the want of land and title-deeds, he immediately wrote to the Master of the Rolls, demanding to know on what ground he could presume to recommend for a son-in-law, a man who had no rent-roll to produce. Sir Joseph Jekyll, in his answer, made it clear that it was possible to hold some rank in society, and even to possess some wealth, without being master of those parchments which the country gentleman seemed to consider the only undeniable tokens of fortune and respectability; and he concluded by advising Mr. Cocks not to hesitate a moment in accepting the proposal made him, as Yorke would at that time consent to marry his daughter with a portion of six thousand pounds, whereas in another year he would probably not be contented with less than three or four times that sum. This explanation had the desired effect, and the marriage accordingly took place.

The connexion derived from this alliance probably influenced Yorke in the choice of a circuit, his practice having

been till that period confined to Westminster Hall. The next spring he appeared upon the western circuit, and in spite of his recent standing, was employed there as extensively in proportion as he had been in London.

That this should excite the envy as well as the surprise of the bar, is not to be wondered at. But new favours of fortune awaited Yorke, such as even the penetration of Mr. Justice Powys might scarcely have foreseen as the consequences of the forthcoming work. He was called up to town, before he had completed his first circuit, to be made Solicitor-General * (March 23rd, 1720), being thus, at the early age of twenty-nine, and within five years after his call to the bar, promoted to an office which is generally supposed to require not only approved talent and knowledge of the law, but a much greater share of experience than can fall to the lot of one so young, both in years and practice. Much dissatisfaction was testified among the seniors of the bar at this appointment, the more eminent among them, not without reason, considering they had much stronger claims to the possession of the vacant post; and those who had not the same personal reasons for displeasure being still nettled, at thus finding themselves outstripped in the race of preferment by so youthful a competitor. Besides the envy and the odium which so marked an instance of favouritism could not fail to awaken among his professional brethren of the bar, the new Solicitor-General had to contend against another and a more serious prejudice, the mistrust of his clients. However he might have distinguished himself during the former part of his career, still his employment had been of course almost

* The following is a copy of the letter written on this occasion by the Chancellor to Yorke. It is directed to him at Dorchester :—

"Sir,

The King having declared it to be his pleasure that you be his solicitor-general, in the room of Sir William Skimpson, who is already removed from the office, I, with great pleasure, obey his majesty's commands, to require you to hasten to town immediately upon the receipt hereof, in order to take that office upon you. I heartily congratulate you upon this first instance of his majesty's favour, and am, with great truth and sincerity,

Sir,

Your faithful and obedient Servant,

PARKER, C."

entirely that of a junior counsel; and though in that capacity he had never failed of discharging his duty, both with credit to himself and advantage to the party in whose cause he was retained, still it was to be supposed that many who had been glad to avail themselves of his talents when they were backed by the experience of older men, would naturally hesitate before they committed their interests entirely to the custody of an advocate of five years' standing. Professional etiquette forbade him to appear in a cause except as the leading counsel; and those who best knew the advantages of experience in a leader, were most reluctant to engage him as such. Thus, nothing but a very extraordinary share of ability and of legal knowledge could have saved him from the loss of his private practice; and had he not found opportunities of shewing that he possessed both, his appointment to the solicitorship, far from being the source of additional honour and emolument, could not but have been very materially prejudicial to his pecuniary interests, as well as to his reputation. It was not long, however, before he made it evident that he was equal to the duties of his new station. His talents, instead of being lost in the wider sphere wherein they were called upon to act, expanded in proportion as the demands upon them were greater. By these means, the prejudice which had at first been conceived against him, on account of his youth, was gradually dispelled, and before long his practice became more extensive than ever; the marked favour of the Chancellor, and the affability of his own deportment, particularly his courtesy towards the attorneys of the court, contributing, no doubt, as well as his acknowledged ability, to render him a popular counsel.

In the discharge of his public duty as Solicitor-General, he was not less eminently successful than in the management of private causes. The trial of Christopher Layer for high treason, in November 1722, afforded him an opportunity, which he did not neglect, of making a splendid display of his powers, both as a lawyer and an orator. The task of answering the legal objections urged in favour of the prisoner was delegated to him. His reply, which was of course in great measure unpremeditated, occupied two hours. Very little of it, except the heads of the arguments he employed, is preserved in the State Trials; but we are assured that the manner

in which, after recapitulating and confuting all the topics that had been advanced in behalf of the accused party, he finished by summing up the whole body of the evidence, so as not to leave a doubt on the minds of either the jury or the court, was the theme of universal admiration: his speech was, indeed, allowed to be a masterpiece of argumentative eloquence. Layer, it is well known, was condemned to be hanged; but the execution of the sentence was deferred from time to time until the spring of the following year, in the hope that he might be induced to give evidence against the Bishop of Rochester, and certain other accomplices supposed to be implicated in the plot laid for the restoration of the Pretender. This expectation being disappointed, a bill of attainder was brought in (May, 1723) against the suspected parties. Bishop Atterbury was deprived of all his offices and sent into banishment; John Plunkett and George Kelly, the other accessories, were sentenced to confinement during his Majesty's pleasure. The Solicitor-General is said to have displayed considerable talent in bringing forward in parliament the bill against the last-mentioned of these persons, who was imprisoned in the Tower, whence he contrived to make his escape about thirteen years afterwards.

Yorke had received the honour of knighthood a few months after his appointment to the office of Solicitor-General. In February, 1724, that is, after he had retained the solicitorship somewhat less than four years, he was promoted to the rank of Attorney-General, being succeeded in his former office by Sir Clement Wearg. He was now fully launched into the stream of preferment, and could dispense for the future with the favour and patronage of the Chancellor, to whom he had hitherto been indebted for his advancement. It was well for him that this was the case; for he had been little more than a year established in his new office, when the gross corruption of Lord Macclesfield brought on the impeachment in consequence of which he was deprived of the Great Seal. As Attorney-General, it was Sir Philip Yorke's duty to assist the managers of the House of Commons in making good their charge. But his intimacy and connexion with the accused were so well known, that he succeeded, though not without some difficulty, in procuring himself to be excused

from so painful a task; and though decency forbade him to undertake the defence of his former patron, or, indeed, to appear at his trial in any other capacity than that of his principal accuser, he found means to reconcile decorum with gratitude, by rebutting in the House of Commons the personalities of the fallen dignitary's most inveterate enemies, particularly of Serjeant Pengelly. Lord Macclesfield was, however, fortunate that he lived in an age when very many members of either house had excellent reasons for regarding corruption as by no means an unpardonable sin; so that the clamour against him was not so loud as his frauds and his extortions were well worthy to raise. The fine of thirty thousand pounds, which was the punishment awarded him by his fellow peers, was but a small portion of the sum he had amassed by his peculations; and to the disgrace of the time, his conviction neither debarred him from the countenance of the great, nor even, if report speaks true, from the favour of the court.

Of Sir Philip Yorke's general conduct as one of the law officers of the crown, Lord Chesterfield speaks in the following terms:—"Though he was solicitor and attorney-general, he was by no means what is called a prerogative lawyer. He loved the constitution, and maintained the just prerogative of the crown, but without stretching it to the oppression of the people. He was naturally humane, moderate, and decent; and when, by his employments, he was obliged to prosecute state criminals, he discharged that duty in a very different manner from most of his predecessors, who were too justly called the bloodhounds of the crown." Horace Walpole has given him a very different character; but he has taken so little pains to disguise his prejudices with regard to most of those whom he is pleased to vituperate, and in particular his rancorous and inveterate hatred against Yorke, that his testimony would be of little or no weight, even were it not contradicted by irrefragable evidence, and in some instances by his own admissions. Thus, in speaking of an after-period of this great lawyer's life, when, as Lord High Steward, he presided at the trial of the rebel lords who had taken arms in the service of the Pretender, he tells us that his demeanour towards the noble prisoners was that of a low-born upstart, proud of an

opportunity to evince his loyalty by insulting his fallen superiors. But this accusation is entirely disproved by the very full and minute report of the proceedings, wherein, though every word he uttered seems to be noted down with scrupulous accuracy, we find nothing to corroborate the charge. It is evident that Lord Orford was not sufficiently on his guard against the danger to which those who deviate from truth are continually running the risk of exposing themselves, namely, that of unwarily betraying their own general want of veracity, by an occasional adherence to real facts, wholly incompatible with the imaginary occurrences they have chosen to invent. In one part of his memoirs, for example, he plainly declares of Lord Hardwicke, that "in the House of Lords he was laughed at, in the cabinet despised:" but the very same work affords us many previous instances, which, by the author's own shewing, make it very plain that his opinion was of considerable weight in both places. This is a tolerable illustration of the proverbial aphorism, that a good memory is particularly necessary to those who have little regard to veracity.

Although Yorke had owed his first introduction into parliament principally to the offices of his early patron, Lord Macclesfield, it is believed that he was more directly indebted for it to the favour of the Duke of Newcastle. At all events, it is certain that he attached himself very early in his career to this powerful nobleman, of whose influence in the councils of the nation he did not fail afterwards to avail himself. A connexion with the family of the Pelhams led to one with Sir Robert Walpole, so that he secured to himself the support of a party which, for his singular good fortune and its own, though perhaps not equally so for that of the country, contrived to keep itself in power till he had arrived at an age when power was, or might well be, indifferent to him. Thus, while some of his legal competitors were impoverished by the heavy charges of their elections, his own fortune never suffered from any such cause of expenditure. Whether he sat for Lewes or for Seaford, he was invariably returned under the auspices of the ministry, without either cost or trouble.

After having held the office of Attorney-General during nearly ten years, an opportunity offered itself for a higher pro-

motion. The Great Seal was resigned in October, 1733, by Lord King, who had succeeded the Earl of Macclesfield on the woolsack: and the chief justiceship of the King's Bench was vacant at the same time, by the death of Lord Raymond. It was generally expected that, according to the usual forms of precedence, the higher of these offices would be offered to Yorke, and that the place of Chief Justice would fall to the share of Mr. Talbot, the Solicitor-General. It proved, however, otherwise. Mr. Talbot, having devoted himself more exclusively than his colleague to Chancery practice, was held to be, if possible, still more eligible as a Chancellor than the Attorney-General, the duties of whose office had latterly caused him to be employed much more generally in the common-law than in the equity courts, and had consequently qualified him in a greater degree for presiding in the King's Bench. Talbot was ambitious, and so no doubt was Yorke; but the ambition of the latter was very much qualified and tempered by prudence, and if he thirsted after eminent dignities, he was still more desirous that they should be permanent and secure. Now the chancellorship, he well knew, though a place of higher dignity and emolument than that of Chief Justice, was held by a much more precarious tenure. He was, consequently, not indisposed to give up his pretensions to a seat on that unsteady pinnacle of legal preferment, the woolsack; the rather that he would resign them in favour of one with whom he lived on terms of the strictest friendship and intimacy. There only remained one obstacle to be got over. The predominant foible of Yorke's character was the love of money; and it was with difficulty he could make up his mind to forego his claims upon one place, for the sake of putting up with another much less lucrative. This objection was easily obviated by Sir Robert Walpole. He offered to increase the salary of Yorke, as Chief Justice, from two thousand to four thousand pounds a year (the salary then, and indeed till very lately, forming only a small portion of the emoluments of the office); and upon Yorke's refusing to accept this augmentation as a distinction personal to himself, it was made permanent to his successors on the bench. This compromise, together with the promise of a peerage, entirely reconciled the Attorney-General

to the loss of the chancellorship, which was accordingly conferred on the Solicitor-General, with the rank of Lord Talbot. Yorke took his seat in the King's Bench, and was shortly afterwards called to the upper house by the title of Baron Hardwicke, of Hardwicke, in the county of Gloucester.

He retained the office of Chief Justice nearly three years and a half (7, 8, 9, and 10 Geo. 2), during which period he did not fail to add largely to his former reputation. His colleagues in office were Lee, who succeeded him as Chief Justice), Probyn, and Page. The cases argued and adjudged by them have been collected and published by Mr. Lee, of Gray's Inn, whose single volume might serve as an honourable monument of Lord Hardwicke's judicial ability, were there no other testimony of it on record. Not that any but a very imperfect idea can be derived from such a publication as this, of the copiousness of argument, or the elegance of illustration, much less of the graces of manner and diction, for which we are assured the Lord Chief Justice was so eminently conspicuous. Of the extent of his legal knowledge, however, and the acutenesss of his intellect, this book contains very sufficient evidence. Indeed, to preserve the substance, and, as it were, to condense the essence of the legal arguments employed, has been, as it certainly deserved to be, the chief object of the author of these reports; though he might, perhaps, without prejudice to this the most important part of his task, have bestowed more attention on the minor accessories of uniformity of arrangement and of style. The cases bear evident marks of being not only written at different times, which of course they necessarily must be, but, in some instances, published from the hasty notes taken in court, without the degree of care in the revision which would have been necessary to reduce them to the same uniform standard of conciseness or development. In some Lord Hardwicke is made to deliver his judgment in the first person, in others he speaks in the third; and some, as for example that of Holmes v. Gordon, are reported with such evident haste and negligence, that the first person and the third are indiscriminately employed. Perhaps the best specimens, and those which may be supposed to give the most distinct idea of Lord Hardwicke's style, are the cases in which he delivers the opinion of the Court; such,

for instance, as those of Moor v. The Mayor and Corporation of Hastings, and The King v. The Inhabitants of Glastonbury, both delivered in Hilary term, 10 Geo. 2, a very short time before his removal from the Court of King's Bench. These cases are also to be found in Sir John Strange's Reports; but as that work comprises, within the compass of two volumes, the proceedings of the King's Bench, Chancery, Common Pleas, and Exchequer, from the early part of George the First's reign to 21 Geo. 2, they are, of course, reduced according to a much more abridged scale.

Lord Hardwicke was so well satisfied with his situation as Chief Justice of the King's Bench, which, indeed, he filled with no less honour to himself than advantage to the country, that, upon the death of Lord Talbot (February 14th, 1737), he testified considerable reluctance to resign it for the chancellorship. Sir Robert Walpole was anxious to have him placed on the woolsack, and he combated all the objections of the unwilling judge, with the earnestness of a man bent on carrying his point. Still his arguments appeared to produce little or no effect. The expediency of giving up that which was certain and secure, for the sake of being put in possession of what was unstable and precarious, could not be made clear to the comprehension of the Chief Justice, and he persisted in declaring himself averse from the change. The minister had exhausted all his topics of persuasion. He now appealed to the jealousy of his listener, a weakness of which he well knew him to be very susceptible, and threatened, in case of his ultimate refusal, to give the great seal to the eminent Chancery barrister, Mr. Fazakerly. Lord Hardwicke, half alarmed, and half inclined to doubt whether Sir Robert Walpole was in earnest, represented to him that Fazakerly was without question an avowed Tory, and for aught he knew a Jacobite. "I am very well aware of that," coolly replied the experienced maker of political proselytes, "but if by one o'clock" (laying his watch upon the table) "you have not accepted my offer, by two, Fazakerly shall be lord keeper of the great seal, and one of the staunchest Whigs in England." This stroke was decisive. The given time had not expired before Lord Hardwicke had made up his mind, and consented to be elevated to the highest judicial dignity in the country.

One of the chief causes of his reluctance to quit his post in the King's Bench at that particular period, was, that the office of chief clerk of that court was then expected shortly to become vacant; and as the Chief Justice had the power of granting it for two lives, by retaining his place he would be enabled to make a handsome provision for some member of his own family. Sir Robert Walpole was willing to do away with this objection, by buying up the life interest of Mr. Ventris, then the actual chief clerk, and annexing the grant of the office to the chancellorship. Lord Hardwicke, however, very properly refused to deprive the future Chief Justice of this privilege for his own personal advantage, and the difficulty was finally got over by a promise of that tempting ministerial bait, the reversion of a tellership of the Exchequer, which was to be given to his eldest son.

Sir Robert Walpole himself, accompanied by the lord president of the council and several of the other principal officers of state, attended the new Chancellor at the ceremony of his taking the oaths and his seat. It is a remarkable circumstance, that on the same day (February 17th), after having sat for some time in the Court of Chancery, Lord Hardwicke adjourned to the King's Bench, and their took his place as Chief Justice, to give judgment in a case of importance, which had previously been argued before him: thus uniting the functions of an equity with those of a common-law judge, and enjoying the singular honour of presiding in the two highest courts of the kingdom within the space of a few hours.

One of the first duties which in his new station he was called upon to fulfil, was by no means an agreeable one; though he derived from it the assurance, that his abilities and his integrity were held in as high estimation by the chief of the opposition party, as by the King and his ministers. About the time when he was called upon to take his seat in the Court of Chancery, the attention of the public was engrossed by an open rupture between his Majesty and the Prince of Wales, the latter of whom had long been at variance with his father. It was occasioned principally by the concealment of the Princess's pregnancy, of which, although she had been twice supposed to be on the point of delivery, no notification whatever had been given to the King. This and other

breaches of respect determined his Majesty and the ministers to send to the Prince, in the name of his royal father, a severe message of reprimand; and it was decided that Lord Hardwicke should be one of the bearers of it. In order to get over any objections that might be started on his part, a little stratagem was planned by Sir Robert Walpole for taking him by surprise. On Sunday, the 20th of February, the new Chancellor received from the Duke of Newcastle the King's commands to attend the next day at the privy council, for the purpose of receiving the great seal. Lord Hardwicke accordingly made his appearance there at twelve o'clock, the hour when the council was summoned. While he was waiting in the room next the bed-chamber, in company with the Duke of Newcastle, the Duke of Argyle, and some other of the members, Sir Robert Walpole suddenly came out of the King's closet, holding a paper in his hand, which proved to be the royal message, and in a hurried manner declared it was the King's pleasure it should be delivered by the Lord Chancellor, the Lord President, the Lord Steward, and the Lord Chamberlain. The first of these did not fail to expostulate on the hardship of selecting him for the performance of so irksome a duty. Sir Robert affected to coincide with him, and said he had already represented the matter to the King, but that his Majesty, whose determination on the subject was not to be shaken, had peremptorily said, "My Chancellor shall go." Further resistance was of course out of the question, and Lord Hardwicke, however reluctantly, had no alternative but to yield. After this point had been finally adjusted, about two o'clock, the King came out of his closet, and without making the slightest allusion to what had passed, presented him with the great seal, accompanying the delivery of it with many gracious expressions of his esteem. No further difficulties being started with respect to the royal message, it was accordingly delivered by the officers whom Sir Robert Walpole had fixed upon. The Prince of Wales received the deputation with much affability, and was particularly attentive to Lord Hardwicke, to whom he made many flattering compliments on his recent promotion. On their departure, the Chancellor happened to be the last who left the room, and the Prince detained him for some mo-

ments, charging him in a whisper with conciliatory expressions of regret for the displeasure of the King, and his anxiety to do all in his power toward repairing the breach between himself and his Majesty. Lord Hardwicke, naturally averse from this mode of communication, requested that the other members of the deputation might be called back, and that the answer might be given to all alike: upon which the Prince replied, that he did not mean what he had said to be considered as an answer to the King's message, but merely wished to entrust his Lordship with his sentiments, that he might afterwards make such use of his information as he might think fit. This singular confidence sufficiently shews what an opinion was entertained by the Prince and his party of the Chancellor's prudence and integrity. In the collection of manuscripts relating to the Yorke family, made by Dr. Birch, whence this anecdote is taken, there is an account, purporting to be written by Lord Hardwicke himself, of his intercourse on other occasions with the Prince, by which it appears that he received many expressions of his Royal Highness's esteem and respect for his character and talents; but as the document, however interesting, is much too long to come within the limits of this memoir, the reader who may be curious to peruse it is referred to the original in the British Museum. It is marked No. 4325, in Dr. Ayscough's Catalogue.

In quitting a court of common law for a court of equity, Lord Hardwicke did not labour under the disadvantages which both before and since his time have attended some Chancellors similarly removed. Neither had his education been confined to one exclusive course of study, nor had his practice been limited exclusively to one court. In the office of an eminent solicitor, his attention was most probably divided between the business of the common law, and that of Chancery; and as his professional prospects during the greater part of his studentship were in all likelihood undecided, it is natural to suppose that he would be equally anxious to qualify himself for either department which circumstances might afterwards point out as most eligible. After his call to the bar, he could not fail to experience the advantages of this double store of knowledge. The circumstance of his patron, Lord Macclesfield, being promoted to the woolsack, had the effect

of confining his practice, at first, in a great degree to the Court of Chancery; the duties of his official appointments afterwards obliged him to devote a considerable part of his attention to the King's Bench. For either situation he was equally well qualified. He had not only directed his reading towards the attainment of the different portions of legal knowledge necessary for both, but his early acquaintance with the practical proceedings of each gave him advantages which reading alone might perhaps have been unable to supply. These peculiar circumstances in his education and his professional practice made it comparatively a matter of indifference to him, so far as regarded the requisite knowledge, in which court he was called upon to preside. His removal from the King's Bench to the chancellorship was therefore not attended with that inconvenience, either to himself or to the public, which has frequently and justly been made the subject of complaint, when mere common lawyers have been placed upon the woolsack; and perhaps still more justly, when Chancery barristers have been called upon to fulfil duties so foreign to their professional studies and habits as those of a common-law judge.

It was in the Court of Chancery that Lord Hardwicke passed the longest and most glorious portion of his professional career. It was his singular good fortune to fill the highest legal station in the kingdom during nearly twenty years; a space of time longer than it has been the lot of any single individual to occupy it, with the exception of Lord Chancellor Egerton among those who have preceded him, and of Lord Eldon among his successors. Very few, even of those who have held the same office during a much shorter period, have escaped in an equal degree the envy and the evil report of their contemporaries. His integrity no one ever called in question: his talents were beyond the reach of censure: and those who made it their business to discover faults in his character, were obliged to dwell upon such minor blemishes as detracted but little from the eminent qualities, which even his enemies could not refuse to acknowledge. The wisdom of his decrees was the theme of universal eulogy. The only failing which the most captious could pretend to detect in his judgments was, that he sometimes betrayed an inclina-

tion rather to base them exclusively on the foundation of pure reason, than to frame them according to the strict tenor of the positive regulations by which that reason ought to be modified and controlled. The accusation is a general one, and one that it might at present be equally difficult to refute or to substantiate. Even admitting it to be well founded, it would probably with many still remain a question, how far such a charge should be made a subject of reproach, and how far of praise. For when it is considered, that originally the peculiar province of the Court of Chancery was to administer redress for such grievances as did not come under the cognizance of the common law; that it was intended also to obviate the hardship, and in some cases the injustice, which cannot always be either avoided or remedied by a severe adherence to the letter of established rules; it may fairly be asked, whether the too great multiplication of restrictions on the discretionary powers of the Chancellor be not calculated to defeat the object, for the accomplishment of which his jurisdiction was first created. That some and even many restraints must be laid on the mere discretion of any officer of justice, is what no speculative lawyer will venture to controvert, any more than a practical one will deny that many are actually imposed on an English Chancellor. The Chancery, as Bacon very aptly observed on taking his seat there, is ordained to supply the law, not to subvert the law. We have so far improved upon this maxim, that, at present, he who presides in that court may well profit by the admonition which the same great man gave to Serjeant Hutton, when he was appointed a judge of the Common Pleas,—that he should draw his learning out of his books, not out of his brain. Indeed, the system which, in the technical language of our jurisprudence, is called equity, is now little, if at all, less accurately circumscribed by known rules and precedents, than the very different system which, in contradistinction to it, we emphatically term *law*. But its limits were far from being so minutely traced, at the period when Lord Hardwicke was called to the woolsack. If the comparison be not too fanciful, we may liken the different state of the equity of that day from the equity of our own time, to the different condition of certain suburbs of the metropolis at the same periods. Where

the passenger now finds his path clearly marked out by long rows of houses, which prevent him from swerving to the right or to the left, except at known and definite intervals, he might then, in many places, pursue his way as he listed among fields and pastures, unrestrained except here and there by some isolated building. In the same manner, where an equity judge of the present day is hedged in by rules and precedents, so that it is not at his option to adopt the course he pleases, he might then occasionally find himself in a situation where his path was much less confined. Now it is an undisputed fact, that a very considerable proportion of the precedents which at present serve at once as guides and as restraints, both to direct and to control the judgment of the Chancellor, were created by Lord Hardwicke himself. It has already been remarked, that there would be great difficulty in ascertaining to what precise extent he took upon himself to overstep the boundaries marked out by his predecessors; but those who are the most inclined to consider the so doing a serious fault, and to believe him guilty of it, must at least admit that he has amply atoned for his error, by contributing so much to prevent his successors from falling into a similar one.

A point on which he is much more open to censure, is the indifference with which he tolerated in his court grievances it certainly was in his power to palliate, if not wholly to remedy. At least, it unquestionably was his duty to make some attempt towards the redress of them; and that he neglected to do so is assuredly a stain upon his judicial character. Faults of omission, it is true, are generally looked upon with much more indulgence than those of actual commission; but where a duty so imperious is wilfully and designedly neglected, where that neglect is certainly occasioned in part by unworthy motives, and where it is productive of incalculable mischief and injury to a very large portion of the community, too much severity of animadversion can hardly be lavished upon it. As early as the year 1733, that is, before Lord Hardwicke was appointed Chancellor, a Commission had been appointed for inquiring into certain abuses of the Court of Chancery. The result of their researches was not, however, made public till 1740, when he had presided for some years in that court. During this period, he had taken a part

in the proceedings of the inquiry; and his signature is accordingly affixed to the report. As this production laid open to public view some of the numerous abuses, the effects of which had long been the theme of general discussion and complaint, and which, indeed, had given rise to the publication of several works on the subject, it is impossible that Lord Hardwicke could have been ignorant of the evils occasioned by them. That he was eminently qualified to perform the ordinary duties of his station, is a sufficient proof that he had all the necessary information which might enable him to detect and to remedy the causes of those evils. That some effort of this kind was expected from him, he seems to have been fully aware; and three years after the publication of the report, he issued an order for the regulation of some trivial matters connected with the practice of the court, and particularly regarding the fees of solicitors. But had this been put forward as an attempt at reform, it would have been looked upon as nothing short of an absolute mockery; and indeed the Chancellor acknowledged at the time, that he merely issued the regulations as a temporary measure, until some more effectual provisions could be sanctioned by the legislature. Now those provisions were never made nor attempted to be made. For this the chief blame must rest with Lord Hardwicke, who, knowing and acknowledging the necessity of reform, having fully sufficient power and influence to effect it to any extent he might think fit, and having moreover thus pledged himself that it should be effected, presided for twenty years in the Court, without using the slightest endeavour to fulfil his promise. It will not tend to lessen the odium deservedly attached to such a mode of conduct, that the only probable motive which can be assigned for it, is avarice; in other words, that he abstained from suppressing abuses, because those abuses were profitable to him.

But however deep a blot this may appear in the character of a Chancellor, it is necessary to dismiss all thought of it from our minds, when we undertake to examine the merits of his decisions. The manner in which he acquitted himself of the ordinary duties of his office must be estimated, not according to what the state of the Court of Chancery ought to be, or what he himself might have made it, but according to what it actually

was. It is not to be wondered at, if disappointed suitors or envious enemies should have made it a charge against Lord Hardwicke, that he was not so expeditious in delivering his judgments, as the impatience of the former or the malignity of the latter could have desired. But when we find that impartial and disinterested, not to say competent, judges have dwelt with admiration on his mode of conducting the business of the court, and especially (considering the obstacles that stand in the way of expedition) on the dispatch with which it was disposed of, we may safely reject this imputation as frivolous and unfounded. It is the lot of those who occupy eminent stations, to be constantly exposed to calumny and misrepresentation; and the watchful eye which the English public ever keeps on the officers of the law, is very often led to see their failings through an exaggerated medium. "Bread and water," says the amiable and learned Sir John Wilmot, "are nectar and ambrosia, when contrasted with the supremacy of a court of justice;" and all will be inclined to agree with him, who are either too sensitively alive to the influence of vulgar clamour, or cannot find consolation for it in the consciousness of their own abilities. The fact is, that popular outcry on such a subject as this is not worthy of much regard. It may be considered a proof that there are faults in the system against which it is raised, but not that the fault lies with one particular person. When we find that the average number of bills filed yearly in the Court of Chancery, while Lord Hardwicke presided there, fell very little short of two thousand, we cannot in reason feel much surprised that there should have been an arrear of cases on the list, and that some delay should have taken place before each cause could find a hearing. In order to estimate the degree of ability with which any functions are performed, it is necessary first to know what those functions are, and what is the difficulty of executing them. Now, with regard to the Chancellor, this is what none but lawyers are fully acquainted with, and therefore none but lawyers can appreciate the judicial merits of a Chancellor. What may appear unaccountably tedious delay to those who can see no motives for any delay at all, may possibly be considered as extraordinary expedition by those who are aware of the utter impossibility of more speedy dispatch. Nor should it be forgotten,

that a hasty decision is likely to prove, in the end, a much longer method of disposing of a cause than a deliberate judgment. "I have seen," said Bacon, "an affectation of dispatch turn utterly to delay at length; for the manner of it is to take the tale out of the counsellor at the bar his mouth, and to give a cursory order, nothing tending or conducing to the end of the business. It makes me remember what I heard one say of a judge that sat in Chancery, that 'he would make forty orders in a morning out of the way;' and it was out of the way indeed, for it was nothing to the end of the business. And this is that which makes sixty, eighty, an hundred orders in a cause to and fro begetting one another, and like Penelope's web doing and undoing." This applies as well to final decisions as to interlocutory orders in the progress of a suit. During the chancellorship of Lord Erskine, suitors were at first gratified by the expeditious manner in which their claims were discussed and adjusted; but when the successful party found he had to encounter the delays and the expenses of an appeal after judgment had been given for him in Court, he no doubt abated somewhat of the admiration he had felt for the intuitive penetration and the rapid decision of the Chancellor. In the course of twenty years, during which Lord Hardwicke presided in the Court of Chancery, three only of his judgments were appealed from, and those were confirmed by the House of Peers.

The ample stores of legal wisdom which he furnished to the world, while he presided in the Court of Chancery, are treasured in the reports of Atkyns and of Vesey senior. The first volume of the former was published the year after Lord Hardwicke had resigned the seals. The cases, instead of being classed according to the chronological order of decision, were placed under separate heads and titles, after the manner of a digest; but this plan being generally disapproved of, as less convenient for occasional reference, was discontinued in the next volume, (published in 1767), wherein the usual mode of arrangement was adopted. Mr. Vesey's work was not given to the public till 1771. It would be difficult to find in any age or nation, as the production of a single man, a more various or comprehensive body of legal wisdom, than is contained in these volumes. Though upon the whole arranged with more

care than the collection of Mr. Lee, they have not preserved the speeches of the Chancellor with such accuracy, as to convey a distinct impression of the style of his elocution. But however much we may regret, in a literary point of view, the condensed form in which the cases are published, if we look upon them as law reports, their conciseness certainly cannot be considered otherwise than a merit. The work of this nature in which the words of the Judge have been most carefully noted down, is that of Sir James Burrow. This reporter had peculiar advantages. He was not only furnished by Sir John Wilmot with the short abstracts of cases which that judge was in the habit of drawing up with great care from the notes he had taken in court, but it is said that he also regularly submitted his own manuscript to Lord Mansfield for approval and correction, before it went to press. His reports contain, in consequence, a full and minute record of all that fell from the lips of one of the most eloquent men who ever presided in a court of justice; and for entertainment, or in a certain, sense for instruction, they are undoubtedly to be preferred before most of the works that find a place in the lawyer's library. But the practical lawyer who opens them in search of information on any particular point, may often find occasion to regret the copiousness of their detail, and to wish that Sir James Burrow had imitated the conciseness of Atkyns.

In framing his judgments, Lord Hardwicke appears always to have been anxious to bring the case within the scope of some broad general principle. This, however, he never effected by means of forced interpretations or fanciful analogies. He was always careful to support his opinion by the authority of legal precedents, in the selection and application of which he was particularly happy. Again, his regard for principles never betrayed him into the dangerous practice of giving his own judgments in such loose and general terms, as might extend their authority too far. It was his invariable practice to express himself in the most guarded terms, and to mention distinctly the qualifications and restrictions with which he meant his opinion to be received; so that his judgments were effectually prevented from acquiring, as precedents, a wider application than it was his original design to give them. For illustration, and, in the absence of other authorities, for a guide

in his arguments, he frequently had recourse to the civil law, with which, like his illustrious contemporary Mansfield, though not perhaps in so great a degree, he had familiarised himself, and for which, in common with all who have ever made it their study, he entertained the highest respect. It might possibly be in part the result of his acquaintance with the writings of the ancient civilians, that his judicial arguments were peculiarly distinguished by the qualities for which they had been deservedly praised, namely, luminous method in the arrangement of the topics, and elegant perspicuity of language in the discussion of them. When he delivered his opinion on any case of importance, he was so far from wishing or attempting to pass over the objections which had been suggested by those who argued on the opposite side, that he frequently repeated them in such a way as to give them greater force than had been claimed for them at the bar. The masterly manner in which he afterwards refuted them generally called forth the admiration, and extorted the assent, even of those who had originally propounded them. By the constant attention he always paid to the speeches of the Bar, he acquired during the progress of the cause a mass of information, of which he did not fail to find the advantage in drawing up his judgments. He did not affect to be above learning from any, even the youngest and most inexperienced, of the barristers who argued before him; and though it is to be supposed he often had to listen to the redundancies and superfluities which too frequently disfigure the oratory of our courts, (perhaps the Court of Chancery more than any other), his courtesy and politeness always prevented him from testifying the slightest impatience. In this he differed from Lord Mansfield, who, singularly affable and courteous as he was in his general behaviour to the bar, did not always think himself obliged to keep up the appearance of attending strictly to the speakers. During a long reply, for instance, he would generally be, or appear to be, occupied with a newspaper; and at the close of the harangue, carelessly asking the orator whether he had finished, he would immediately proceed to charge the jury. It is true, his charges on such occasions often excited the wonder of his audience, so beautifully lucid was the arrangement of the argu-

ments, so clear the statement of the facts, so plainly were the inferences pointed out. The whole court would be lost in amazement, on finding that the Judge, who had to all appearance been only inattentive to the arguments of counsel, did not omit a single one of any importance when he was summing up. But while they were surprised and delighted by the display of such extraordinary abilities, there never failed to be one or two persons in court, who felt at least as much dissatisfaction as the rest of the audience did pleasure; and those were the neglected orators. Lord Hardwicke never gave in to this failing; for a failing it undoubtedly was, to whatever exhibitions of talent it may have given occasion. He was always careful, not only to listen with patience and attention to the bar, but, what is sometimes of still greater importance, to make it appear that he did so; a practice which no judge, who has it at heart to be popular among his own profession, can safely neglect.

In this respect, also, the evenness and placidity of his temper gave him great advantages. On no occasion was he ever betrayed into ebullitions of temper, such as, both before his time and since, have too often degraded the dignity of our courts of justice. The affability and the courtesy of his general demeanour towards the bar, and the solicitors of the court, to which he had been in no small degree indebted for his professional advancement, was in no wise lessened when he had reached the summit of legal honours*.

In private life he has been accused, not perhaps without reason, of occasionally displaying an undue assumption of superiority, which shewed that his dignity sat less easily upon him than if he had worn it from his birth. But whether he

* An anecdote is related of him, which furnishes an excellent instance of his good-natured attention to suitors, and his tact in administering an indirect rebuke to counsel. In a cause to which a Mr. Cromwell was a party, the advocate opposed to him thought fit to indulge in some very unwarrantable vituperation of that gentleman's ancestry. Lord Hardwicke was aware that the representative of the family happened to be in court at the time, and begging the orator's pardon for interrupting him, he expressed his fears that Mr. Cromwell might find himself inconveniently situated outside the bar, inviting him, at the same time, to take a seat on the bench. It is needless to add, that when the speech was renewed, it was in a very different tone.

felt more anxious for popularity among the members of that profession to which he owed his eminence, or whether the tribute of respect due to his legal rank was more readily paid by them than by society, or whether that he felt less of embarrassment, and a more complete self possession, in court than out of it, he certainly never shewed any signs of haughtiness there; and the placid urbanity of his manners towards those who attended in Westminster Hall, lent an additional grace to the elegance of his diction, the profundity of his learning, and the acuteness of his judgment.

From what has been said of Lord Hardwicke's eloquence, it may be inferred that he was more calculated to shine as an orator on the bench than in Parliament. In the latter place, so long as his subject required nothing more than perspicuous statements and forcible arguments, he commanded as much attention and as much admiration as in a court of justice. The most eminent statesmen and orators of his time have indeed likened him, when speaking, to the personification of public wisdom delivering instruction. But in a public assembly wisdom itself is not all-sufficient; indeed we naturally connect with wisdom the ideas of calmness and consideration, which it need scarcely be said are not always consistent with the warmth of debate. To form a distinguished parliamentary orator, many of the same qualities, no doubt, are necessary as those which are requisite for a judicial one; but others must be added. The one may be compared to a mariner, who sails through unruffled waters, and encounters none but gentle breezes; the other holds his course over a troubled sea, filled with rocks and quicksands, and eddies, and whirlpools; he has to guide his bark through all these perils, in spite of a heavy wind that is continually shifting its quarter, and blows alternately from every point of the compass. This situation calls not only for all the skill and the experience of a practised navigator, but for the energetic promptitude of thought and of action, the undaunted courage, and the mixture of boldness and of caution, which many a practised mariner wants. In like manner, for him who trusts himself to the stormy sea of public debate, the acuteness of judgment, the profoundness of thought, and the facility of elocution, for which Lord Hardwicke was distinguished, are not alone sufficient to ensure

success; especially if it be true, as Lord Chesterfield expressly says, and as there is no reason to doubt, that his oratory savoured somewhat of the pleader. Argument, however sound, expressed in language however elegant, is not always sure of producing an effect in such assemblies as our Houses of Parliament, unless it be occasionally accompanied, not only by wit and satire, but by vehemence of declamation, and even of gesticulation, greater perhaps than strict taste would warrant, in addressing a different auditory. If this be in some degree true of our Parliament, even at this day, it certainly was much more so in the time of Hardwicke, when oratory had more influence, and mere argument less, than at present. The man who had not the sharp and ready weapon of satire at his command, whose very temperament forbade him from soaring into the region of impassioned eloquence, could not expect to hold a prominent place in the golden age of English parliamentary oratory, when in both Houses speakers were held as second-rate, who at many other periods might have aspired to the supremacy then yielded to no less a man than Chatham.

In respect of political knowledge and judgment, also, Lord Hardwicke was far from holding a foremost rank. He certainly appeared to much less advantage in the House of Lords or at the Council-table, than in the Court of Chancery; and yet, by a species of perversity by no means uncommon, he rated or affected to rate his qualifications as a politician much higher than his ability as a lawyer. "Men are apt to mistake," says Lord Chesterfield, "or at least to seem to mistake their own talents, in hopes, perhaps, of misleading others to allow them that which they are conscious they do not possess. Thus Lord Hardwicke valued himself more on being a great minister of state, which he certainly was not, than upon being a great magistrate, which he certainly was. All his notions were clear, but none of them were great. Good order and domestic details were his proper department: the great and shining parts of government, though not above his parts to conceive, were above his timidity to undertake." This passage, and indeed the whole of the character of Lord Hardwicke by the same author, seems written in the spirit of truth and impartiality. It may indeed be said of him, as it has been said

in another sense and with much less truth of Lord Mansfield, that his political career is not the portion of his life which his eulogists can dwell on with most complacency. It should be remembered, however, that a lawyer who enters the arena of politics in competition with those who make politics their study and their profession, labours under a disadvantage almost as considerable as a politician who, without further preparation than could be made in the leisure hours of his principal occupation, should quit one of the houses of parliament to take his seat at the bar or on the bench of one of the courts of law. This consideration seldom has due weight given to it, though the slightest reflection is sufficient to shew that it cannot reasonably be put out of sight, in attempting to estimate impartially the talents of one who combines the functions of the lawyer with those of the statesman. Nor is it only in respect of his inferior opportunities for acquiring political knowledge, that some allowance may be claimed for the lawyer. His profession not only engrosses the greater part of his time; it gives him also habits of thought uncongenial to those of a statesman; and it is to no purpose to argue that none but weak and plastic minds suffer themselves to be influenced by habit. Such is not the fact, and numberless instances might be quoted to prove that it is not. The human intellect, however firm or however elastic, cannot be constantly and for a great length of time bent towards one object, without contracting a bias which will unfit it in some degree for being turned in a contrary direction. A man whose daily and hourly occupation obliges him to keep his mind continually occupied with the most minute details of facts, who is for the most part forbidden to generalise and to speculate, who must hold a strong curb over his imagination, and never suffer even his reason to make a step but with the support and subject to the check of precedent and authority, —such a man, however strong may be his intellect, and whatever efforts he may make to preserve it free from any particular bias, must sooner or later find himself unable to prevent it from feeling that most powerful influence to which our nature has subjected us, the influence of habit.

It is not at present easy to form an estimate of Lord Hardwicke's qualifications, otherwise than from the report of his

contemporaries. The measures adopted by the ministry during his chancellorship are no doubt recorded in the annals of the reign, and are consequently open to criticism; but without some more private information, it is impossible to determine what share he had in the advising of them. The papers left by Lord Hardwicke, which are now in the possession of his representative, comprise his confidential correspondence with the Duke of Newcastle and Mr. Pelham. According to Mr. Coxe, to whose inspection they were submitted when he was writing the memoirs of the Pelham administration, they are a mine of valuable information as to the secret history of the time; but from the few specimens preserved in that work, it would certainly be hazardous to attempt drawing any general conclusion, either as to his general ability, or the responsibility that attaches to him. Horace Walpole says of him, that he had no knowledge whatever of foreign affairs, but what was whispered to him by the Duke of Newcastle; from another quarter we learn, that the Duke of Newcastle never took a single step without the advice of his most trusty counsellor, Lord Hardwicke. It is probable that neither of these accounts is strictly correct. That the first has not the slightest foundation in truth, there exists ample evidence in the correspondence of Lord Hardwicke with the Duke of Newcastle, where the former occasionally exposes his own views on the subject of foreign policy, and the latter never seeks to disguise the importance both he and his brother attached to the counsel as well as the support of the Chancellor. In one letter, written in 1739, after alluding to his great credit and influence as well in the cabinet as in the House of Lords, the Duke makes the following avowal to him:—"It is no disagreeable circumstance, in the high station in which your lordship is, that every man in the House of Lords now knows that yours is the sense of the King's administration, and that their interest goes with their inclinations when they follow your lordship." It is well known that the Duke was naturally timid and wavering; that he dreaded responsibility, and, like other men of the same character, was more inclined to recommend half-measures than to take a decided part. Lord Hardwicke was of a similar turn of mind; and the congenial dispositions of the two ministers may be supposed to have produced a general

coincidence in their opinions, which of course must have made it at all times difficult, and at present impossible, to ascertain with which of them those opinions first originated. The following extract from one of the Duke of Newcastle's letters will shew pretty clearly on what footing they stood with regard to each other in respect of opinions; and at the same time give proof, that however unconscious his Grace might be of timidity and indecision in himself, he was quite aware that his friend was not exempt from those failings. "My brother," he writes, "has all the prudence, knowledge, experience, and good intention, that I can wish or hope in man; but it will or may be difficult for us to stem alone that which with your great weight, authority, and character, would not be twice mentioned. Besides, my brother and I may differ in opinion, in which case I am sure yours would determine both. There has been for many years a unity of thought and action between you and me; and if I have ever regretted anything, it has been (forgive me for saying it) too much caution in the execution, which I have sometimes observed has rather produced then avoided the mischief apprehended."

With regard to domestic policy, the principal measures that are supposed to belong entirely to the Lord Chancellor are, the bill for the abolition of heritable jurisdictions in Scotland, 1747; the act for the naturalization of the Jews; and the Marriage Act, both passed in 1753. The first of these was framed for the purpose of diminishing the feudal power of the chiefs and great landholders of Scotland, which had been found too dangerous in the recent rebellion. The Chancellor introduced it at first into the House of Lords; but it was there objected, that as compensations were to be granted, it came within the rules of a money bill, and must consequently originate with the Commons. It was accordingly sent thither, and passed, though not without considerable opposition. That which it encountered in the House of Lords was comparatively trifling, and it was carried without a division. Lord Hardwicke's manuscript notes of the debate have been preserved, and have furnished the account of it given in the fourteenth volume of Hansard's Parliamentary History. The measure itself was a prudent one, and well justified by reasons of policy. It would be well for the fame

of Lord Hardwicke had he never gone further than this in his demonstrations of loyalty to the reigning family; for it certainly redounds little to his credit, that when on another occasion it was proposed to inflict the penalties of high treason on all who should correspond with the Pretender or his sons, he endeavoured to procure the insertion of a clause to implicate the posterity of the offenders, during the lives of the Pretender's sons, in the same crime, and the same punishment.

Of the two acts passed in 1753, that for the naturalization of the Jews excited so much clamour among all ranks and classes, that the ministry easily consented to repeal it in the following session. To have proposed an act calculated to promote religious toleration, and to remove civil disabilities imposed on account of religious faith, does much more credit to Lord Hardwicke, than the facility with which he yielded to the popular outcry against it. As to the act for the prevention of clandestine marriages, the existence of such abuses as are enumerated in it is sufficient proof that some legislative enactment of the kind had long been wanting; and whatever may be the intrinsic merits of the statute, it is certain that he who conceived and brought it forward, rendered a very signal service to the country. It may be instanced as an almost ludicrous example of the misrepresentation to which the motives of men in public life are liable, that Lord Hardwicke was reported to have brought the subject before parliament, chiefly, if not solely, with the view of taking an effectual precaution against improvident marriages among his own family.

The Marriage Act was not passed without considerable opposition in the Commons. Towards the close of one of the stormy debates to which it gave occasion, Fox used the opportunity to make a very unjustifiable attack upon the character of Lord Hardwicke. He was answered in a spirited manner by one of the Chancellor's sons, Charles Yorke; who in the course of his speech gave Fox to understand that it was dangerous to attack a personage of such authority; and that he might possibly be made to feel it. This hint produced from Fox something like what in parliamentary language is called an explanation; that is, a partial disavowal, or at least a palliation, of what he had previously said. The matter, however, did not end here. Lord Hardwicke him-

self took up the subject in the House of Lords, and commented with much warmth and asperity on the conduct of Fox, whom he designated as a dark, gloomy, and insidious genius, an engine of personality and faction. The greater part of his speech was in this strain. He said Fox had repented of what he had said, but that for his own part he despised his scurrility as much as his adulation and retractation. These particulars would, perhaps, scarcely be worth preserving, but that they afford a singular instance of Lord Hardwicke's being betrayed into losing the command of his temper. In general, he never suffered opposition to ruffle him, and his perfect calmness sometimes gave him an advantage in debate, which might more than compensate for the want of other qualities. On this occasion, however, he gave a full vent to his anger; and what makes his conduct appear the more extraordinary is, that not only several days had elapsed since the provocation, but that he read or affected to read his speech from a written paper, as if determined to shew, that however strong his expressions might be, they were the result of deliberation.

On the death of Mr. Pelham, and the subsequent appointment of his brother, the Duke of Newcastle, to be prime minister (in the spring of 1754), among other promotions which took place was that of the Lord Chancellor to a higher rank in the peerage. He was created Earl of Hardwicke and Viscount Royston. It may appear somewhat extraordinary that these dignities were not conferred at an earlier period, than when he had filled the eminent station of Chancellor upwards of seventeen years. It is certain that the King was willing to confer them much sooner, and it is believed that a proposal to that effect was more than once made to him by the ministry; but either Lord Hardwicke was till then averse from a higher elevation, or he thought fit to yield unresistingly to that species of influence, against which many other wise men, including Socrates himself, have found it a vain and hopeless task to contend:—Lady Hardwicke's consent could not be obtained.

Her ladyship was a woman of most exemplary prudence, and, conscious, no doubt, of her eminent capacity for the management of her family concerns, she suffered no one else to interfere with them; not even her lord himself, who,

as she used to remark, was indebted to her for his reputation as Chancellor, inasmuch as, by taking especial care to keep his mind entirely free from household cares, she enabled him to give its undivided energies to the duties of his official situation. Among the many praiseworthy qualities she displayed in the discharge of the functions she took upon herself, there was none more conspicuous than that of severe economy, a quality which indeed she carried to such a pitch, that most persons chose the word parsimony to convey an idea of it. Now, if she practised this virtue with regard to the most trivial of her household concerns, it was not to be supposed she would neglect to exert it in an affair which mothers are wont to consider a very important one, namely, the marriage of her daughters. So long, she used to say, as they were simply the Misses Yorke, no suitors who might solicit the honour of their alliance would think of insisting upon a larger fortune than ten thousand pounds; but if they became Lady Elizabeth and Lady Margaret Yorke, no less a sum than twenty thousand would probably be expected. Accordingly, their father, who was of a character to appreciate such reasoning as this, was forbidden to aspire to the honours of an earldom until such time as the young ladies should become wives. The eldest being at length married to the celebrated navigator, Lord Anson, and the youngest to a son of Sir Gilbert Heathcote, all impediments to his promotion were removed.

This new accession of rank, however, could add nothing to the extent of his weight and influence in the House of Lords, which is said to have exceeded that of any other nobleman in the kingdom. His high personal character, his eminent station, and his intimate relations with the prime minister, were of themselves sufficient to command for him no ordinary degree of respect and consideration. It is to be wished he had never descended to employ for the same purpose other means less worthy of him; but it is too well known that, with little regard to justice or fair dealing, he used all the arts of intrigue to prejudice those who might divide, and consequently lessen, his authority. Thus it was his favourite design (for obvious reasons) to remain the only law lord, so that an appeal from the Court of Chancery to the Peers might be simply an

appeal from Lord Hardwicke in Lincoln's Inn Hall to Lord Hardwicke in the House of Lords. To effect that object, no exertion was spared to exclude from the peerage, either altogether or as long as might be possible, such men as Parker, Lee, Ryder, and Willes. Against the latter, indeed, who had entered upon his professional career about the same time with himself, he is said to have entertained a rooted and implacable jealousy, which, if the story related of him be true, he took an early opportunity of gratifying at the expense of every principle of honour, by relating to Lord Macclesfield the substance of a private conversation in which Willes had spoken of him with disrespect. It is but fair to remark, however, that such a transaction as this is represented must necessarily have been of so private a nature, that it is easy to conceive the possibility of false rumours being circulated with regard to it; and that so serious a charge should not be admitted without the strictest evidence of its truth.

Some obloquy has been cast upon Lord Hardwicke, on the ground that he disposed of the church patronage belonging to his office with a view rather to increase his own political influence, than to advance obscure merit, or to further the interests of religion. This accusation is undoubtedly just; but whether the fault be a very venial or a highly criminal one, is a question likely to be decided by different persons in very different ways: no one, at all events, will deny that it is a very common one. That he did not bestow a large portion of the emoluments that were in his gift as the rewards of literary merit, if it be a fault at all, is one not likely to escape being exaggerated. There is no class of persons more jealous of what they conceive to be a slight upon their calling, than men of letters; and as they are commonly the directors of public opinion, an unfavourable impression is often widely circulated against men, whose chief crime is that of having offended their fraternity by some real or fancied neglect. Lord Hardwicke has not altogether escaped the lot of those whose reputation has the misfortune to fall under this kind of censure. It has been imputed to him as a crime, that he took away from the poet Thomson the place of secretary of briefs, which had been given to him by Lord Talbot. The fact is, that he did not absolutely take it away. It became

vacant on the appointment of a new Chancellor, and Thomson was either too proud or too negligent to solicit a renewal of the office for himself, though a considerable time was suffered to elapse before it was disposed of, probably with the design of affording him every opportunity of making known his wishes on the subject. Lord Hardwicke's treatment of Dr. Birch seems also to have been somewhat misrepresented. That very worthy and laborious man of letters had been tutor to his son, Charles Yorke, who took upon himself to recommend him for preferment. "From my own acquaintance with him," he writes (1741), "I can only confirm the general character he bears of being a clergyman of great worth, industry, and learning, subsisting at the mercy of booksellers and printers, without any preferment but a small living in the country, which will scarce keep a curate. He is a person of excellent heart as well as head, and by his diligence and general knowledge in most parts of learning, may be made extremely useful to the public." The immediate reply to this letter was an offer of a living in Wales of the value of thirty pounds a year, which Dr. Birch declined accepting. The amount certainly was inconsiderable, but it can hardly be supposed that Lord Hardwicke meant it for anything more than a temporary provision, till some other preferment might become vacant, especially as he did afterwards find another opportunity of being serviceable to him.

According to Horace Walpole, "the best thing that can be remembered of the Chancellor, is his fidelity to his patron; for let the Duke of Newcastle betray whom he would, the Chancellor always stuck to him in his perfidy, and was only not false to the falsest of mankind." Sufficient notice has already been given of this author's exaggerations and misstatements, to prevent his testimony from being received as evidence of anything further than the simple fact, that the political alliance between the Duke of Newcastle and Lord Hardwicke was invariably maintained with perfect fidelity. The resignation of the premiership of the one consequently ensured, as a matter of course, the resignation of the chancellorship by the other. This event took place in the autumn of 1756; and their party, which till that time had maintained such a degree of power as seldom falls to the lot of a ministry,

was suddenly thrown into the ranks of opposition. The failure of the ill-contrived attempt made by the King in 1746, to emancipate himself from their control, had only produced the effect of rendering that control more absolute; and thenceforward he had made scarcely any effort to contend against it. Their own imprudence, however, and the incapacity of some of their members, particularly of the Chancellor's son-in-law, Lord Anson, whose former celebrity was very ill sustained by his administration of the affairs of the Admiralty, at length brought about what the sovereign had no power to effect. The defeat of Byng, and the surrender of Fort Phillip, were events that would have tried the stability of any ministry, even had its opponents been less formidable than were those of the Newcastle party. But towards the close of the year preceding (Nov. 20th, 1755), Pitt, Legge, and George Grenville had received letters of dismission from their respective offices, and James Grenville had resigned the Board of Trade; so that a powerful and desperate opposition was to be expected, which, with such a topic as the disgrace of the English navy to declaim upon, might raise up such a storm of popular indignation as the ministry would in all probability be unable to weather. Under these circumstances, Parliament was prorogued early, to prevent an immediate demand for an inquiry, which could not with any decency have been refused. During the recess, overtures were made to effect a coalition with Mr. Pitt, which however proved ineffectual, as he absolutely refused all terms that did not include the removal of the Duke of Newcastle. Unfortunately for his Grace, the Chief Justice of the King's Bench, Sir Dudley Rider, died in the course of the spring (25th May, 1756), and the vacant office was looked for by the Attorney-General, Murray, who was the Duke's ablest and most confidential ally in the House of Commons. It was in vain that the most brilliant, the most extravagant offers were made to prevail upon Murray to retain his seat only for one day, at the opening of Parliament. He resolutely insisted on being promoted to the chief justiceship, with a peerage; and at length, on his threatening, in case of a refusal, to desert the cause altogether, his demands were complied with. On the same day when he first took his seat in the King's Bench (Nov. 11th, 1756), the Duke of Newcastle resigned. A few days

afterwards (19th November), the Lord Chancellor gave up the great seal, and it was put into commission in the hands of Willes, Chief Justice of the Common Pleas, Wilmot, who the year before had succeeded Sir Martin Wright as one of the puisne judges of the King's Bench, and Baron Smythe.

Such was the close of Lord Hardwicke's career as a Chancellor and a minister. Great efforts were made by the new ministry to induce him to keep his place, but without effect; and in the ensuing summer, when the coalition took place between Pitt and Fox, he was equally resolute in his refusal to resume the seals, which, having been also offered to Lord Mansfield, to the Master of the Rolls, and to Willes, at length fell to the lot of Sir Robert Henley, with the title of Lord Keeper. Besides his disinclination to hold office with the new ministry, it is to be supposed he was not insensible that his advanced age required more repose than was compatible with the arduous duties of his former station. He was now fast approaching his seventieth year, and might well remain satisfied with the dignity and fortune he had acquired in the course of his long and prosperous career. Besides, in giving up his place, he by no means renounced at the same time his political influence. If he had no longer a voice in the cabinet, he still retained in the House of Lords all the weight that could attach itself to one of the chiefs of a party still numerous and powerful.

The King always continued to respect and esteem him. Having inadvertently omitted to recognise him on the first occasion of his appearing at court without the insignia of office, his Majesty no sooner discovered who he was, than he addressed him in the most flattering terms, and complimented him on the length and the value of his services. After the resignation of his office, his time was divided, as it had been before, though with less leisure for the country, between his estate of Wimpole, in Cambridgeshire (which had been the seat of the celebrated Lord Oxford before it came into his possession), and his town residence, which was Powis-house, in Grosvenor-square. With his neighbours at the former place he did not enjoy much popularity. He affected to despise the manners and the acquirements of mere country gentlemen, and generally treated them with a supercilious reserve, peculiarly

offensive to men, some of whom probably looked upon him as nothing more than a titled upstart. Nor was their treatment in other respects likely to please them better. Not only were their horses and servants invariably sent to search for such accommodation as was to be procured at the dirty and miserable public-house in the village of Wimpole, but the thrifty housekeeping of Lady Hardwicke by no means compensated the masters for the inconvenience to which they were put in the persons of their dependents. One monument of her ladyship's economising disposition is still preserved at Wimpole. According to ancient custom, the splendidly embroidered purse, in which the Chancellor is wont to keep the great seal, is annually replaced by a new one; and in virtue of another custom of equally long standing, the discarded purse becomes the perquisite of one of the officers of the court. This latter custom, however, found no favour in the eyes of Lady Hardwicke, who could by no means be convinced of the propriety of giving away, as a mere gratuity, what she could turn to some account herself. She accordingly took upon herself to abolish the practice, and the several embroiderings, in the whole twenty in number, were appropriated to ornament the hangings of a state-room in the house at Wimpole, where, as has been already stated, they may still be seen.

Notwithstanding this peculiarity of Lady Hardwicke's character, she appears upon the whole to have fulfilled in an exemplary manner the duties of a wife and a mother. With her husband she always lived on terms of the most perfect harmony; and indeed it is probable that her excessive love of economy, which others might have considered her greatest failing, was looked upon by Lord Hardwicke as one of her brightest virtues. Avarice was certainly his predominant foible. That a man, who in his youth had been forced to accommodate his expences to the limits of a narrow stipend, should never afterwards be able wholly to divest himself of habits acquired in the school of adversity, is by no means surprising; and if his love of money had displayed itself merely in a disinclination to part with it when acquired, the fault might have been easily excused. But unhappily his cupidity led him to regard the increase of his fortune as a primary object of ambition; and though to accomplish it he never

descended to employ means inconsistent with the strictest integrity, there cannot be a doubt that he sacrificed to it a species of fame which it was in his power to earn, and which it was incumbent on him to deserve. Had he not been deterred by avarice from effecting the reform of the Court of Chancery, he might have left behind him a smaller inheritance to his children, but he would have transmitted to them the glory of being descended from a disinterested benefactor of his country. Lord Waldegrave has said of him, that "he might have been thought a great man, had he been less avaricious, less proud, less unlike a gentleman, and not so great a politician." Sufficient has already been said to account for the first and the last of these charges. The two others may be looked upon as one. The pride of wealth and of station, even the pride of intellectual endowments, which is perhaps less offensive than either, can scarcely be made very manifest, without subjecting him who exhibits them to the imputation of being unlike a gentleman.

Although Lord Hardwicke devoted a part of the leisure which his numerous duties left him to the cultivation of general literature, it is not to be supposed that he could have much time to spare for composition. Accordingly, there remain few specimens of his style in writing, though, were we to judge of it only from his mode of speaking, we might safely pronounce it to have been easy and elegant. Some memoranda and familiar letters have been preserved by Dr. Birch, among which is a Latin one addressed to Dr. Clerk (Samueli Clerico), dated Sept. 15th, 1724; and some political papers are still in the possession of his family. It is supposed also that he had some share in the composition of the work entitled "A Discourse of the Judicial Authority of the Master of the Rolls," usually attributed to his wife's uncle, Sir Joseph Jekyll, who filled that post; but the supposition has never been authenticated. The only tract of any importance that can be confidently attributed to him, is a letter to the Scottish judge, Lord Kaimes, which has been inserted in the first volume of the memoirs of the latter, written by Lord Woodhouselee. Previously to the publication of his "Principles of Equity," in 1760, Lord Kaimes had communicated the introduction of the work to Lord Hardwicke, and the letter in

question is a dissertation on some of the topics proposed for discussion. Lord Hardwicke does not profess to go at length into the arguments that may be adduced in support of his opinions. "The field," he says, employing a sporting metaphor, "is wide, and to range the whole is beyond my strength; but I will beat a piece of ground here and there, to try if I can start anything that may be worth your Lordship's pursuing." After some preliminary comments on the separation of common law from equity, he proceeds: "Whether the jurisdiction of common law and equity ought to be committed to the same or to different courts, is a question of another nature, and is very properly said by you to be no less intricate than important. It is a question of policy and legislation, depending upon general reasons of civil prudence and government. You have treated it with great modesty; and for my own part, I am fearful of being influenced by some prejudice or bias contracted from long habit and the usages of my own country." Notwithstanding this candid avowal, however, he examines the question with great impartiality, deciding at length in favour of the separation of the courts. He afterwards passes to the consideration of the restrictions that ought to be placed on the discretionary power of an equity judge. He acknowledges the necessity of some restraints; but represents at the same time the disadvantage of increasing them in such a degree, as to confine that power within as narrow limits as in a court of common law. The reasoning, though not fully developed, is quite worthy of Lord Hardwicke; the whole letter is elegantly written, and it affords at the same time a specimen of his peculiar manner of treating legal subjects, and evidence of his freedom from prejudice, in consenting to enter into a deliberate discussion upon doubts, the very mention of which some Chancellors would have held to be nothing short of an insult.

All the powers of his vigorous and commanding intellect were preserved unimpaired to the latest period of his life, so that he retained the ability as well as the inclination to enjoy the pleasures of literary occupation. The hand of time had also been laid so gently on his frame, that he knew little or nothing of the usual infirmities of age. By a constant adherence to the strictest temperance, he had repaired the defects

of a constitution originally by no means robust; and his health was uniformly good, until near the close of his seventy-third year, when he began to suffer from the attacks of the disease which not long afterwards put a period to his existence. His death took place at his house in Grosvenor-square, on the 6th of March, 1764. His remains were interred at Wimpole.

The evening of Lord Hardwicke's life was as serene and unclouded as the former part of it had been brilliant. It would be difficult to point out an instance of a longer or more uniform career of prosperity than that which he enjoyed. Entering the world without the advantages of birth or fortune, unfriended and unknown, he had overleaped with unexampled rapidity and ease the obstacles which, in the profession he had chosen, usually impede at the very outset the exertions even of men of wealth, rank, and powerful connexions. No more singular instance can be quoted of his good fortune, than that the party in which he enrolled himself should remain in power for a length of time almost unparalleled in the history of English ministries. With equal or even superior abilities, had he from the first attached himself to the Opposition, instead of to Sir Robert Walpole and his allies the Pelhams, it is clear he never would have enjoyed an opportunity of signalising his knowledge and his talents in any official situation. That abilities, however transcendant, would never have obtained him such easy promotion as he gained through the influence of favouritism and patronage, is a fact that will surely be disputed by no one who is acquainted with the usual course of legal preferment; but, at the same time, it is equally certain that he never would have been able to improve his first advantage as he did improve it, without the aid of talents and acquirements of no ordinary kind. Though he owed much, therefore, to his good fortune, that circumstance detracts nothing from his real merit.

Besides the dignified offices which were permanently conferred on him, he was, at four several times, appointed one of the Lords Justices for the administration of the government during the King's excursions to Hanover. He also on three different occasions received the commission of Lord High Steward of England. In 1749, on the Duke of Newcastle's resigning the office of High Steward of the University of Cam-

bridge, to accept that of Chancellor of the same body, Lord Hardwicke was elected to the place his friend and patron had vacated; and the same dignity has since been successively conferred on his son and his grandson. Of his five sons, the eldest, Philip, who succeeded to the title, and addicted himself with some success to literary pursuits, married the Marchioness Grey, who was grand-daughter to the Duke of Kent, and a daughter of the Earl of Breadalbane. The third son, Joseph, after having been a considerable time ambassador to the States of Holland, was created Lord Dover in 1788; the fourth, John, did not distinguish himself in any public capacity, but held the sinecure offices of Clerk of the Crown and Registrar of Bankrupts; the fifth, James, was Bishop of Ely. The marriage of his two daughters has already been mentioned. It only remains to be added, that his second son, Charles Yorke, followed the profession in which his father had so eminently distinguished himself, and followed it with such success, that he also became Chancellor; though unfortunately a premature death prevented him from acquiring in that situation the reputation which his learning and his talents must otherwise have ensured him. His acceptance of the great seal, in January 1770, gave such displeasure to his brother, to Lord Rockingham, and others of the party with which he was connected, that, stung with the coldness and the reproaches he had encountered in an interview with them, he no sooner arrived at his house in Ormond Street, than he drank freely of some brandy which happened to be on the sideboard. The ardent spirits, combined with the strong irritation and the nervous excitement of his mind, brought on a violent paroxysm of sickness, which occasioned the rupture of a blood-vessel, and he lived but a very short time afterwards. The newspapers of the time hinted that he had put a period to his own existence, a rumour to which the mode of his death, and the apparent symptoms of violence indicated by the copious effusion of blood, no doubt at first gave rise. His relatives, however, took the best means to contradict this report, by causing his body to be exposed to the view, not only of family friends and acquaintances, but even of domestics, so that no doubt could be entertained as to the real cause that terminated his life.

The last century produced conspicuous examples in public life, of the descent of talent as well as honours from father to son. Thus the illustrious Lord Chatham gave birth to William Pitt; with different degrees of merit, Lord Holland was the father of Charles Fox; and Sir Robert Walpole, of Horace Lord Orford. Such instances appear to have been generally less rare in the profession of the law than in any other. When Bacon presided in the Court of Chancery, he had it to say that "there were three of the king's servants in great places: Mr. Attorney, son of a judge, Mr. Solicitor, likewise son of a judge, and himself a Chancellor's son." Heneage Finch, the son of Lord Chancellor Nottingham, elevated himself by his legal acquirements to the rank of Earl of Aylesford; and nearer our own time, the son of Chief Justice Pratt has presided, first in the Common Pleas, and afterwards in the Court of Chancery, where his name as Lord Camden will long be held in veneration. To this catalogue of lawyers by descent, which may no doubt be greatly enlarged, must be added the name of Charles Yorke. His career, though short, was eminently successful; and the talents of which he had given proof afforded such promise of future celebrity, that he was universally looked up to as likely to become one of the most brilliant ornaments of that profession, to which his father had been indebted for all his wealth, his dignities, and his fame.

SIR WILLIAM BLACKSTONE.

AMONG those who have risen to eminence by the profession of the law, none have obtained a more extended and durable reputation than Sir William Blackstone. The eloquence of the advocate only charms his contemporaries, and he is little remembered when no more heard; the wisdom of judges of the past time lies hid in voluminous reports, and is known only to the initiated; but the fame of the Commentaries is universal: they are at the present day as highly esteemed as when first published—they are studied by every one who wishes to become a lawyer—they are read by every one who considers it interesting to be acquainted with the political institutions or civil regulations of his country. The labours of Blackstone make smooth and pleasant the entrance of the student into the dry and intricate system of technical law,

"and charm
His painful steps o'er the burnt soil."

Of him, then, to whom every lawyer is under so great obligations, it cannot be uninteresting to know the history.

William Blackstone was born on the 10th of July, 1723, in Cheapside. He was a posthumous son; his father, Mr. Charles Blackstone, a silkman by trade, having died some months before his birth. This his biographer and brother-in-law, Mr. Clitherow, deems a providential circumstance, although apparently a misfortune. "For," says he, "had his father lived, it is most likely that the third son of a London tradesman, not of great affluence, would have been bred up in the

same line of life, and those parts, which have so much signalised the possessor of them, would have been lost in a warehouse, or behind a counter." His mother belonged to a family of some consideration; she was the daughter of Lovelace Bigg, Esq., of Chilton Folliot, in Wiltshire. On her being left a widow, her relations took charge of the education of her children. The two eldest lads, Charles and Henry, were taken by their uncle Dr. Bigg, Warden of Winchester School; they afterwards both became Fellows of New College, Oxford, and obtained livings. Another uncle, Mr. Thomas Bigg, a surgeon in Newgate-street, provided for the subject of the present memoir. When seven years old, he was sent to the Charter-House, and in 1735 was admitted on the foundation, one of his mother's cousins having procured the nomination of Sir Robert Walpole.

Here his proficiency was so great, that he soon became the favourite of the masters, and at the age of sixteen was at the head of the school. About this time he first displayed his literary abilities by some verses on Milton, for which he was rewarded with Mr. Benson's gold medal. Although but young, he was thought sufficiently forward to be removed to the university; and accordingly, on the 30th November, 1738, he was entered a commoner of Pembroke College, Oxford,— "a society," says Johnson, himself a member, "which for half a century has been celebrated for poetry and elegant literature." He was here contemporary with Shenstone, and Moore, afterwards Archbishop of Canterbury. Master Blackstone, however, did not proceed to the university immediately, but was allowed to remain at school until after the 12th of December, the anniversary commemoration of the foundation of the Charter-House, in order that he might speak the customary oration in honour of Richard Sutton, which he had been at the pains to prepare.

Such was his merit, or such his interest (for he who was nominated by Walpole must have had some interest), that he obtained two exhibitions, to one of which he was elected by the governors of Charter-House, to the other by the fellows of Pembroke College.

He seems from the first to have made up his mind to follow the profession of the law, being doubtless prompted by

that desire of distinction which his success at school had served to stimulate, for we find that he entered himself a member of the Middle Temple on the 20th of November, 1741 (being then eighteen); nor did he lose any time in qualifying himself for practice, but was called to the bar so soon as the probationary period of five years had expired, viz. on the 28th of November, 1746.

Previously to this, he had removed from Pembroke to All Souls; and in June, 1744, had become a fellow of the latter college. All Souls was no less celebrated for lawyers than Pembroke was for literati; he himself mentions Lord Northington and Chief Justice Willes as fellows of this society, and (space permitting) it might be pleasing to speculate on the influence which this association with literature and law had upon Blackstone:—

> "When first the college rolls receive his name,
> The young enthusiast quits his ease for fame;
> Through all his veins the fever of renown
> Spreads from the strong contagion of the gown."

In June, 1745, he graduated Bachelor of Civil Law. Upon obtaining a fellowship, and a consequent improvement of his revenue, he took chambers in the Temple, and divided his time between London and Oxford.

At Oxford he had diligently progressed in the study of the classics, mathematics, &c.; and, before he was twenty, had compiled a Treatise on the Elements of Architecture, illustrated by plans and drawings from his own pen, which, however, he did not publish. An eminent architect of the present day, to whom a few years since the work was referred for an opinion upon its merits, after criticising minutely that portion of it which related to the more ornamental part of the art, expressed his astonishment that any person not intended for the profession should have entered so elaborately, and reasoned so justly, upon what is generally supposed the least fascinating division of the study, viz. the different modes of construction of buildings, the various preparatory mechanical contrivances, the soil best suited for foundations, and other of the laborious minutiæ of that scientific art. He devoted, too, no inconsiderable portion of his time to the

fascinations of polite literature, and had become accomplished in the art of poetry. But, upon betaking himself to read the law, he deemed it necessary to abandon this pleasing employment. To do this required no little resolution, and he has embodied his regretful feelings in some elegant lines, which were afterwards printed in Dodsley's Miscellanies. These verses display a cultivated taste, and an intimate acquaintance with our most admired poets, with whose writings we may trace several coincidences. To his early predilection for poetry, we may reasonably attribute the formation of that exquisite style and method with which he afterwards embellished and illustrated the law. For nothing so well can teach us that propriety of expression, that felicity of illustration, and that symmetry of method, by which the most abstruse subject may be rendered clear and delightful, as the study of the works of those who may be styled the masters of language. He who would convey information must learn to please, otherwise he may pour forth stores of knowledge without much improving his hearers; and the art of poetry is nothing more than the art of pleasing by a combination of words and images. Almost every lawyer who has risen to any enviable eminence, if not, like Blackstone, a poet himself, has nevertheless so far indulged a partiality for the belles lettres, as to have been the friend of poets and the associate of wits. Mansfield, Cowper, Harcourt, Talbot, and Stowell, are names which immediately occur to us. The "viginti annorum lucubrationes," which, according to computation, are required to form a perfect lawyer, may without danger be interspersed with lighter and more miscellaneous studies, in the same manner as we may dine on a variety of dishes without injury, nay, even with advantage to our health. The student requires not to be encouraged in relaxing pursuits; it may however console him to know, that they are not absolutely inconsistent with his duty.

Notwithstanding this relinquishment of the delightful employment of his youth, we find that Blackstone had one relapse. This was on the occasion of the death of Frederick, Prince of Wales, in 1751, when, at the instance of his brother-in-law, he composed an elegy, which appeared in the Oxford Collection. He cared not, however, to be again caught toy-

ing with the muse, and therefore exacted from his relative a promise of secrecy, which that pious person presumed not to violate until after Sir William's death.

Whether his expectations of success at the bar were humble or high, it may be conjectured, without much hazard, that they were disappointed. In fact, from 1746 to 1760, he only reports himself to have been engaged in two cases, and those so unimportant, that they are not mentioned in any other book. But we are told that, at this period, he became acquainted with several of the most eminent men of the legal profession, who saw, through the then intervening cloud, that genius which afterwards burst forth with so much splendour. From the time of his call to the bar until Michaelmas Term 1750, he appears to have regularly attended the Court of King's Bench, and taken notes of cases. In these, however, we may perceive a gradual relaxation of diligence, symptomatic of hope deferred; and latterly the only cases are those concerning the universities, in whose affairs Blackstone always took an especial interest.

In his "Farewell to his Muse," he thus salutes his profession:—

> "Then welcome business, welcome strife,
> Welcome the cares and thorns of life,
> The visage wan, the pore-blind sight,
> The toil by day, the lamp by night,
> The tedious forms, the solemn prate,
> The pert dispute, the dull debate,
> The drowsy bench, the babbling hall,
> For thee, fair justice, welcome all."

The contemplation of justice alone was, however, inadequate to reconcile him to these things, or to keep him in London, where, we are told, his expenditure exceeded his receipts. More prudent than Cortes, who, when he landed in Mexico, burned his ships to render retreat impossible, he did not abandon his fellowship as he had done his poetry, nor did he cease to cultivate his Oxford connexions. On the contrary, he passed much of his time in that city, and engaged himself actively in university affairs. He was elected Bursar of his college; and, in May 1749, was so lucky as to obtain the appointment of Steward of the College Manors, and also to be elected Recorder of Wallingford, on the resignation of his

uncle. In 1750, he took his degree of Doctor in Civil Law, and thereby became a member of the convocation.

About this time the College of All Souls was troubled by the numerous claims of those who were related to Archbishop Chichele, the founder, by which they were prevented from electing "learned and ingenious individuals" into their society. This gave occasion to Blackstone's first publication—"An Essay on Collateral Consanguinity." In this pamphlet he endeavoured to prove, that as the Archbishop, by the canons of the Roman Church, could have no legitimate lineal descendants, the great lapse of time had extinguished collateral consanguinity, and that all mankind might be presumed equally akin to the founder. This doctrine was rather ingenious than convincing; and when, in 1762, the college, acting on it, rejected the claim of one of the founder's kinsmen, who appealed to Archbishop Secker as Visitor, the archbishop, with a common-law judge and a civilian as his assessors, decided in favour of the appellant, notwithstanding the argument of Blackstone, who was of counsel for the college. Afterwards, when raised to the bench, he was chosen by Archbishop Cornwallis as one of his assessors, and assisted in framing a regulation which did away with the inconvenience to the college, without much violating the intention of the founder.

Although his hopes of advancement at Westminster Hall had been disappointed, and although he had sufficient employment at Oxford to make his time pass without tedium, and sufficient revenue to free him from anxiety, he was not deterred from attempting

> "Things unattempted yet in prose or rhyme."

He formed the design of reducing into system the common law, which had hitherto lain in scattered fragments in the reports, or in large masses in the Institutes of Coke, "rudis indigestaque moles"—of treating with elegance a subject on which the graces of composition had never before been bestowed—of teaching, in a place where it had never before been taught, a science which no one there desired to learn. With the dignity of a doctorship, the convivial society of a college, a respectable reputation, and an easy income, he persevered in his herculean undertaking, and completed his plan. With

every inducement to indolence, he was not idle—with none of the ordinary motives of exertion, he worked:—

> "Fame is the spur that the clear spirit doth raise
> (That last infirmity of noble minds)
> To scorn delight, and live laborious days."

Too much praise cannot be bestowed upon Blackstone, for having resisted all those temptations which have seduced so many men of promise, and which are, perhaps, harder to be overcome than any other of the difficulties that beset us in life. Too much gratitude cannot be paid to him by lawyers, for his gratuitous and invaluable present to his profession. It should be recollected, too, that he was not fluent in speech, and it may be inferred that his pen was not that of a ready writer. The composition of every sentence was probably an effort of mind; and although his labour in collecting the materials for his work must have been incalculable, it cost him more pains to mould them into form. In confirmation of this we may mention, that, although a temperate man, he made use of the excitement of wine to quicken the operations of his mind, and that he composed the Commentaries with an inkstand on one side and a bottle of port on the other.

It was most likely after Michaelmas Term, 1750, when he grew weary of

> "The drowsy Bench and babbling Hall,"

that he began to prepare his lectures upon the laws of England, which formed the basis of the Commentaries. In Michaelmas Term, 1753, he delivered his first course at Oxford. What with the novelty of the undertaking, and his own reputation at the University, he obtained a very numerous class, and many of the first men attended. In fact, his lectures became quite popular, perhaps as much from their strangeness as their excellence, and all the idlers of the University flocked to hear Dr. Blackstone lecture on the law. It is related of him, that during all the time he delivered these lectures, he never kept his audience waiting even a few minutes. It is some evidence that he had a considerable number of disciples, that in the next year, 1754, he published his Analysis of the Laws of England, as a guide to those who attended his lectures.

His fame had by this time extended itself beyond the narrow precincts of Oxford, and his abilities had gained him the esteem of more discerning judges than the under-graduates of the University. Thus, when, in the year 1752, the chair of civil law fell vacant, the Duke of Newcastle consulted Murray, then Solicitor-General, as to the person on whom to confer the appointment. The Solicitor-General strongly recommended Dr. Blackstone. The Duke, with characteristic caution, desired to see the candidate, in order that he might himself form an opinion as to whether he was qualified in every respect for the office. Dr. Blackstone was accordingly introduced. "I presume," said his Grace, "in the event of any political agitations in the University, that your exertions may be relied upon in behalf of the government." "Your Grace may be assured that I will discharge my duty in giving law lectures to the best of my poor ability." "And your duty in the other branch too?" inquired the Duke. The doctor bowed. A few days afterwards Dr. Jenner was appointed Regius Professor of Civil Law.

In this year, Dr. Blackstone was engaged as counsel in the strongly contested election for the county of Oxford. This gave occasion to his "Considerations on Copyholders," which, at the instance of his client, Sir Charles Mordaunt, he published. Sir Charles, however, did not rely on the ingenuity of Blackstone to unravel this Gordian knot, but more adroitly solved the difficulty by an act of parliament.

He was now assessor in the Vice-Chancellor's Court, and one of the delegates of the Clarendon Press, which he much improved, and otherwise employed himself to the advantage of the University.

In 1756, he resumed his attendance at Westminster, and he appears from this time until 1759 to have come up to town every winter, and shewn himself in court each Michaelmas and Hilary Term, for the purpose, doubtless, of making himself known. He does not record that he was engaged in any cause.

Mr. Viner having bequeathed a large sum of money, and a larger abridgement of law, to the University of Oxford, for the purpose of instituting a professorship of common law, it became necessary to appoint a professor. All eyes were turned

towards Dr. Blackstone as the fittest person for that office, and he was accordingly, on the 20th Oct. 1758, unanimously elected first Vinerian Professor. He lost no time in entering upon the duties of his professorship, and on the 25th of the same month delivered his Introductory Lecture on the Study of the Law, now prefixed to the Commentaries, which for elegance of composition is perhaps not excelled by anything in the language.

His lectures soon became so celebrated, that he was requested to read them to the Prince of Wales (afterwards George the Third); but being at that time engaged with a numerous class of pupils at Oxford, whom he did not think it right to leave, he declined the honour. However, he transmitted copies for the prince's perusal, and his royal highness, far from being offended, sent the doctor a handsome present in acknowledgment of his merits.

Thinking that he had now established a reputation from which he might reasonably hope for advancement, he resigned his employments of assessor in the Vice-Chancellor's Court, and Steward of All Souls' Manors, and in June, 1759, purchased chambers in the Temple, where he came to reside; only visiting Oxford at the periods required by the duties of his professorship. This time, his hopes, being better founded, were soon realised; although we do not find that he appeared in court in any case of importance until Trinity Term 1760; nor, indeed, does it seem that he ever acquired much celebrity as an advocate. His name does not occur in the reports anything like so frequently as those of Norton, Morton, Dunning, &c., yet doubtless he obtained a considerable share of practice as a chamber counsel; and the opinion of one, who it was known had so thoroughly investigated the laws, must have been deemed valuable, and much sought after.

Lord Chief Justice Willes and Mr. Justice Bathurst invited him to take the coif. This he declined, either not being ambitious of that ancient and honourable degree, or thinking that the expense more than counterbalanced the honour and privileges acquired thereby. So that now, instead of sitting in briefless despondency on the back benches, he actually had judges soliciting him to plead in their courts.

This year (1760) he published his edition of Magna Charta,

and a tract on the Law of Descents. The former work occasioned a short controversy between him and Dr. Lyttelton, Dean of Exeter, afterwards Bishop of Carlisle. The dean had furnished Dr. Blackstone with an ancient roll, containing both the Great Charter and the Charter of the Forest, of which the doctor made no use, not deeming it original. The dean was angry that the authenticity of this family property (it belonged to his brother, Lord Lyttelton) should be doubted; he therefore exhibited his roll to the Society of Antiquaries, who returned him thanks, and decided in his favour. Out of respect to that learned body, of which he was now (May 1762) a member, Dr. Blackstone presented a memoir in support of his view of the question. The chief point in dispute between the dean and the doctor was, whether the great seal had ever been appended to this roll. The dean asserted that most indubitably it had, from the fact of some threads remaining, by which another piece of parchment had evidently been attached. The doctor contended that it was only the commencement of an old copy of statutes, and that the threads had probably connected it with other parchments containing the continuation, and proved, moreover, that it was not usual to attach the royal seal to a charter on a separate piece of parchment. He also furnished the society with a description of an antique seal, in a letter to the Hon. Daines Barrington, which letter contains a very graphic account of the dispute between the prelates and popular party, in the reign of James the First, with respect to ecclesiastical jurisdiction. It is printed in the third volume of the Archæologia.

The first cause of any interest which he was entrusted to argue, was that of Robinson v. Bland, in Trinity Term, 1760. The point in dispute was, whether a gaming debt, contracted in France, could be recovered in this country. Blackstone had to contend that it could not. His argument, if we may trust his own report, was elaborate and ingenious. The following passage is extracted as a specimen:

"It is suggested that this is a positive law:—that there is no vice in the contract—no moral turpitude in fair gaming. But is there any in stock-jobbing, in insuring the exportation of wool, in a marriage contract, or in suing out an original after six years are expired? Yet no transaction of this kind

will be countenanced in our courts, whether the cause of action arose at home or abroad. It is not a necessary ingredient to vitiate a foreign transaction, that it must be accompanied with moral turpitude. Reasons of foreign or domestic policy will make it frequently improper to enforce a contract against the positive law of the state.

"But is there no degree of moral turpitude in excessive gaming, such as risking £700 at a sitting? There is at least extravagance, and probably distress to a man's self, his family, and dependents in every relation of life. Gaming to excess gives a loose to every furious passion that deforms the human mind. What this excess is the laws have ascertained. In gentlemen, by stat. 14 Car. II., it was £100 at a sitting; by 9 Ann. it is £10; in tradesmen, by the Bankrupt Laws, it is £5.

"This Court will not give a sanction to this fashionable vice, nor suffer our travelling nobility and gentry to fall a more easy prey to it than they are already. If they lose only ready money in France, our laws indeed cannot assist them: but the loss is then limited, and the consequence less pernicious. But gaming on trust is big with ruin, which in its nature cannot be computed."

In the next cause in which he appears to have been engaged, the question argued was, in a legal point of view, decidedly the most interesting that ever came before the courts of this country,—namely, the common-law right of literary property. The action was brought by the sons and executors of the celebrated Jacob Tonson against one Collins, for pirating their copyright in the Spectator. The case was first argued in Trinity Term 1761, by Wedderburn for the Tonsons, and Thurlow for Collins, and again in Michaelmas Term following, by Blackstone on the one side and Yates on the other. Of Blackstone's admirable argument we must content ourselves with giving the following passages, and doubt not that they will tempt our readers to refer to his Reports, where the perusal of the entire debate will afford both instruction and delight:—

"The Roman Law of Accession (hinted at in the former argument) was founded on very absurd principles. If one wrote a poem on another man's paper, the poem belonged

to the owner of the paper, and not to the poet. Surely a satisfaction for the paper was all that the owner was entitled to. The same law, in the same breath, gives testimony of its own unreasonableness. If a picture be painted upon my tablet, it belongs to the painter. For it is ridiculous (says the emperor) that the painting of an Apelles or a Parrhasius should follow the property of a worthless board. Certainly there is as little reason that the works of a Bacon or a Milton should be come the property of the stationer, upon whose paper they might casually be written. But, absurd as this law is, it is not absurd enough to say, that the owner of the paper acquired any more than a right to that identical copy. It never supposed that he acquired a right to the sentiment, so as to multiply copies. For this being the usual way of rewarding the labour of an author, it would be unjust to make him a sharer in the reward who has been no sharer in the labour. It is the only species of property whereof authors are usually possessed; and it would be doubly hard to take from them their only means of subsistence.

"Printing is no other than an art of speedily transcribing. What, therefore, holds with respect to manuscripts, is equally true of printing. If an author has an exclusive property in his own composition, while it is in the mind,—when clothed in words,—when reduced to writing,—he still retains the sole right of multiplying the copies, when it is committed to the press. The purchaser of each individual volume has a right over that which he has purchased; but no right to make new books, and gain perhaps £500 at the original expense of only 5*s*.

"This answers Mr. Thurlow's question concerning the extent of the present remedy. 'Does it lie against the keepers of circulating libraries, who buy one book and lend it to a hundred to read?' Certainly not. The purchaser of a single book may make any use he pleases of it; but no man, without leave from the author, has the right to make new books, by multiplying copies of the old. If a man has an opera-ticket, he may lend it to as many friends as he pleases; but he may not counterfeit the impression, and forge others. The owner of a single guinea may barter it, or lend it, as he pleases, but he may not copy the die and coin another.

"It is necessary to sift this right to the bottom, and to argue upon principles, as it probably will be a leading precedent; and it is more satisfactory, first to convince by reason, than merely to silence by authority."

In his reply, he thus ably distinguishes between literary productions and mechanical inventions:—

"Style and sentiment are the essentials of a literary composition. These alone constitute its identity. The paper and print are merely accidents, which serve as vehicles to convey that style and sentiment to a distance. Every duplicate, therefore, of a work, whether ten or ten thousand, if it convey the same style and sentiment, is the same identical work which was produced by the author's invention and labour. But the duplicate of a mechanic engine is, at best, but a resemblance of the other, and a resemblance never can be the same identical thing. It must be composed of different materials, and will be more or less perfect in the workmanship. Although, therefore, the inventor of a machine may not be injured at common law, by the sale of a work made like his, it will not follow, that an author is not injured by the surreptitious sale of a work that is absolutely and specifically his own. The proprietors of the Spectator were not injured by the sale of the Rambler, which resembled their composition; but we say they are now injured by the sale of the Spectator itself.

"There is a distinction, then, in the nature of the things compared together; and there is also a distinction arising from public convenience. Mechanical inventions tend to the improvement of arts and manufactures, which employ the bulk of the people; therefore they ought to be cheap and numerous; every man should be at liberty to copy and imitate them at pleasure; which may tend to further improvements. However, a temporary privilege may be indulged to the inventor for a limited time, by the positive act of the state, by way of reward for his ingenuity. This inconvenience will soon be over, and then the world will remain at its natural liberty. But as to science, the case is different. That can, and ought to be, only the employment of a few. And one printing-house will furnish more books than any nation can find able readers; which differs it still more from the case of

mechanics, of which very few in comparison can be constructed, under the inspection of the author."

This last sentiment is not exactly in accordance with the spirit of the present times, or the principles of the Society for the Diffusion of Useful Knowledge.

This case, which was the first in which the common-law right of literary property was mooted, is only reported by Blackstone. The judges were of opinion for the plaintiff, but it was carried, on account of its importance, into the Exchequer Chamber. It was then discovered that the defendant was merely nominal, and that all the expenses were paid by the Tonsons; in consequence of which the judges refused to give judgment. Blackstone afterwards argued in support of the same side of the question, in Millar v. Taylor; and when, in 1774, the conclusive case of Donaldson v. Beckett came before the House of Lords, he shewed by his judicial opinion that he had argued from conviction.

In 1761, the appointment of Chief Justice of the Common Pleas for Ireland was offered to him, which he declined. In March of the same year, he was returned to Parliament for Hindon, in Wiltshire, and on the 6th of May following was gratified with a patent of precedence. The day before this he was married to the daughter of James Clitherow, Esq., of Boston House, in the county of Middlesex, the then representative of an old family in that county, and grandfather of the present possessor. Honours and happiness thus flowed in thick upon him.

By his marriage he vacated his fellowship, yet was he not a loser, for the Earl of Westmoreland, the Chancellor of the University, in the July following appointed him Principal of New Inn Hall. This not only gave him an additional dignity in the University, but afforded him an agreeable residence when he went there to deliver his lectures. He had it in contemplation to make New Inn Hall a society for students of the common law, by annexing the Vinerian Professorship to the Principality, and constituting Mr. Viner's fellows and scholars members of that Hall. But this plan was not approved by the Convocation.

His presence at Oxford was so much desired, or his professorship so much coveted, that an attempt was made to take

from him the power of appointing a deputy to read the solemn lectures, one of which is directed to be read every academical term. Upon this he printed a statement of his case for the use of the Members of Convocation, and the ungenerous proposition was heard of no more.

Upon the establishment of the Queen's household, in 1763, Dr. Blackstone was appointed her Majesty's Solicitor-General, and at the same time was chosen a Bencher of the Middle Temple.

Before this he had collected his Tracts, and published them in two volumes octavo; and in 1765 appeared the first volume of the Commentaries. Thus there was an interval of twelve years between the delivery of his lectures at Oxford and the publication of the Commentaries; and although it has been remarked that at the time Blackstone wrote his great work he had seen but little practice, it was doubtless considerably improved by his subsequent experience. Of the Commentaries so much has been said, that it is almost impossible to say anything new. We will speak of them, then, in the words of a master,—one who, having investigated their foundation, is competent to judge of the learning displayed in them, and who, being himself gifted with a congenial mind, is qualified to speak of their elegance. "It is easy," says Mr. Justice Coleridge, "to point out their faults; and their general merits of lucid order, sound and clear exposition, and a style almost faultless in its kind, are also easily perceived, and universally acknowledged: but it requires, perhaps, the study necessarily imposed upon an editor, to understand fully the whole extent of praise to which the author is entitled; his materials should be seen in their crude and scattered state; the controversies examined, of which the sum only is shortly given; what he has rejected, what he has forborne to say, should be known, before his learning, judgment, taste, and, above all, his total want of self-display, can be justly appreciated."

Like a bee among the flowers, Blackstone has extracted the sweet essence of all former writers, and left their grosser matter. We find in the Commentaries the copious learning of Coke, the methodical arrangement of Hale, Gilbert, and Foster, combined with the smooth and pleasing style of Addison and Pope. The publication of them formed an era in legal literature, and

since their appearance law-treatises have not been by any means so much as formerly a mere collection of decided points, loosely strung together, with little to connect them and nothing to explain, more valuable for the references in the margin than the matter in the text. The design of Blackstone is to give a general statement of the doctrines of our law, and a general account of our political institutions. In this he has been eminently successful; but we are not to expect to find those doctrines discussed upon principles of jurisprudence, or those institutions inquired into with regard to any Utopian theory. He is rather a historian than a philosopher, and his occasional remarks are made rather for the purpose of explaining the law, than of proving its reasonableness or its authority.

It would have been singular if a work of such high authority, relating to topics of such general interest, had appeared without exciting animadversion. His remarks on the constitution were obnoxious to the Whigs; his comments on the penal laws relating to religion were displeasing to the Dissenters. For his political opinions he has been attacked by Bentham and Sheridan, perhaps as much from a desire of gaining reputation by a pamphlet, as from any special anxiety for the truth. His observations on the laws against nonconformity produced some acrimonious remarks from Priestley, which Blackstone, conceiving his sentiments on religious liberty to have been misunderstood, answered. To this answer Priestley, never unwilling to appear in print, published a reply in the same spirit as his original comments. Dr. Furneaux also addressed to him some tedious letters on his exposition of the Toleration Act. All his adversaries acknowledged the high merit of the Commentaries, and accompanied their strictures with a compliment. It must be admitted that Blackstone had displayed an undue partiality for the harsh and intolerant laws of Elizabeth and Charles; and although, to his great credit, he modified his remarks thereon in subsequent editions, they are still such as a liberal mind cannot altogether approve.

The legal accuracy of the Commentaries was, generally speaking, unimpeachable. It will be found, however, that the law as to the meeting of commissioners of bankrupts and choice of assignees was altogether wrong in the first edition; but this, on the intimation of one of the commissioners, was

corrected in the second. Such trivial faults in a work of such general excellence are like spots in the sun, which do not diminish its brightness, yet deserve to be noticed for their singularity.

The Commentaries passed through eight editions in the life of the author. The last edition, by Lee, Hovenden, and Ryland, is called the eighteenth*, besides numerous heterodox impressions. In 1771, an edition wasprinted at Philadelphia, to which there were no fewer than 1600 subscribers. One attorney orders thirty-one sets, another twenty-eight. The attorneys in those parts were very liberal to their clients, or else they sold books.

In this year (1765) a transaction occurred in which Blackstone was concerned, and which, for want of something better, may be mentioned as an incident. One Dr. Musgrave, one of those finders of mares' nests who occasionally exhibit themselves and their discoveries for the laughter of mankind, was told by a casual acquaintance at Paris that the French government had bribed Lord Bute, Lord Holland, and a lady of title whose name he knew not, in order to induce the English to grant a peace. Distended with importance as being the depository of so great a mystery, he hastened to London, determined to cause a searching inquiry into this matter. Having some knowledge of Dr. Blackstone, he advised with him as to the steps he should take; and, according to his account, Blackstone, upon reading his written statement, "trembled, seemed much affected, and let the paper drop, as in great agitation," and said, "You must by all means go to the ministry; it is an affair of an alarming nature." Three days afterwards, Blackstone sent a note desiring to see Dr. Musgrave, and when the Doctor waited on him, asked if he had been to the ministry, and said, "If you had not, I should think myself obliged, as a servant of the crown, to go and give the information myself." This statement, if true, would make Blackstone appear a most remarkably credulous and timid man, since every other person to whom Dr. Musgrave mentioned his story (among whom were Lord Halifax and Colonel

* Several others have appeared since this was written, besides Mr. Serjeant Stephen's "New Commentaries, partly founded on the text of Blackstone."

Barré) considered it merely as idle gossip; and such was the unanimous opinion of the House of Commons, when, Dr. Musgrave having published a pamphlet on the subject, a Committee was appointed to inquire into the matter. Blackstone, however, read before the Committee a minute taken by him at the time, which gives a very different account of the affair. He says—"As the acquaintance between Dr. Musgrave and myself was small, I was surprised at the communication. I told him that the affair was delicate both as to things and persons, and that he should well consider the consequences if his friend should deny it. I begged to be excused advising him, but that he would do right to consider that it would depend on the conviction of his own mind and his friend's veracity. It was equally a duty to disclose such a transaction if on good foundation, and to stifle it in the birth if founded on malice or ignorance. We parted. He seemed inclined to proceed. I do not recollect the conversation he mentions three days afterwards. It might be. I thought him such an enthusiast that the information might have disordered his imagination*."

This by way of episode. In 1766, Blackstone resigned his employments at Oxford, viz. the Vinerian Professorship and the Principality of New Inn Hall, finding his engagements in London inconsistent with an attendance to the duties of those offices.

In the Parliament of 1768, Blackstone was returned for Westbury, in Wiltshire. He is not reported to have taken any part in the proceedings of the House, until the case of Wilkes set the country in a blaze in 1769. The question mooted in this case being one of great constitutional and legal importance, Dr. Blackstone took part in the discussion. On the 1st of February, 1769, he moved that Wilkes's petition, respecting the alteration of the record of the indictment against him, by Lord Mansfield, "was an audacious aspersion on the Chief Justice, calculated to convey a gross misrepresentation of the fact, and to prejudice the minds of the people against the public administration of justice." He spoke also in support of the motion for expelling Mr. Wilkes the House,

* 16 Parl. Hist. 778, 781.

grounding himself on the publication of the "three obscene and impious libels." And again, when the resolution was moved, "that John Wilkes, Esq., having been in this session of Parliament expelled this House, was and is incapable of being elected a member to serve in this present Parliament," Dr. Blackstone argued in favour of the resolution. Mr. Grenville replied to him, and quoted a passage from the Commentaries, which was thought a powerful argumentum ad hominem. "Instead of defending himself upon the spot," says Philo Junius, "he sunk under the charge in an agony of confusion and despair. It is well known that there was a pause for some minutes in the House, from the general expectation that the Doctor would say something in his defence, but his faculties were too overpowered to think of those subtleties and refinements which have since occurred to him." Sir Fletcher Norton, however, more expert in debate, stood the Commentator's friend, and took Grenville to task. The only remnant of the debate is the following remark addressed by Sir Fletcher to Mr. Grenville:—"I wish the honourable gentleman, instead of shaking his head, would shake a good argument out of it." It must have been entirely owing to Blackstone's inaptitude to speak that he did not reply to Grenville, since the passage cited from the Commentaries did not really bear against him. It was an enumeration of disqualifications to serve in Parliament, not mentioning the case of expulsion, and concluding with these words,—"but, subject to these restrictions and disqualifications, every subject of the realm is eligible of common right," which merely meant that eligibility was the general rule, and ineligibility the exception; and it was unreasonable to expect that every exception would be particularly set forth in a work of the general nature of the Commentaries.

It was considered so important an object to deprive the ministry of the authority of Blackstone, that the point which the parliamentary skill of Grenville had made was reiterated upon the Commentator, in a pamphlet by Sir William Meredith. To vindicate himself, Blackstone published another pamphlet. This caused him to be attacked by Junius, and he answered Junius in a postscript of six quarto pages. A more elaborate production is attributed to him on this subject, entitled, "The Case of the late Election for the County of Mid-

dlesex considered on the principles of the Constitution and the authorities of Law." Whatever may be the opinions entertained at the present day concerning the proceedings against Wilkes, it is unfair to suppose that the part Blackstone took therein was not the result of sincere conviction, for there is nothing unreasonable or absurd in the opinion, that an individual who is obnoxious to the criminal laws of a country is unfit to be a legislator, and that when a member is expelled by the House of Commons, their decisions shall be binding upon the people to prevent their again returning him; and it is worthy of remark, that Grenville had in a former debate referred to Walpole's case (the authority relied on by Blackstone), and strongly insisted that the law of Parliament established in that case was, that expulsion created only a temporary and not a perpetual incapacity in the party expelled*.

These personal collisions within the House of Commons, and printed controversies without, so little in accordance with the philosophical habits of the Commentator, were sufficient to quench his moderated ambition. He therefore refused the Solicitor-Generalship, which was offered to him by Lord North on the resignation of Dunning, in January 1770; and it was not until the March following that the vacancy was filled by Thurlow, a man every way more adapted to political contention. Blackstone was appointed to the more congenial situation of a Judge of the Common Pleas, on the resignation of Mr. Justice Clive; and on the 9th of February, kissed his Majesty's hand. He was of course called to the degree of Serjeant, and gave rings with the motto "*Secundis dubiisque rectus.*" "But Mr. Justice Yates being desirous *to retire*" (we use the words of Blackstone himself) "into the Court of Common Pleas, I consented to exchange with him; and accordingly (February 16th) I kissed his Majesty's hand on being appointed a Judge of the King's Bench, and received the honour of knighthood." Sir Joseph Yates did not long survive his *retirement*, for on the Whit-Sunday following he was taken ill at church, and died on the Thursday, "to the great loss of the public, and the Court of Common Pleas in particular,

* 16 Parl. Hist. 562.

wherein he sat one term only," quoth Serjeant Wilson. On this event, Sir William Blackstone likewise *retired* into the Court of Common Pleas, "which," says Burrow, "he was always understood to have in view whenever opportunity offered."

Although greater leisure, combined with an equal share of dignity, had doubtless induced Blackstone to prefer the judgment-seat of the Common Pleas to that of the King's Bench, he was by no means negligent in the performance of the duties of his office. There are several very elaborate judgments of his in his own reports, upon recondite points of law, which display a range of reading and diligence of investigation rarely equalled. The Court of Common Pleas, during the time of Blackstone, like the King's Bench during the presidency of Lord Mansfield, differed in opinion only upon two cases. In both Blackstone was the dissentient. The first was the well-known case of Scott v. Shepherd, (2 W. Bl. 892), relative to the distinction between actions of trespass and on the case. The judgment of Blackstone is often referred to, on account of the lucidness with which the doctrine on the subject is stated and explained, and his application of it is generally considered the more satisfactory. The other case was Goodright dem. Rolfe v. Harwood, (2 W. Bl. 937), in which the judgment of the Common Pleas was unanimously reversed by the King's Bench, and that reversal was confirmed by the House of Lords, upon the opinion of the Barons of the Exchequer. The judgment, too, of the Commentator in the celebrated case of Perrin v. Blake, (1 W. Bl. 672), is one of the most valuable pieces of legal reasoning upon record. We cannot, therefore, agree in the remark of Mr. Roscoe, that "after the publication of the Commentaries, the legal acquirements of Blackstone rather declined than advanced." His abilities always shone with an equal lustre as an author, an advocate, and a judge; of which the argument in Tonson v. Collins, and the judgment in Perrin v. Blake, are sufficient to convince us.

Blackstone did not allow those intervals of leisure which he had been so anxious to obtain, to pass unprofitably away. It is not the least of his merits, that he was among the earliest in advocating the Penitentiary system of prison dis-

cipline, which has been so eminently successful in America, and will ere long, it is to be hoped, become the means of diminishing crime throughout the world. In conjunction with John Howard, that glory of humanity, he was instrumental in procuring the enactment of the stat. 19 Geo. 3, c. 74, for erecting penitentiary houses for the confinement of prisoners, as a substitute for transportation. This, like most other important benefits to mankind, was destined at first to be ridiculed and neglected, and the original propounders obtained no credit from it. Men, when they cannot perceive the extent or advantage of an invention, conceal their ignorance beneath the mask of contempt. Now that the utility of these things cannot be denied, let us not forget to praise those who discovered them before us. Howard and Blackstone may be insensible to our applause, but it is a consolation and encouragement to neglected genius, to think that, although now despised, his memory may be held in reverence by posterity.

There was another affair in which he busied himself, more personally interesting to himself, but not on that account the less beneficial to the public. This was an augmentation of the judges' salaries. These being found insufficient to support the judicial dignity, by reason of the heavy taxes, and more expensive mode of living, £400 was added to the salary of each puisne judge.

Amidst these public and general undertakings, he did not overlook the improvement of the neighbourhood where he resided. He passed his vacations at a villa called Priory Place, near Wallingford, now in the possession of his grandson, the present member for Wallingford. Here, by his activity and influence, he procured two turnpike roads to be made through the town, by which the malt trade was considerably increased. He also promoted the rebuilding of St. Peter's Church there, of which he planned the elevation; and erected the spire, so universally admired for its lightness and elegance, at his own expense. At the request of the trustees of Sir George Downing, he had undertaken to frame a code of statutes for Downing College, Cambridge, then about to be established, but this he was prevented from completing by his death.

Now that it was not necessary for him to devote himself

exclusively to business, he again indulged in literary pursuits, which we may imagine were most congenial to his nature. The only fruits of his subsequent literary labours of which we are aware, are "An Account of the Dispute between Addison and Pope," communicated to Dr. Kippis, and by him published in the "Biographia Britannica," in the life of Addison; and some notes upon Shakspeare, which are published in Malone's edition of 1780, marked by the final letter of his name. It is hardly necessary to observe, that both of these productions are characterised by the pure style and lucid order of Blackstone. The first has been praised by Mr. D'Israeli, a very high authority on such subjects.

In this calm and useful manner passed the latter years of Blackstone's life. Having attained the fulness of his fame, he wore away his time, now hearing and deciding disputed points of law—now promoting plans of public improvement—now narrating the quarrels *generis irritabilis poetarum*, as a river swelled by all its tributary streams flows calmly towards the sea, fertilising the country in its course, and rendering the landscape beautiful.

The sedentary employments in which Blackstone delighted were not conducive to health. As he advanced in age he became corpulent, and was occasionally visited by gout, dropsy, and vertigo. In the Christmas of 1779, he was attacked by a violent shortness of breath. Of this he was so far relieved by the application of the remedies usual in cases of dropsy, as to be able to come to town for the purpose of attending Court in Hilary Term. He had hardly arrived ere his malady returned in a more formidable shape; and after lying in a state of insensibility for several days, he expired at his house in Lincoln's Inn Fields, on the 14th of February, 1780, being in the 57th year of his age. He was buried at St. Peter's Church, Wallingford; his friend Dr. Barrington, Bishop of Llandaff, officiating at his funeral.

His only posthumous honour was the following rude distich, which appeared in the public prints of the day:—

> "He's gone whose talents charm'd the wise,
> Who rescued law from pedant phrase,
> Who clear'd the student's clouded eyes,
> And led him through the legal maze."

He left behind him seven children: Henry, James, William, Charles, Sarah, Mary, and Philippa; the eldest only sixteen years of age. Henry Blackstone, the reporter, was his nephew, and died from the effects of over exertion in his profession. Of his sons, James enjoyed nearly the same University preferments as his father: he was Fellow of All Souls, Principal of New Inn Hall, Vinerian Professor, Deputy High Steward, and Assessor in the Vice-Chancellor's Court. He died in 1831, having resigned the Assessorship in 1812, and the Vinerian Professorship in 1824.

The chief characteristics of Blackstone appear to have been prudence and industry; we perceive him calmly and gradually working his way from obscurity to eminence, undeterred by disappointment or neglect. He never abandoned a good possessed for a contingent benefit; thus, when he found his chance of advancement at the bar less than it was at the University, he went to settle at Oxford; still, however, persevering in professional pursuits. He did not venture to enter into the blissful estate of matrimony (although he was a man domestically inclined) until he found he could safely dispense with his fellowship: and he preferred the less prominent, but more secure, station of a puisne judge of the Common Pleas, to the slippery path of a political advocate.

His mind was rather discerning than vigorous, calculated rather to form a judgment on and explain existing things, than to strike into a new path and boldly advance an original theory. He shrank from controversy, and sought rather to instruct the ignorant than to dispute with the learned. Thus it was that he excelled in delivering lectures from the professor's chair, but did not so well succeed in forensic arguments or political debates. When he had considered a question, he could elegantly and lucidly state and explain his opinion; but he could not readily answer an unanticipated objection, or retort upon a contumelious adversary. There could hardly have been a mind better constituted for the judgment-seat,—too cautious to abandon precedents, and too clear to misapply them. Cool and deliberate, he was not likely to be misled by a fallacy, nor to decide on a hasty impression: and we cannot but think that Blackstone is not reckoned amongst our first

judicial characters, only because he did not occupy the most eminent station.

It may be inferred from what has been said, that he was no enthusiast either in religion or in politics; in the former he was a sincere believer in Christianity, from a profound investigation of its evidences; in the latter he was what would be now called a Conservative, friendly to a mild but authoritative government, inimical to the agitations of pretended patriots.

In private life we are told he was an agreeable and facetious companion, tender and affectionate as a husband, father, and friend; strict in the discharge of every relative duty: towards strangers he was reserved, which to some appeared to proceed from pride. His temper was rather remarkable for irritability, which in his latter years was increased by his bodily infirmities.

There may have been more shining characters, of whom we read with deeper interest, but there have been few men more useful in their sphere, few whose example we can contemplate more profitably, few who better realised the wish so happily expressed by himself:—

"Untainted by the guilty bribe,
Uncursed amidst the harpy tribe;
No orphan's cry to wound my ear,
My honour and my conscience clear;
Thus may I calmly meet my end—
Thus to the grave in peace descend."

LORD BATHURST.

THE author of certain "Strictures" on the lives of the eminent lawyers of his time (published in 1790) introduces his notice of Lord Bathurst in the following terms:—"We may boldly write down, that the Earl of Bathurst became a great character perforce; he was nursed in a political hot-bed, and raised *per fas et nefas.* Nothing less than the same necessity introduces his Lordship's name in the same page with those illustrious personages, which it is the purpose of this volume to portray." Without admitting the justice of such unqualified depreciation as this, it cannot be denied that the personal qualities of the noble lord, either as a lawyer or a statesman, would hardly of themselves have invested him with any claim to posthumous commemoration. But the attainment of the Great Seal, the object of all a lawyer's hope and veneration, of itself entitles its possessor to a place among the worthies of the profession, and to a niche, though none of the most conspicuous, in our gallery of legal dignitaries.

The family of Bathurst is one of very considerable antiquity. According to Jacob, its ancestors were originally settled in the principality of Luneburg, at a place called Batters, whence they bore that name; and some of them passing into England, in the tenth century, established themselves near Battle, in Sussex, and gave their residence the name of Batters' Hurst—that is, Batters' Grove,—which was afterwards abridged into Bathurst. In the course of the dissensions between the houses of York and Lancaster, Lawrence Bathurst, the then representative of the family (whose father had been killed at the battle of St. Albans, fighting in the ranks of the

Lancasterians), was deprived of this property in Sussex, which was annexed by the crown to Battle Abbey. He retained, however, lands in Staplehurst, Canterbury, and elsewhere in the county of Kent, which he had acquired by his successful industry in the woollen manufacture, in those ages the staple trade of the Weald of Kent, and to which many of the long-descended gentry of that county—the Ongleys, the Courthopes, the Maplesdons, &c. &c.— are indebted for their first advance to wealth and consequence. George Bathurst, the third in descent from this Lawrence, was the father of several children, of whom the celebrated wit and scholar, Dr. Ralph Bathurst, president of Trinity College, Oxford, was the eldest; and the youngest was Benjamin, who became, in the reign of Charles II., Governor of the East India and African companies, attained the honour of knighthood, and filled the office of treasurer in the household of Queen Anne, when Princess of Denmark. By his wife Frances, the daughter of Sir Allen Apsley of Apsley in Sussex, Falconer to Charles II., Sir Benjamin had several children, the eldest of whom was Allen, afterwards created, in Queen Anne's celebrated batch of Tory peers, Lord Bathurst of Battlesden, in Bedfordshire.

Of him, the convivial intimate of Pope and Swift, and of all the brilliant circle of that Augustan age of literature, it is superfluous to speak to any reader to whom the literary history of their time is not altogether a sealed book. In Parliament, a fluent and impassioned speaker, a skilful and practised debater, he maintained an unabated opposition to the government of Sir Robert Walpole during the whole of his long monarchy of power, and was regarded as one of the chief champions of Toryism in the House of Lords. In private life, amiable, benevolent, affectionate, convivial, and witty, he endeared himself to a circle of friends, larger and more distinguished for eminence of every kind than it falls to the lot of many men, of whatever rank, to have conciliated. His seat of Oakley Grove, near Cirencester, adorned by his taste with extensive and beautiful plantations, which he lived long enough to see matured into noble woods, beheld partakers of its hospitality the noble, the witty, and the learned of successive generations. Sterne gives an interesting account of his introduction to him in his old age:—"He came up to me

one day, as I was at the Prince of Wales's Court;—'I want to know you, Mr. Sterne; but it is fit that you should know also who it is that wishes that pleasure. You have heard of an old Lord Bathurst, of whom your Popes and Swifts have sung and spoken so much. I have lived my life with geniuses of that cast, but have survived them; and despairing ever to find their equals, it is some years since I have cleared my accounts, and shut up my books, with thoughts of never opening them again. But you have kindled a desire in me of opening them once more before I die, which now I do; so go home and dine with me.' This nobleman, I say, is a prodigy; for at eighty-five he has all the wit and promptness of a man of thirty; a disposition to be pleased, and a power to please others, beyond whatever I knew; added to which, a man of learning, courtesy, and feeling." He did indeed live long enough to survive all the illustrious associates of his early manhood, but he lived also to enjoy the rare fortune of seeing his son presiding over the dignified assembly in which he had himself achieved so much distinction,—a fortune which none but the father of Sir Thomas More had known before him,—and to receive at the hands of that son the patent of an earldom*.

The magnificent passage, in which Burke applied this signal instance of worldly felicity to illustrate the eloquent arguments so vainly reiterated against a blind and fatal perseverance in misgovernment, often as it has been admired and quoted, is too apposite to our subject to be omitted here. "The growth of our national prosperity," said the orator, in his speech on the conciliation of America, "has happened within the short period of the life of man. It has happened within sixty-eight years. There are those alive whose memory might touch the two extremities. For instance, my Lord Bathurst might remember all the stages of the progress. He was in 1704 of an age at least to be made to comprehend such things. He was then old enough *acta parentum jam legere, et quæ sit poterit cognoscere virtus.* Suppose, Sir, that the angel of this auspicious youth, foreseeing the many virtues which made him one of the most amiable, as he is one of the most fortunate, men of his age, had opened to him in vision, that when, in the

* He was created, in 1772, Earl Bathurst, of Bathurst, in the county of Sussex.

fourth generation, the third prince of the House of Brunswick had sat twelve years on the throne of that nation, which, by the happy issue of moderate and healing councils, was to be made Great Britain, he should see his son, Lord Chancellor of England, turn back the current of hereditary rank to its fountain, and raise him to a higher rank of the peerage, whilst he enriched the family with a new one. If, amidst these bright and happy scenes of domestic honour and prosperity, that angel should have drawn up the curtain, and unfolded the rising glories of his country, and whilst he was gazing with admiration on the then commercial grandeur of England, the genius should point out to him a little speck, scarce visible in the mass of the national interest, a small seminal principle, rather than a formed body, and should tell him, 'Young man, there is America, which at this day serves for little more than to amuse you with stories of savage men and uncouth manners; yet shall, before you taste of death, shew itself equal to the whole of that commerce which now attracts the envy of the world.' . . . . If this state of his country had been foretold to him, would it not require all the sanguine credulity of youth, and all the fervid glow of enthusiasm, to make him believe it? Fortunate man, he has lived to see it! Fortunate, indeed, if he lives to see nothing that shall vary the prospect, and cloud the setting of his day!"—And he did not: a few months after those eloquent sentences were uttered, he died peacefully, full of years and honour, at the great age of ninety; having retained to the close of his protracted life, not only the cheerful and happy temper, but even the personal activity, and the relish for convivial enjoyments, which had distinguished him from his youth up. Until within a month of his death, he regularly rode out on horseback for two hours in the morning, and drank his bottle of wine after dinner; and used jocosely to declare, that he never could think of adopting Dr. Cadogan's water regimen, inasmuch as, no less than fifty years before, Dr. Cheyne had assured him he would not live seven years, unless he determined to abridge himself of his wine. A well-known anecdote relates of him, that having, about two years before his death, invited a party of friends to his seat near Cirencester, and their conviviality being protracted one evening to a pretty late hour, his son, the Chancellor, object-

ing to so long a sitting, and dilating on the benefit of regular hours to health and longevity, was suffered to retire to his chamber; but no sooner had he gone than the jovial father cried: "Come, my good friends, since the old gentleman is gone to bed, I think we may venture to crack another bottle*!"

Allen Lord Bathurst married, early in life, his cousin-german, the only daughter of Sir Peter Apsley, by whom he had nine children, four sons and five daughters. In one of his letters to Swift, of the date of 1730, alluding laughingly to the Dean's humorous proposal to relieve the poor of Ireland by fattening their children for the table, he says: "I did immediately propose it to Lady Bathurst as your advice, particularly for her last boy, which was born the plumpest and finest thing that could be seen; but she fell into a passion, and bid me send you word that she would not follow up your direction, but that she would breed him up to be a parson†, and he should live upon the fat of the land; or a lawyer, and then, instead of being eat himself, he should devour others. You know women in a passion never mind what they say; but as she is a very reasonable woman, I have almost brought her over now to your opinion; and have convinced her that, as matters stood, we could not possibly maintain all the nine; she does begin to think it reasonable that the youngest should raise fortunes for the eldest." This eldest was Benjamin, who died without issue in 1767; of the second son, Henry, we are now to give a somewhat more particular account.

He was born on the 20th of May, 1714, and having gone through the usual course of school discipline, was entered of Christchurch, Oxford, where he graduated B. A. in the year 1733. He had in the meantime kept terms at Lincoln's Inn, and in Hilary Term, 1735-6, was called to the bar by that society. The practice he obtained was of a very limited nature, and certainly altogether inadequate to account for his subsequent elevation. His name occurs very unfrequently in the reports: in the State Trials we meet with him on one occasion only, as leading counsel for the prosecu-

* The obituaries of the day cite this story as a proof of the grave and temperate habits of the Chancellor *when a young man*. The hopeful youth was at that time about the ripe age of sixty.

† This was his ultimate destination.

tion in the extraordinary case of Mary Blandy, tried for the poisoning of her father at the Oxford Assizes, 1752:—(it is worthy perhaps of remark, that he exercised the right of replying upon the evidence adduced for the prisoner). His professional views, however, were, as was natural from his father's large party connexions, made subservient to, or at least dependent on, his political. He was introduced into Parliament at the first opportunity afforded him after he attained his majority; being returned at the general election of 1735 for Cirencester, for which borough he continued to sit until his elevation to the bench. He attached himself warmly to the same party in the ranks of which his father had so long combated, and although he does not appear to have spoken very often, his vote was never wanting to swell the growing minority against Sir Robert Walpole. The character of his opposition may be estimated from the following passages of a speech delivered by him against a bill for the impressment of seamen, in 1741:—"The servant by whom I am now attended may be termed, according to the determination of the vindicators of this bill, a seafaring man, having been once in the West Indies; and he may therefore be forced from my service, and dragged into a ship, by the authority of some justice of the peace, perhaps of some abandoned prostitute, dignified with a commission only to influence elections, and awe those whom excise and riot acts cannot subdue. I think it, Sir, not improper to declare, that I would by force oppose the execution of a law like this; that I would bar my doors, and defend them; that I would call my neighbours to my assistance; and treat those who should attempt to enter without my consent, as thieves, ruffians, and murderers."

On the dissolution of Walpole's cabinet, and the accession of the Pelhams to power, in the following year, Mr. Bathurst voted for some years with the government, under which his father held for a short period the office of Captain of the Band of Gentlemen Pensioners. But in the year 1745 he was appointed Solicitor-General (he became in 1748 Attorney-General) to Frederick, Prince of Wales, then at the very height of his dissensions with his father, and, as in duty bound, found no difficulty in again severing his connexions with the court, and passing through the neutral region of a

cold and distrustful respect, to an hostility as unmitigated as that which he had opposed to the former ministry. In a speech against the address of thanks, at the opening of the session of 1751, an almost personal attack upon the King shews pretty plainly what strain of opposition he deemed most likely to recommend him to the Prince:—"I wish the gentlemen who support this address had given us a definition of what they call servility, for I have always taken flattery to be servility, or I think it must be deemed so by all those who allow that there can be any such thing as servility in words or language. Now if there be no flattery in this address, I am sure there was never any such thing in words; for we not only make high encomiums without knowing whether they be true or false, but we express those encomiums in as high a style as our language will admit of; for which I appeal to almost every sentence in the address proposed. We must not express our acknowledgments to his Majesty, without calling them our *warmest* acknowledgments; we must not talk of his Majesty's endeavours without calling them his *unwearied* endeavours. Thus I could go on, Sir, with my remarks through the whole of this address; and all this, without knowing anything of the facts we thus so highly extol. How a minister might receive such high-flown compliments without knowledge, or how this House may think proper to express itself upon the occasion, I do not know; but I should be ashamed to express myself in such a manner to my Sovereign; nay, I should be afraid lest he should order me out of his presence, for attempting to put such gross flattery upon him." Such sentiments as these contrast amusingly enough with the purity and independence which we shall see him by and by asserting for the measures and opinions of the cabinet in which he found a seat, and the factious and corrupt motives in which he then discovered all parliamentary opposition to be founded.

The unlooked-for death of the Prince, in the same year, scattered at once all the hopes of the faction of Leicester-house. The "rising sun" was prematurely set, and the hands of the government were so effectually strengthened by the dissolution of his party, as to leave those who built their prospects on political advancement, much too distant a hope of success by a perseverance in opposition. Mr. Bathurst, ac-

cordingly, was not long found in the camp of the anti-ministerial forces. Little more than two years afterwards, he was so far from occupying a position adverse to the government, as to be selected, on the recommendation of Lord Hardwicke to fill a vacant place on the bench of the Common Pleas, where he took his seat on the 6th of May, 1754; his colleagues being Lord Chief Justice Willes, Mr. Justice Clive, and Mr. Justice Noel. This quiet and uneventful post he occupied for the period of seventeen years.

The Court of Common Pleas, from the limited nature of its jurisdiction, and the still more limited extent of its business, could seldom, if ever, be the scene of forensic contest of that general and stirring interest, of which the criminal judicature of the King's Bench made that Court at times the theatre, and which, on even more solemn and national occasions, has awakened the echoes of Westminster Hall, or thronged the galleries of the House of Lords. During the period, however, in which Mr. Justice Bathurst sat there, the trials and discussions arising out of the government crusade against Wilkes and his North Briton, which the popular opinions of Lord Camden had attracted to his court, animated for a time its dull and stilly atmosphere, and choked its narrow space with the multitudes who crowded to swell the triumph of that notable *patriot*. Mr. Justice Bathurst concurred in opinion with Lord Camden, both on the right of the Commons to privilege from arrest for libel, and in refusing new trials to the defendants who complained of excessive damages, in the actions brought against them for seizures under the Secretary of State's warrants. Very few of the other reported cases on which he had to adjudicate were of any other than merely legal interest. In one instance, and that a ludicrous one enough, the court were equally divided in opinion*—the question being whether a surgeon and apothecary, not qualified by estate or degree to destroy partridges, was an "inferior tradesman" within the meaning of the aristocratical statute of William and Mary, which subjects to full costs in trespass such "dissolute persons" as, "neglecting their employments," should go forth in quest of game. Mr. Justice

* Buxton v. Mingay, 2 Wils. 70.

Bathurst delivered his opinion that "the legislature could never intend to permit every master of *every little mechanic trade* to neglect his trade and go a-hunting:" and that the only line that could possibly be drawn between inferior and superior, was, that every tradesman was inferior who was not qualified: and he was inclined to think the Parliament penned the act so obscurely, in order not to disoblige their constituents, many of whom were tradesmen!—O that we might venture to ascribe the same considerate motives to the legislators of our days! This weighty matter was three or four times argued. In another case, Turner v. Vaughan, (2 Wils. 339), in which it was held that a bond in consideration of past cohabitation was good in law, Mr. Justice Bathurst enriched his judgment by quotations from the books of Exodus and Deuteronomy, and thence arrived at the conclusion, that "*wherever it appears that the man is the seducer*, the bond is good." We wonder when a case will occur in which the question of the validity of the bond, the woman being the seducer, shall be solemnly adjudged and reported.

In January 1770, on the dismissal of Lord Camden from the Chancellorship. and the unhappy death of Lord Morden (Charles Yorke), the seals were put into commission, Mr. Baron Smythe (afterwards Chief Baron), Mr. Justice Bathurst, and Mr. Justice Aston, being the Commissioners. Their decrees, in the more important cases at least, were believed to be drawn up for them by Lord Mansfield; in particular that in the case of Tothill v. Pitt, (Dickens, 431), wherein, reversing the judgment of the Master of the Rolls, Sir Thomas Sewell, they held the devise in the will of Sir William Pynsent, under which Lord Chatham claimed the Burton Pynsent estate, invalid by reason of a prior devise of it in the will of the former proprietor, which his Honour had adjudged void as tending to a perpetuity. This judgment gave so much dissatisfaction to the profession, that on an appeal to the House of Lords, the case, at the suggestion of Lord Mansfield, was submitted to the opinion of the other judges, and upon their answer the decree of the commissioners was reversed. They retained the seals until the month of January in the following year (1771), when they were delivered to Mr. Justice Bathurst, with the dignity of Lord Chancellor, and he was

raised to the peerage by the title of Lord Apsley, Baron of Apsley, in the county of Sussex. The appointment excited no small amount of surprise in the profession. Sir Fletcher Norton observed upon it, "that what the three could not do, was given to the most incapable of the three." The malicious muse of Sir Charles Hanbury Williams numbers him in the Tory band who

> "Were cursed and stigmatised by power,
> *And raised to be exposed.*"

The writer whom we quoted in the outset is equally complimentary:—"He travelled all the stages of the law with a rapidity that great power and interest can alone in the same degree accelerate. His professional career, in his several official situations, was never prominently auspicious, till that wonderful day when he leaped at once into the foremost seat of the law. Every individual member of the profession stood amazed; but Time, the great reconciler of strange events, conciliated matters even here. It was seen that the noble earl was called upon from high authority, to fill an important office, which no other could be conveniently found to occupy. Lord Camden had retired, without any abatement of rooted disgust, far beyond the reach of persuasion to remove. The great Charles Yorke, the unhappy victim of an unworldly sensibility, had just resigned the seals and an inestimable life together. Where could the eye of administration be directed? The rage of party ran in torrents of fire. The then Attorney and Solicitor-General were at the moment thought ineligible,—perhaps the noble lord then at the head of affairs, who was yet untried, had a policy in not forwarding transcendant ability to obscure his own. Every such apprehension vanished upon the present appointment. This man could raise no sensation of envy as a rival, or fear as an enemy."

His judicial incompetency was indeed unfortunately too obvious. Sir Alexander Macdonald begins one of his conversations with Dr. Johnson, on his visit to London in 1772, with a remark, suggested, we presume, by a recent visit to Lincoln's Inn Hall, "that the Chancellors in England are chosen from views much inferior to the office, being chosen from temporary

political views;" a state of things, according to the Doctor, inseparable from all but a pure despotism. Wilkes, according to Horace Walpole, stated his opinion of the Chancellor's qualifications extremely *apropos*. It was hinted to him, on his election to the mayoralty, that his Lordship intended to signify to him that the King did not approve the city's choice. He replied, "Then I shall signify to his Lordship, that I am at least as fit to be Lord Mayor as he to be Lord Chancellor." "This," continues Walpole, "being more gospel than everything Mr. Wilkes says, the formal approbation was given." To preside with efficient control and entire self-dependence in a court wherein the massive intellect of Thurlow and the acute sophistry of Wedderburn were daily in the lists of contest, would indeed have exercised all the learning and all the mental powers of a Hardwicke or an Eldon. Well, therefore, might it be said of Lord Bathurst, a lawyer indeed of fair attainments, but imperfectly conversant with equity principles and practice, and not endowed with any vigour of intellect which could enable him to apprehend them, as we have seen achieved in our day by the intuitive facility of a Lyndhurst, —that he never entered the Court of Chancery with a firm and dauntless step. On several occasions, we find him applying to the registrar (Mr. Dickens, the reporter of the cases in Chancery for many years), not merely for oral information on matters of practice, but for formal written opinions and abstracts of the authorities, which he delivered to the bar as his judgments. Having called in the Master of the Rolls, Sir Thomas Sewell, to his assistance in a case of some importance,—and after the statement of his Honour's opinion,— "I ought to apologise," says the superior judge, "for keeping the matter so long before the Court: at first I differed in opinion with his Honour, but he hath now convinced me, and I entirely concede to his Honour's opinion, and am first to thank him for the great trouble he hath taken on the occasion."

Such was the learned lord in the Court of Chancery. In the House of Lords, he appeared as the unshrinking advocate of those unhappy councils which ended in the dismemberment of our colonial empire. "What!" said he, in the debate on the reception of General Gates's letter—"What!

acknowledge the independency of America, and withdraw our army and our fleet! Confess the superiority of America, and wait her mercy! He desired the House to consult their own feelings for an answer." Alas! that answer the stern necessity of repeated humiliations too speedily supplied! The Chancellor appears to have figured as the chief vindicator of the purity of Lord North's cabinet, and the independence of his partisans. When Lord Effingham, in the debate on his motion relative to the state of the navy, in 1778, remarked that "the first Lord of the Admiralty knew his strength in a division; he would go below the bar, and take with him his —he had like to have said, servile majority," the Lord Chancellor left the woolsack in great warmth, and asked, were their lordships to be so grossly insulted without a rebuke? "He had sat in that House seven years, and never before heard so indecent a charge. A servile majority! The insinuation was not warrantable. He had for one voted in favour of the measures of government; but would any lord venture to say he was under influence? The ministers knew his place was no tie upon him; they knew he always gave his vote freely, and according to his real opinion. *He* was born the heir of a seat in that assembly; he enjoyed a peerage as his hereditary right. He could not *therefore* sit still and hear the noble earl talk of a servile majority, and he was amazed that government had so long suffered themselves to be abused; he hoped they would no longer be patient under such a continued strain of invective, but would take the proper means to prevent it in future." His Lordship was perhaps right in ascribing more weight to the dignity he derived from an hereditary source, than that which he owed to his professional advancement. On a subsequent occasion, when again magnifying his own political purity, and attacking the motives and principles of the opposition, he was somewhat unpalatably reminded of his own anti-ministerial career. "He had for a long series of years," he said, "served his sovereign in several capacities, and he could lay his hand on his heart, and with truth affirm that he had always acted for the good of his country, to the best of his abilities, and that there was nothing the crown had to bestow which could induce him to give a vote contrary to his con-

science, or declare against what seemed to him to be the real interest of his country. If he was not very opulent, he had sufficient to put him above the poor temptations of place and emolument,"—with much more to the like effect. The conduct of the opposition arose, he alleged, "from a wicked ambition; a lust of power and dominion; a thirst after the emoluments of office. It sprung from corruption, and the worst species of corruption, because it was incurable—a corruption of the heart." The Duke of Richmond observed upon this estimate of the motives of a parliamentary opposition, "that he was ready to take his Lordship's word for every syllable of the doctrine, so far as it applied to himself. There was a period, and a long and perhaps the most valuable period of his Lordship's life, when *he* was known to be in strong opposition to the measures of the court. His Lordship, it might be fairly presumed, now spoke as he once felt; he spoke from long experience. No man was a better judge of the various operations of the human mind under such circumstances, and so far as he retained a recollection of what passed in his own, it was scarcely to be doubted, it was fair to conclude, that a wicked, corroding ambition, whetted and increased by unavailing attempts, and a state of political despair, were, in his Lordship's contemplation, ever productive of malice and personal enmity, and that worst species of corruption, a corrupt heart."

"Quis tulerit Gracchos de seditione querentes?"

Lord Bathurst (he succeeded to the earldom, and to the barony of Bathurst, on his father's death in 1775) appears to have taken little part in the actual business of legislation. He had a chief hand in the framing of the Royal Marriage Act, the provisions of which he defended with a chivalry that none but its parent could have exhibited. "He should be unworthy of the situation he was in, if he could not defend every clause, every sentence, every word, every syllable, and every letter in it. He would not consent to any amendment whatever: it could not be mended. If any inconveniences arose, parliament would remedy them *a hundred years hence;* all power might be abused, but it was better to risk that than not to give this power—*the king could not make a bad use of it,*

because parliament would punish the minister who advised the king ill."

The only case of peculiar interest which came by appeal into the House of Lords while he occupied the woolsack, was that of Donaldson v. Beckett, in which the question as to the right of literary property was so fully and learnedly discussed. The Chancellor concurred in the opinion of the majority of the judges, that neither by the common law, nor under the statute of Anne, could any exclusive right be sustained. He went at much length into the legal bearings of the case, and gave an interesting historical detail, illustrated by original letters, of the proceedings in both Houses during the passing of the statute, all tending to shew that the sense of the legislature, at that period, was against the right: but he wisely abstained from debating the doubtful ground of public policy, or, like Lord Camden, overlaying his legal conclusions with rhetorical declamations on the meanness of writing for bread, and the superiority of glory as the reward of literary labour. His father, who had been witness to the "acquisitiveness" of Pope, and had himself been the depositary of poor Gay's little savings, could have assured him that such a doctrine found, at all events, small acceptance in their day.

Lord Bathurst does not appear to have inherited much of his father's fondness for the society of literary men, or to have extended to them a very liberal patronage. He bestowed, however, unsolicited, a commissionership of bankruptcy on Sir William (then Mr.) Jones, and intended, had he retained the seals long enough, to have appointed him, notwithstanding the extreme character (as it was then deemed) of his political opinions, to an Indian judgeship, the great object of his hopes, which he subsequently obtained at the hands of the Coalition Ministry. Mr. Jones acknowledged his patronage in the most glowing terms of gratitude in the Dedication of his Isæus. "Your Lordship," he said, "has been my greatest, my only benefactor; without any solicitation, or any request on my part, you gave me a substantial and permanent token of regard, which you rendered still more valuable by your obliging manner of giving it, and which has been literally the sole fruit that I have gathered from an incessant course of

very painful toil; your kind intentions extended to a larger field; and you had even determined to reward me in a manner the most agreeable both to my inclinations and to the nature of my studies, if an event, which, as it procured an accession to your happiness, could not but conduce to mine, had not prevented the full effects of your kindness."

The Chancellor incurred considerable observation and censure by conferring a chaplaincy on Martin Madan, the translator of Juvenal, whose heterodox opinions and indifferent morals were then tolerably notorious, and who afterwards gave such serious offence to the church by the publication of his Thelyphthora—a defence, hardly disguised, of the practice, or at least the doctrine, of polygamy. His Lordship's ecclesiastical patronage was, on one occasion, solicited in a manner of which it is just to say that it exhibited only the unequalled assurance of the applicant, and implies no reproach whatever against the honour or integrity of the patron. On the living of St. George's, Hanover Square, falling vacant, Lady Apsley received an anonymous letter, offering a sum of three thousand guineas, if by her assistance the writer were presented to it. The letter was traced to the unhappy profligate Dodd, and led to his dismissal with disgrace from the office of king's chaplain.

In the summer of 1778, Lord Bathurst, finding his health unequal to the labours of his office, resigned the great seal; and, as it is stated in his Biographia, declined to receive a pension offered to him on his retirement: although he is affirmed to have been a man of parsimonious habits. In November of the following year, however, he was appointed to the dignified office of President of the Council, which he retained until the breaking up of Lord North's administration. The last occasion on which he distinguished himself as a speaker, before his resignation of office, was in vehement opposition to the bill for securing an annuity to the family of Lord Chatham, who, he contended, had been amply repaid for all his services by the pension he enjoyed during his life, and his appointment to the privy seal. The Chancellor found himself, on this occasion, leader of a generous minority of eleven, and consoled himself under his defeat by recording in a protest his dissent from a measure which, he apprehended, "might

in after times be made use of as a precedent for factious purposes, and to the enriching of private families at the public expense;" a profession of honourable economy to which three signatures besides his own were subscribed. He continued to be a frequent speaker in Parliament, and a strenuous opponent of all the attempts to persuade to the conciliation of America. On several occasions we find him and Lord Thurlow, who seems to have entertained an unequivocal dislike for him, in almost direct collision of opinion, though members of the same cabinet. After his final retirement from office, he still continued for some years a regular attendant in his place in Parliament, but at length, and for some years before his death, was compelled by the advance of age and the decline of health to withdraw altogether from political life. He died at his seat of Oakley Grove, on the 6th of August, 1794, in his eighty-sixth year.

The mansion of Apsley House, now the seat of so much more illustrious an occupant, was built by Lord Bathurst. As soon as it was completed, he was saluted with the agreeable intelligence that he had encroached upon a plot of ground granted by the crown to a veteran soldier, whose widow threatened him with a suit in Chancery. Having bought off her claims at the price of a considerable sum of money, it became a standing joke in Lincoln's Inn Hall (a joke with a double aspect), that an old woman could beat the Chancellor in his own Court.

Lord Bathurst was twice married; first to Anne, only child of a gentleman named James, and widow of Charles Philips, Esq., who died without children; secondly, to Tryphena, daughter of Thomas Scawen, Esq., of Carshalton, in Surrey, by whom he had two sons and four daughters; the eldest of whom, the late noble earl, died in the year 1835, having filled, during a large portion of his life, many and distinguished offices in the service of the Crown.

LORD MANSFIELD.

THE name of Murray, which must be familiar to every one in the least acquainted with the history of Scotland, is generally admitted to be among the most ancient of that country. Tradition derives it from the Moravii, a warlike people of Germany, of whom a colony is said to have settled at a very early period in that part of the kingdom since known by the appellation of Murrayshire. But without going so far back for its origin, or resting its antiquity on equivocal testimony, it can be proved by authentic records, that Friskinus de Moravia, who is usually looked upon as the immediate founder of the family of Murray, was a wealthy and powerful noble of Scotland so far back as the beginning of the twelfth century. By a royal charter, dated 1284, Sir William de Moravia, or Murray, one of the lineal representatives of Friskinus, was confirmed in the possession of the estates of Tullibardine, which he had obtained in consequence of a marriage with the daughter of Malise, seneschal of Strathearn. In the reign of James VI., Sir John Murray, twelfth baron of Tullibardine, was raised to the peerage, by letters-patent dated April 25, 1604; and in little more than two years afterwards (July 10, 1606) was created Earl of Tullibardine. This title is now annexed to the Dukedom of Athol. The peerage of Scotland also counts among its titles those of Dunmore, Stormont, and Elibank, all belonging to the name of Murray, and all deriving their origin from the same source.

Sir Andrew Murray of Argonsk, who was a younger son of Sir William Murray, eighth baron of Tullibardine, may be considered the founder of the Stormont branch of the

family. By his second wife, Lady Janet Graham, daughter of the Earl of Montrose, he had three sons, of whom the second, David, during the reign of James VI., was successively appointed to the offices of master of the horse, captain of the guard, and comptroller of the royal revenue. Being in attendance on the king at the time when his life was threatened with imminent danger by the Earl Gowrie's conspiracy, he had an opportunity of doing good service to his majesty, by contributing to provide for the safety of his person, and particularly by quelling the insurrection that broke out in the town of Perth, soon after the intelligence of Gowrie's death became public. The activity and zeal displayed by him on this occasion procured him a considerable share of the Earl's possessions, which became forfeited to the crown in consequence of his treason. The king conferred on him the barony of Ruthven, and the abbacy of Scone, which last, having a short time before been erected into a temporal lordship for the family of Gowrie, empowered the new possessor to assume the title of Lord Scone. The ancient abbey and the adjoining royal palace of Scone, from time immemorial the crowning place of the kings of Scotland, have been so entirely destroyed by the religious fanatics of the Reformation, that the exact site on which they stood is now uncertain; though it is generally supposed that the present castle is built nearly on the same spot, a beautiful and romantic situation on the banks of the Tay, about a mile and a half to the north of Perth. This edifice was begun by Earl Gowrie, and finished by his successor, Sir David Murray, whose memory is perpetuated there by a fine marble monument erected over his tomb in the adjoining church, representing him as large as life, in a kneeling posture, and in complete armour. By letters patent, dated August 16, 1621, he was created Viscount Stormont. The lineal succession to this title has since met with no interruption. The fifth viscount married the only daughter of David Scot of Scotstarvet, who was the heir male of the family of Buccleugh, and by her he had fourteen children. Of these the fourth, William, has given more lasting celebrity to the name of Murray, than had been conferred on it by the valour and the wisdom of the many illustrious warriors and statesmen whose deeds had previously rendered it so honourably conspi-

cuous in the annals of their country. His life will form the subject of the following pages.

The Honourable William Murray, at present better known by the title of Lord Mansfield, was born on the second of March, 1704, in the palace or castle of Scone. A mistake in the entry of his name in the books of Christ Church College, Oxford, for some time gave credit to the supposition that the town of Bath could claim the honour of giving him birth. But this can be contradicted on his own authority. The circumstance was one day mentioned to him by Sir William Blackstone; and he then accounted for the error, by presuming either that the document transcribed into the college books must have been so illegibly written as to cause the word Perth to be mistaken for Bath, or that the broad Scotch pronunciation of the bearer, if he was referred to for an explanation of it, might have given rise to a similar confusion of the two names.

The country of his birth had no share in the cultivation of his genius; for he was removed to England when not more than three years of age, and there received the whole of his education. Some portion of his early youth was passed at the grammar school of Lichfield; and it is a remarkable fact, that at a later period, when he filled the station of Chief Justice of England, there were no less than seven judges on the bench, besides himself, who had been partly educated at the same seminary: namely, Lord Chancellor Northington; Sir Thomas Clarke, Master of the Rolls; Willes, Chief Justice of the Common Pleas; Chief Baron Parker; Sir John Wilmot, then a puisne judge of the King's Bench, and afterwards Chief Justice of the Common Pleas; Mr. Justice Noel; and Sir Richard Lloyd, a Baron of the Exchequer. The celebrity of the school was afterwards still further increased by the fame of Johnson and Garrick, who were both brought up there. Young Murray did not remain sufficiently long at Lichfield to obtain in it more than the rudiments of classical learning, being admitted a king's scholar at Westminster at the age of fourteen. Fortunately the school had never been in a more flourishing condition than at the period when he entered it. The number of the boys amounted to five hundred; and besides the advantage of having for their daily instructors two such eminent

scholars as Doctors Friend and Nicholl, they were examined at elections by Bishop Atterbury, who attended in his capacity of Dean of Westminster, Bishop Smalridge, as Dean of Christchurch, and Bentley, as master of Trinity College, Cambridge. "As iron sharpeneth iron," says a distinguished schoolfellow of Murray, "so these three, by their wit and learning and liberal conversation, whetted and sharpened one another." The learned rivalry of such men could hardly fail to excite a corresponding emulation among the young scholars who were in the habit of witnessing it; and in the constant competition of talent to which this excitement must have given an additional stimulus, none shone more conspicuous than Murray. It is particularly recorded of him, that his superiority was more manifest in the declamations than in any of the other exercises prescribed by the regulations of the school; a fact not to be overlooked in the history of one who afterwards, as an orator, equalled if not excelled such competitors as it falls to the lot of few nations or ages to possess. His proficiency in classical attainments was almost equally great; insomuch that at the election in May 1723, when he had been five years a member of the school, he stood first on the list of candidates for Oxford, where he accordingly entered as king's scholar in the following June.

During his residence at Christ Church, Murray did not disappoint the expectations which had been formed at Westminster with respect to his success in the university. Here he was of course less controlled than he had been at school in the direction of his studies; and the bent of his taste, as well as of his ambition, led him to devote a considerable portion of his time to that of oratory. As he spared no pains to attain excellence in his favourite pursuit, he not only took care to exercise himself frequently in composition (the surest method of forming a ready speaker), but he was not deterred by the apparent drudgery of the task, from following a plan recommended by all the most eminent professors of the art, and one which gives those who adopt it the double advantage of familiarizing themselves at the same time with the practice of composition, and the language of classical literature; namely, that of translating the masterpieces of ancient oratory, and then retranslating the version into the original tongue. He has

often been heard to declare, that while at Christ Church he put this method in practice with most of the orations of Cicero. These circumstances are important in a double point of view; both inasmuch as they are a proof of the assiduity and industry of the individual, and as they tend (so far at least as one very eminent instance can do so) to discredit the very common, but not the less very fallacious doctrine, according to which eloquence is considered as a natural gift, incapable of being cultivated or improved to any considerable extent by study and practice. This is a notion particularly likely to find favour with such as do not distinguish mere fluency of speech, or the capability of stringing words together with rapidity and facility (than which there scarcely exists a more mean and unenviable faculty, nor one more frequently allied with very small talent), from real eloquence, the noblest effort of human intellect.

That Murray, even at this early period, had reflected much and deeply on the principles of the art in which he was thus earnestly endeavouring to perfect himself, is sufficiently proved by the fragment of a Latin discourse, written by him while at the University. It is a critical examination of the speech of Demosthenes for the Crown; and is very evidently the work of one accustomed to calculate by what means a particular effect is most likely to be produced on the passions or the understandings of a mixed assembly of people. The artful mode in which the orator contrives in the outset to secure the favourable attention of his auditory, calls forth the admiration of the young critic; and he beautifully compares the insinuating eloquence of Demosthenes, insensibly assuaging the passions aroused by his rival's peroration, to a silent shower of dew gently falling on a parched herbage. "Quis flexanimam Demosthenis potentiam digne explicaverit, quæ submisso placidoque principio in animos omnium, velut in accensos agros taciturno roris imbre leniter influentes, incendium quod reliquerit Æschines extinguit, populique furorem placat?" The rising energy of the speaker, and the effect produced by it on his hearers, is commented on with great judgment as well as beauty of language. But what he especially applauds is the dexterity of Demosthenes, in keeping himself as it were concealed, and exciting the feelings it is

his object to awaken, without appearing to make any effort for that purpose. It is particularly worthy of notice, that the eloquence of Murray himself was afterwards chiefly remarkable for that consummate perfection of art which conceals all appearances of art, and excites no suspicion of design. He tells us of Demosthenes, "Omnem artificii suspicionem tollit, et in narrationibus non advocati studium sed testis fidem, in argumentis non rei excusationem sed judicis auctoritatem habet." This eulogium is equally applicable to himself, and is indeed in substance nothing but what has been said of him by a great master, that his statement of a case was alone worth an argument.

Though oratory was undoubtedly the favourite study of Murray, he was by no means inattentive to the other branches of learning cultivated in the University. The discourse just mentioned would be an ample proof, were there no others, of his classical scholarship, and especially of his complete mastery over the language in which it is written. He also distinguished himself, though in a less degree, by his attempts at poetry; and it is probably in allusion to his success in these two pursuits, as well as in the study of classical literature, that the portrait of him painted for Christ Church, by Martin (1776), represents him with a volume of Cicero in his hand, and a bust of Homer placed on the table before him. A copy of Latin verses has been preserved, written by him after he had taken his bachelor's degree. They certainly do not exhibit any extraordinary degree of poetical merit; but they are at least equal to the common average of academic exercises, and shew their author to have been familiar with the practice of Latin versification. The subject is the death of George the First; and the prize which had been proposed for the best composition on that occasion was awarded to Murray. Pitt, then a gentleman commoner of Trinity, was one of the disappointed competitors; and this was in all probability the first instance of the rivalry between these two celebrated men, who were afterwards for many years the leaders of two contending parties, in a much more brilliant and more arduous species of strife.

In April 1724, Murray had become a member of Lincoln's Inn, and in Michaelmas term 1730, having previously gra-

duated as Master of Arts (24th of June 1730), and passed a short time on the continent, he was called to the bar. In what manner he had qualified himself for the duties of the profession he was now about to enter upon, we have but very imperfect means even of conjecturing. This is the more to be regretted, as a full account of his initiation into the science, of which he afterwards became so able an expounder, would derive a peculiar interest from the circumstance of his having, unlike the majority, depended almost entirely on his own resources for instruction; since it is known that, although he no doubt readily availed himself of the occasional advice and assistance of such of his seniors as chance gave him access to, he never professedly became the pupil of any particular practitioner. During his noviciate, he was in the habit of attending a debating society, the discussions of which were exclusively confined to legal subjects; and his arguments were prepared with so much care as to be frequently serviceable to him in after-life, not only when at the bar, but when he presided in the Court of King's Bench. This is almost all that can be stated with positive certainty of his early studies. However, in the absence of information as to the course of reading he himself adopted, which might possibly be thought to want in authority quite as much weight as it would have in point of example, we are fortunately supplied by his own hand with advice as to some part of the course which his maturer experience recommended for others to follow. It is by no means improbable, that the very plan by which he himself had been guided in his reading was, in substance and in all essential particulars, the same he afterwards proposed as the most eligible. If so, it comes to us doubly recommended.

The first preparation suggested for the study of the law is a general course of historical reading; and two letters of Murray's on the subject of foreign, and particularly French history, written at the request of the Duke of Portland, afford very good evidence that he himself abided so far by the directions he afterwards laid down. This necessary information being obtained, the legal student is recommended to gain a general insight into the science of ethics, which, as Murray justly observes, is the foundation of all law. From ethics the next step is to the law of nations, which he correctly describes

as being partly founded on the law of nature, and partly positive. When this foundation is laid, it will be time, he says, to look into systems of positive law; and he mentions it as a thing of course, that the Roman laws will be the first to claim attention. It will afterwards be necessary to obtain a general idea of the feudal system, for which purpose Craig "De Feudis" is proposed as "an admirable book for matter and method." "Dip occasionally", he concludes, "into the Corpus Juris Feudalis, while you are reading Giannone's History of Naples, one of the ablest and most instructive books that ever was written. These writers are not sufficient to give you a thorough knowledge of the subjects they treat of; but they will give you general notions, general leading principles, and lay the best foundation that can be laid for the study of any municipal law, such as the law of England, Scotland, France, &c."

Some objections may perhaps be made to the details with which the outline of this comprehensive plan of study has been filled up. The list of authors recommended might no doubt be both amended and enlarged with advantage: as for instance, in the case of ethics, for which the only works mentioned are Xenophon's Memorabilia, Cicero De Officiis, and Wollaston's Religion of Nature, with Aristotle's Treatise, for occasional reference; and still further in that of civil law, which comprises merely Gravina and the Institutes of Justinian, with the short commentary of Vinnius; the Digest to be consulted only from time to time. But the substance of the plan itself appears to us unexceptionable. It may probably be urged, that such a course of purely preparatory study would demand a space of time which might be more advantageously devoted to a direct and immediate pursuit of the object in view, namely, a knowledge of the English law. But this objection is upon the whole more specious than solid; and is indeed founded on a principle which we conceive to be altogether erroneous. The task which the student has to accomplish is admitted on all hands to be an arduous one; the goal is distant, and it is therefore commonly presumed that he who soonest starts forward on the road has a much better prospect of reaching it, than those who delay their departure in making preparations for the journey. This notion does not prevail, nor is it ever

acted upon, in the real business of life. If a real voyage be contemplated, instead of the figurative one to which we have just compared the study of the law, no one thinks of grudging either the time or the trouble bestowed in making provision to encounter the length and the difficulties of it; because common foresight and every-day experience abundantly prove, that it is only by taking such necessary precautions that it can be performed with safety or expedition. The length of time, and the degree of care, given to the task of making preparation, are proportioned to the length and the difficulties of the proposed expedition. We see no valid reason why the mind should not in like manner be forearmed against the difficulties of a toilsome and arduous course of study; nor why the time and the trouble bestowed in so preparing it should be considered mis-spent. Indeed, we are acquainted with no more striking exemplification of the very just, though apparently paradoxical, adage, that the most direct way may turn out to be the longest in the end, and most haste prove worse speed, than the precipitation with which it is too common to plunge at once, and without previous preparation, into the intricacies of the study of the law.

The advantage to be derived from imbuing the mind with a sufficient store of principles, before we proceed to load the memory with the rules which have been deduced from them, has never, to our knowledge, been denied in theory, however little it may be attended to in practice. There is, however, one peculiar benefit attendant on this method, which we believe has not sufficiently often been adverted to; though for confirmation of it we may confidently appeal to all who have called the faculties of their minds into active exercise, with reference to any subject whatever. This is the extreme facility with which any particular rule, which has been obtained as the conclusion and result of a train of reasoning, is preserved in the recollection, or, if forgotten for the moment, is recalled at pleasure; and, on the other hand, the extreme difficulty of retaining in the memory a mass of isolated and unconnected facts, which we have originally taken for granted, and which, having as it were no hold upon the brain, we have no means of recovering when they have once escaped. Nor, in enumerating the advantages of a plan of study like that

recommended by Murray, should the facilities it affords in acquiring as well as retaining knowledge be left out of the calculation. The different gradations from one subject to another, are placed, so to speak, in a descending direction. The student gains a lofty eminence in the first instance, and his whole after progress is made with the ease of a traveller journeying down hill. If the study of the law were always entered upon in this manner, we should not so commonly hear of its revolting abstruseness, nor should we be able to quote so many examples as are now to be found, of men neither deficient in talent nor in perseverance, who have pursued it with reluctance, or quitted it in disgust.

Perhaps no one who ever abandoned the profession of the law has had stronger temptations to assign as his motive, than those which assailed Murray. Accomplished, devoted to literature, and, so far as academical distinction can confer celebrity, not without some portion of literary fame, it must have required a severe exertion of self-command to refrain from following the example of the numerous aspirants to renown, who have been seduced from the bar by the prospect of acquiring more speedy honours and emolument in the world of letters. The character of literary men as a class, and their station in society, had never been higher than at that very period. The time was still fresh in the memory of his contemporaries, when Addison and Prior had found their literary celebrity a passport to offices of state. Pope had raised himself to independence, and indeed to affluence, solely by the exertion of his talents. The eagerness with which his acquaintance was courted, and the deference shewn to him in the highest classes of society, were owing entirely to his success as an author. These, and many other instances of a similar kind, were, no doubt, a strong inducement to those who felt the consciousness of genius, to venture on the same track. The manners of that time, too, made the eminent authors particularly easy of access; and every one might be a witness to the respect invariably paid to them in the public places of resort, where they were wont to congregate. Those places of resort were moreover almost all in the quarter of the town occupied by the members of the legal profession, who then lived in the very heart and focus of the literary world.

The neighbourhood of the inns of court was the chosen head-quarters of men of letters, and also, indeed, of men of fashion, who were almost universally anxious to cultivate their society. Steele dates all the papers of his Tatler, that have reference to literary discussion, from either Will's coffee-house or the Grecian; the former being frequented by such as interested themselves chiefly in poetry and the lighter departments of the belles lettres, the latter by those whose conversation turned principally on subjects of classic learning. Will's (as well as Button's, which in Murray's time was still more frequented) was in Russell-street, Covent-garden, within a few minutes' walk of Lincoln's-inn; the Grecian was and still remains * at the very gate of the Temple. Our readers will probably not require to be reminded, that Dick's and Serle's, and several other coffee-houses of the same character, formed a cluster about the inns of court; nor that the well-known shop of Bernard Lintot, the bookseller, which was the constant morning lounge of literary men, was situated between the Temple Gates, in Fleet Street. We are not certain whether old Jacob Tonson, Dryden's publisher, still remained at the Judge's Head in Chancery-Lane, or whether he had then vacated this shop in favour of the Shakespeare's Head, over against Catherine Street in the Strand. At all events, the head-quarters of literature may be said to have had Temple-Bar for their nucleus. In Lincoln's Inn Fields, too, stood the theatre; and a theatre was then a place of amusement of a far higher character than it has been of late years. In short, a lawyer of that day was surrounded by such temptations as have induced many, whose tastes and habits gave them any inclination towards literary pursuits, to forsake their profession altogether, and many more to follow it so languidly, as to find themselves eventually shut out from all prospects of its highest dignities and rewards.

That Murray withstood these allurements, as well as those of the fashionable society to which his birth gave him access, or at least made them subservient to his more serious pursuits, is a convincing proof that he possessed the energy and deter-

* 1830:—it has been since pulled down, and chambers built upon its site.

mination of character, without which nothing great can be achieved. That he was ambitions is of itself small praise; for to conceive lofty projects and indulge in brilliant anticipations of fame, is the constant occupation of many an idler, who wants the resolution to make any effectual attempt towards realizing his visions of future greatness: but that he had perseverance steadily to pursue the object of his ambition, shews not only his strength of mind, but his consciousness of ability to attain the eminence he aspired to reach; than which (whatever particular instances may be adduced as exceptions to the rule) it may safely be affirmed there is, in general, no more certain indication of genius.

However, after giving to Murray the credit which is justly his due for remaining constant to his profession, in the midst of these inducements to desert it, we must not omit to remark, that he was not subjected to that sort of trial, which of all others has had the greatest influence in cooling the ardour of aspirants to legal honours, and in many instances has caused them prematurely to abandon a profession, that might eventually have raised them to wealth and eminence, as great as their most sanguine hopes could have anticipated. He had not to contend with neglect, nor to struggle against the mortification and the discouragement of unmerited obscurity. In respect, indeed, of an early opportunity of displaying his acquirements, he may be said to have been unusually fortunate. Within a year and a half after his call to the bar, we find him engaged with the Solicitor-General, Talbot, in an appeal case of importance before the House of Lords; and only a few days afterwards he appeared in the same place, as counsel for the Marquis of Annandale. In the year following he was retained in three appeals; and his success in this, the most lucrative department of a barrister's practice, was so great, that in the years 1739 and 1740, he was counsel in no less than thirty; a much larger number than are usually set down for hearing in the course of two consecutive sessions of parliament. Previously to this (in 1737) he had received from the corporation of Edinburgh the freedom of the city in a gold box, for the zeal and ability he had displayed as their advocate, before both Houses of Parliament. The occasion of his being engaged on their behalf was the proposal of a bill for disqualifying the

Provost and fining the corporation, on account of their remissness in quelling the Porteous riots: their inactivity being imputed to motives of disaffection to the reigning monarch. Perhaps the connection of a part of Murray's family with the Jacobite party might be one reason why he was singled out for their defender.

It is to be presumed that he was indebted for his first introduction to the bar of the House of Lords to the influence of his family connections. These were probably of less service to him in the Court of Chancery, where he was a constant attendant; but the reputation for abilities, both as an orator and a lawyer, which he shortly acquired, in consequence of the talent displayed by his arguments in cases of appeal, could not fail to procure him clients elsewhere. It is not always that the names of counsel engaged are given at all in Atkyns' Reports, and when this does happen, the seniors only, on whom the arguing of the cases devolved, are mentioned; besides which, as the work is very properly confined to causes of importance, it contains no allusion to such business as may be supposed to have brought a rising young barrister most frequently before the court. We have, therefore, no clue towards forming anything like a correct estimate of the amount of Murray's practice during this period; but there is every reason to believe that it went on progressively increasing in Westminster Hall, with as much rapidity as in the House of Lords. It has been said, indeed, that he remained, for a long time after his call to the bar, entirely unnoticed; and that he never knew the difference between having no practice at all and one that produced him three thousand a year. That this account is incorrect may easily be proved by a reference to the Lords' Journals: and another story, on which it is partly founded, seems to lay very little better claim to credibility. According to this tale, in the well-known case of Cibber v. Sloper, tried (5th December 1738) before Sir W. Lee, Chief Justice of the King's Bench, the senior counsel employed on behalf of the defendant being suddenly seized with a fit in court, the conduct of the defence devolved entirely upon Murray, who was retained as junior on the same side; and the Court consenting to adjourn for an hour, in order to give him time for preparation, at the expiration

of that time he delivered a speech, which had such an effect on the jury, as speedily to bring the young, and till that time unknown orator, an enormous influx of clients. Now it is to be remarked, in the first place, that two accounts of the trial, published at the time, make no mention of any incident of this kind; though it would have been one not likely to be omitted in books made up for the sole purpose of gratifying the curiosity of the public, and containing the most minute detail of every thing connected with the proceedings. Even had Serjeant Eyre, the leader, been disabled from proceeding with the defence, there were three other counsel on the same side, independent of Murray, and two of them, Noel and Lloyd, were his seniors; so that it is most improbable the duty would have devolved on him. But the fact is, that the Serjeant's speech is reported at considerable length, and bears not the slightest mark of his having been stopped short, or even interrupted for a moment, by an attack of illness, or any other cause. Murray, it is true, was afterwards heard by the Court, but this privilege was probably conceded to him from a consciousness of his ability as a speaker, which had long been no secret, either to his own profession or the public. In short, there seems every reason to believe that the whole history of Serjeant Eyre's sudden malady, and Murray's almost equally sudden emersion from obscurity into celebrity, owes its origin to that same appetite for the extraordinary, by which so many facts of much greater importance are almost daily confused and distorted. There is no reason, however, to doubt that Murray's reputation was diffused much more widely than it had been before, in consequence of the part he bore in this trial. Any cause in which the son of Colley Cibber might be concerned was not likely to fail in catching the attention of the public. His wife, too, (the sister of Thomas Arne the composer) who was the cause of the action, had long been a favourite actress, and the whole town had been occupied, some time before, with the notable dispute between her and Mrs. Clive, as to who should perform the part of Polly Peachum, in the Beggars' Opera*; so that all the history of her intrigues

* This is alluded to in Fielding's play, "The Historical Register for 1736," where Theophilus Cibber, under the name of Pistol, and his

was sure to prove an attractive subject, in an age when a depraved taste for such scandalous and indecent details as were gone into at the trial, was, to say the least, quite as prevalent as in our own time. Indeed, no better proof can be given of the general curiosity excited by this case, and of the extent to which the account of the trial, and of the events that led to it, was circulated, than the fact of one pamphlet on the subject having reached a sixth edition. In a legal point of view the case still possesses some interest, inasmuch as it affords an instance of a practice now deservedly exploded in actions for criminal conversation: the jury having been directed to find for the plaintiff, notwithstanding the most direct and unequivocal evidence of collusion on his part. The amount of the verdict was ten pounds.

In support of the account which represents Murray as having been entirely unknown and unemployed till the trial of Cibber v. Sloper, a letter of Pope's is adduced, supposed to have been written in answer to one wherein the young lawyer had good-humouredly complained of his want of business on the circuit. There is not, however, the slightest evidence to shew that the letter in question was addressed to Murray; and indeed if Warburton's arrangement of his friend's papers be correct (which there is surely no reason to

father by that of Ground-Ivy, are held up to the ridicule of the audience.

"Thus to the publick deign we to appeal;
Behold how humbly the great Pistol kneels.
Say then, O Town, is it your royal will,
That my great consort represent the part
Of Polly Peachum, in the Beggars' Opera?"

Speaking of the rival Pollys, Medley says, "they were damned at my first rehearsal, for which reason I have cut them out; and to tell you the truth, I think the town has honored 'em enough with talking of 'em for a whole month; tho' faith, I believe it was owing to their having nothing else to talk of." By the way the plan of Sheridan's Critic, with the idea of the wise Lord Burleigh shaking his head, &c. is taken entirely from this play, or rather farce, of Fielding. We have heard that Sheridan, when taxed with appropriating some ideas from another quarter, and converting them to the use of Sir Fretful Plagiary, was in the habit of taking additional credit to himself for making the knight act so much in character.

doubt) it is quite clear that this must have been written to a totally different person, since it is classed among others dated 1718, a time when Murray was not fourteen years of age. Besides, nothing can be more improbable than that one fragment, and one only, of their correspondence should have been inserted in the collection of the Poet's works.

The poems of Pope contain several testimonies of his attachment to Murray. In the fourth book of the Dunciad, which was added to the original work in 1742, he very happily introduces an allusion to his friend's celebrity, at the same time that he vents a bitter and well-merited satire upon the exclusive attention paid in our public schools to mere verbal learning, and especially to Latin versification. A pedant makes his complaint before the throne of Dullness, that Westminster Hall and the House of Commons should cause all this species of lore so speedily to be forgotten, even by those who were once the greatest proficients in it.

> "We ply the memory, we load the brain,
> Bind rebel wit, and double chain on chain;
> Confine the thought to exercise the breath,
> And keep them in the pale of words till death.
> Whate'er the talents, or howe'er design'd,
> We hang one jingling padlock on the mind:
> A poet the first day he dips his quill;
> And what the last?—a very poet still.
> Pity! the charm works only in our wall,
> Lost, too soon lost, in yonder house or hall.
> There truant Wyndham ev'ry muse gave o'er,
> There Talbot sank, and was a wit no more!
> How sweet an Ovid, Murray, was our boast!
> How many Martials were in Pulteney lost!"

Of his imitations of Horace, the sixth epistle, published in 1737, is addressed to Murray, and contains, among other passages relating to him, the following lines:—

> "Grac'd as thou art with all the power of words,
> So known, so honour'd in the House of Lords.*

* A specimen of bathos hardly surpassed by Colley Cibber's well known parody on it:—

> "Persuasion tips his tongue whene'er he talks:
> And he has chambers in the King's Bench Walks."

Conspicuous scene! Another yet is nigh,
More silent far, where kings and poets lie;
Where Murray (long enough his country's pride)
Shall be no more than Tully or than Hyde!"

Several anecdotes are recorded of the intimacy of these two illustrious friends, from which it appears that their feelings towards each other were almost as those of a father and son. For instance, an acquaintance of Murray's happening one day to enter his chambers abruptly, perceived him practising the gestures of an orator before a glass, while the poet sate at his side, to give his opinion of their effect. Another story gives a still better example of the familiarity of their intercourse. It is well known that Pope entertained some jealousy of the reputation Dr. Friend had acquired for his Latin epitaphs; which feeling, indeed, at one time vented itself in the epigram—

"Friend, for your epitaphs I'm griev'd,
Where still so much is said;
One half will never be believ'd,
The other never read."

He was occasionally seized with a desire of emulating, as well as ridiculing the doctor. Towards the decline of his life, he was often in the habit of spending his winter evenings in the library of Murray's house, in Lincoln's Inn-fields; and when the professional duties of the latter obliged him to leave his guest alone, he would employ himself in penning compositions of the same kind. These Murray, on his return, never failed to throw into the fire, saying, that the finest of English poets, and the one who had most embellished his own language, ought to write in no other.

No intimacy could surely be closer, than one which authorized such friendly liberties as this. To the latest period of Pope's life, the same cordial intercourse met with no interruption. A few days before his death, he was carried from Twickenham, at his own desire, to dine with Murray, in London. This was the last social interview between them. The only other guests invited were Bolingbroke and Warburton. By Pope's will, Murray was appointed one of his executors, and a trifling bequest (a marble bust of Homer, by Bernini, and another of Sir Isaac Newton by Guelfi) was

left to him, as a memento of the poet's friendship. Murray was also in possession of a portrait of Betterton the actor, drawn by Pope himself, who occasionally amused himself with attempts at painting.

Before Murray had acquired that high character at the bar which secured him the possession of a large income, he was a suitor for the hand of Lady Elizabeth Finch, one of the daughters of the Earl of Winchelsea and Nottingham. The want of adequate fortune was, however, at that time, considered by the lady's family an impediment to their union; and he had some reason to fear that a more wealthy rival might supplant him. This is pointedly alluded to by Pope, in some lines of the epistle quoted above.

> "From morn to night, at senate, Rolls, and hall,
> Plead much, read more, dine late, or not at all.
> But wherefore all this labour, all this strife?
> For fame, for riches, for a noble wife?
> Shall one whom native learning, birth conspir'd
> To form, not to admire, but be admir'd,
> Sigh, while his Chloe, blind to wit and worth,
> Weds the rich dulness of some son of earth?"

In the Ode to Venus, also, which was published the same year (1737), the same topic is touched upon.

> "Mother too fierce of dear desires,
> Turn, turn, to willing hearts your wanton fires;
> To number five direct your doves,
> Then spread round Murray all your blooming loves:
> Noble and young, who strikes the heart
> With every sprightly, every decent part;
> Equal the injur'd to defend,
> To charm the mistress, or to fix the friend;
> He, with a hundred arts refin'd,
> Shall stretch thy conquests over half the kind;
> To him each rival shall submit,
> Make but his riches equal to his wit."

It is not probable that these encomiums, however well-merited, had any influence in overcoming the objections of the lady's family. Her own portion, as one of six daughters, being of course a small one, it is to be supposed that before her parents yielded their assent to the match, Murray was in

the receipt of an adequate, if not a very large, professional income. The marriage took place in November 1738, the month previous to the trial of Cibber v. Sloper, which may have had the effect of greatly increasing the number of his clients and the amount of his professional gains, but certainly was not the first occasion of his obtaining either.

This alliance exercised a very material influence over Murray's future career. After the resignation of Sir Robert Walpole, in February 1741, among the different appointments which took place on the formation of the new ministry, was that of the Earl of Winchelsea to the post of First Lord of the Admiralty. His promotion to this office is sufficient evidence of his credit with the party then in power; and he had not long to wait for an opportunity of exerting it successfully in behalf of his son-in-law. In the course of the following year, the Solicitor-General, Sir John Strange, resigned; and the vacant place was immediately filled by Murray. This appointment gave him a new sphere for the exercise of his talents. With the prudence and caution which were distinguishing features of his character, he had hitherto withstood the solicitations of his friends to embark in politics, and had constantly refused to become a candidate for a seat in parliament: alleging, as his reason, that while he continued to enjoy the patronage of all parties, he could gain nothing by attaching himself to one, a maxim he had probably learnt from Pope, who originally had it from Addison. Having once, however, taken the decisive step of accepting office, he had no longer any motive for refraining to enter the House of Commons; nor indeed could he have avoided doing so, had he been inclined. Accordingly, on the 22d of November, 1742 (Parliament having assembled on the sixteenth day of the same month), he was returned for Boroughbridge. This borough being one over which the Duke of Newcastle possessed considerable influence, it was probably as an avowed adherent of the Pelham party that Murray first launched himself into the political world. Among the Tories, the Jacobites, and the discontented Whigs, who had coalesced in opposition to the measures of Sir Robert Walpole, this party may be said to have steered in some sort a middle course. That, at least, such was their policy at that period, and for some time afterwards, is plainly

shewn by the Duke's favourite project of uniting these conflicting interests; a project which himself and his brother effected, on the resignation of Lord Granville (1747), by the formation of the "broad-bottomed" administration. Such principles as these were exactly suited to Murray, who was always averse from extreme or violent measures of any kind; and of whose political conduct throughout a long and honourable career, moderation and consistency were the distinguishing characteristics.

The former quality he displayed in an eminent degree on the occasion of the trial of the rebel lords in 1746, and (much to the credit of the times be it said) he displayed it in common with every other person concerned in the prosecution. Not even the shameless and unnatural attempt of the octogenarian Lord Lovat, to save his own life by the sacrifice of his son's, could tempt the Solicitor-General to express the indignation it must have excited in his breast. He studiously confined himself to a plain statement of the facts, and exposition of the evidence, which he summed up and commented upon in a manner that shewed him to be a consummate master of his profession. His different speeches on these trials are fully and, as we learn from contemporary authority, accurately reported in the State Trials. They are probably the only specimens from which a tolerable idea may be formed of his forensic eloquence; though, of course, from the nature of the duty he was called on to perform, the idea must be a very imperfect one. Towards the conclusion of the proceedings, he was warmly complimented both by the Attorney-General and Lord Talbot, for the ability he had displayed. Lord Talbot, in particular, said of him that his eminent talents had never appeared to such advantage as on that day, when his candour and humanity lent an additional grace to his eloquence; and he concluded by expressing his hope that he might, at a future period, find the talents of the Solicitor-General adding lustre to the highest civil employment in the kingdom. From such a character as Lord Lovat, praise could be of little value, except inasmuch as, being the praise of a man condemned to death, towards him who had principally contributed to procure his conviction, it must have been candid and impartial. He said he had the honour to be Mr. Murray's

relation, though it was possible he might not know it; that his cousin's eloquence would have been of great service to him, had it been exerted in his behalf; but that although he was the principal sufferer by it, he could not refrain from listening to it with pleasure; declared he considered him an honour to his country; and hoped his Scottish origin and connexions might not prove a bar to the preferment he so well deserved.

There was some reason for the apprehension intimated by Lord Lovat, that the country and the political principles of Murray's relations might stand in the way of his advancement. His family, though not openly committed in the cause of the Pretender, was generally supposed to have preserved its hereditary attachment to the house of Stuart; his elder brother, indeed, had been, ever since the death of Queen Anne, in the service of the exiled prince, from whom he had received the title of Earl of Dunbar. Murray's elevation to office under the English government had caused some suspicion to prevail among the adherents of the Pretender abroad, that this titular Earl of Dunbar was disaffected to their common cause; and on the other hand, with equal injustice, whispers had been industriously circulated among the political opponents of the solicitor-general, that he was secretly attached to the Jacobite principles avowed by his brother. Subsequently, it was even imputed to him, that his temperate and dispassionate conduct towards the rebel lords, when they were brought to trial, was attributable to his prepossession in favour of the cause for which they suffered: a charge equally applicable to every person concerned in the prosecution, since the behaviour of every individual among them was marked by the strictest decorum and moderation; and equally destitute of foundation with regard to all, as, had they chosen to indulge in invective or vituperation against the prisoners, they would only have lowered their own characters as men and gentlemen, without thereby in the least strengthening the evidence. If it were not that no accusation is too grossly or palpably ridiculous for political rancour to countenance against the objects of its animosity, we should suppose Murray's enemies would have been anxious to avoid any allusion to his conduct on this occasion; as it is very

certain no servant of the crown exerted himself with more zeal, or with so much effect, as he, throughout the whole of the trials.

After the death of the Prince of Wales, in March 1751, the adversaries of Murray's party endeavoured to further certain political purposes of their own, by bringing forward, in a more tangible shape, the rumours that had been indistinctly noised abroad concerning his disaffection to the reigning family. The opposition, now deprived of their chief, were reduced almost entirely to silence in parliament; but though, for the time, the very existence of two separate parties seemed equivocal, individuals belonging to both were no less keenly alive to their own interests at that period than at most others. The great object with every one who aspired to power, was to secure to himself or his allies some place about the person of the young prince (afterwards George III.), it being conjectured (and very reasonably so, as subsequently appeared in the instance of Lord Bute) that those who could ingratiate themselves with the heir apparent would have a very good chance of obtaining a share in the government when he became king. Accordingly, there was as much of intriguing to procure the management of the future sovereign, as ever there had been of fighting among the Greeks and Trojans to secure the body of Patroclus. Now it happened that Andrew Stone, the Duke of Newcastle's secretary, was one of the Prince's governors; and another was Johnson, Bishop of Gloucester. Both had been contemporaries of Murray at Westminster, and the intimacy of the three had continued ever since; insomuch that Johnson owed his rise, from the place of second master of the school to a seat on the bench of bishops, entirely to the interest of Stone and Murray. It may easily, therefore, be conceived with what satisfaction the intriguers seized on an opportunity of bringing forward an accusation which implicated the three at once, and charged them with the common sin of Jacobitism.

Early in February 1753, Lord Ravensworth came suddenly to town, and gave Mr. Pelham to understand that he had a charge of this nature to prefer. The information was by no means graciously received. Indeed the minister appeared very little disposed to proceed to an enquiry. But as

the whole affair had been communicated to several of the opposition, he could not avoid an investigation; and it was decided that Lord Ravensworth should communicate his intelligence to the privy council. It is not our intention to enter into the details of the proceedings. They are given with great minuteness in Horace Walpole's Memoirs, and may be found, in a more condensed form, among the other gossippings of Bubb Doddington's Diary, to which works we must refer our readers for more ample information on the subject. Suffice it to mention here, that after a long and tedious sifting of the matter, it appeared there was no better foundation for the charge, than some loose words casually dropped by one Fawcett, an attorney at Newcastle, in a conversation at table; which intimated that, upwards of twenty years previously, he had known Murray, Johnson, and Stone to visit a notorious Jacobite named Vernon, and that at his table they were in the habit of pledging the Pretender's health. Even this evidence, little as it went to prove, was prevaricated upon, and explained away, and partially retracted by Fawcett himself, when summoned before the council; and the fact alleged was distinctly and solemnly denied by each of the parties accused. Upon this the charge was at length altogether dismissed; and an attempt set on foot by Lord Ravensworth and the Duke of Bedford to revive the subject, in the shape of a parliamentary enquiry, proved utterly abortive.

Vernon, the Jacobite alluded to by Fawcett, although he followed the calling of a mercer, was a member of the ancient Derbyshire family of that name. Murray, Stone, and Johnson, had all been intimate with his son at Westminster school, and their boyish friendship led to an acquaintance with himself, which was continued after they had left the University. For Murray, indeed, he soon conceived a warm attachment, insomuch that, on the death of his only son, he considered him as his heir; and eventually left him, by his will, a property in Cheshire and Derbyshire, which was estimated at the value of more than ten thousand pounds. This was some time after Murray's marriage. The testimony of Fawcett all bore reference to an earlier period, when Murray was a young lawyer, and Stone and Johnson were both in obscurity. At that time it appears that young Vernon and his three

friends used frequently to sup at his father's house in Cheapside, on which occasions there is little doubt that the old tradesman made no secret of his attachment to the Jacobite party. Whether the others ever thought fit to humour him so far as to avow a similar predilection, was the question that constituted the whole gist of the deep and serious investigation before the council. The only person who treated the affair as it deserved was the king himself, who repeatedly declared it was of very little importance to him what the parties accused might have said, or done, or thought, while they were little more than boys: he was quite satisfied with the assurance that they had since become his very faithful subjects and trusty servants.

Putting Murray's solemn asseveration of the falsehood of Fawcett's statement entirely aside, we think the constant drinking of the Pretender's health before a mixed company, at a time when such symptoms of disaffection might, and often did, entail very awkward consequences on the persons displaying them, would have been an act quite inconsistent with the caution and the prudence of his character. Whether the improbability of the charge, coupled with his own denial of its truth, were then generally considered sufficient to disprove it altogether, we have no means of ascertaining. But his political opponents either did give it entire credence, or had their own reasons for affecting to do so; and the imputation of this political crime was, for many years afterwards, a favourite weapon with his assailants. Even so late as the time of Junius, we find it turned against him; and Horne Tooke, when he was tried in the Court of King's Bench, had no scruple in making free use of it. But it was in the hands of Pitt, and shortly after the investigation, that it proved most formidable. At the time the charge was made, Pitt was himself a member of the administration; and though his feelings of jealousy or personal enmity did occasionally betray themselves, even while he was enlisted under the same banner with Murray, he of course could not then make an habitual show of hostility against him. But on the death of Mr. Pelham, (March, 1754) and his subsequent dismissal from the office of paymaster of the forces, which happened the year afterwards, (November 1755) he was thrown into opposition, and had full

opportunity of giving scope to his eloquence in repeated attacks against all the adherents of the Duke of Newcastle. Murray, as the acknowledged leader and champion of the ministerial party in the House of Commons, would naturally have been singled out by him as the opponent most worthy to be coped with, and most difficult to silence, even had he not been further instigated against him by that spirit of personal rivalry, which, according to Horace Walpole (and in such a case we may give full credit even to this prejudiced partizan), had materially contributed to bring about his defection from their common cause. Many examples of his attacks upon Murray, and some in which he taunted him with his supposed inclination towards Jacobitism, may be found in Walpole's Memoirs. From them it would appear that Pitt never failed to have the advantage, and that Murray invariably quailed beneath the pointed sarcasms of this great orator. The authority is no doubt questionable; but the account, nevertheless, wears the appearance of truth. There was a degree of timidity about the character of Murray, which was very likely to unfit him for stemming such bold and rapid torrents of invective or irony as the genius of Pitt delighted to pour forth. In closeness of argument, in happiness of illustration, in copiousness and grace of diction, the oratory of Murray was unsurpassed; and, indeed, in all the qualities which conspire to form an able debater, he is allowed to have been Pitt's superior. When measures were attacked, no one was better capable of defending them; when reasoning was the weapon employed, none handled it with such effect; but against declamatory invective his very temperament incapacitated him from contending with so much advantage. He was like an accomplished fencer, invulnerable to the thrusts of a small sword, but not equally able to ward off the downright stroke of a bludgeon.

We have the testimony of every historian of Murray's time, to his ability as a parliamentary orator. In the House of Commons he had no competitor but Pitt. "They alone," says Lord Chesterfield, "can inflame or quiet the house; they alone are attended to in that numerous and noisy assembly, that you might hear a pin fall, while either of them is speaking." Horace Walpole's frequent testimony to the same

purpose is the more valuable, inasmuch as he gives it with evident reluctance. Unfortunately we have now no better means of estimating Murray's skill as a debater, than by the effects it produced. Pretended reports of his speeches in Parliament may be found among the publications of the day; but there is none on which we can place much reliance, even as far as the arguments are concerned, much less the language, which indeed they scarcely affected to give with accuracy. It was in 1738 that the House of Commons declared it a breach of privilege to print any account of its debates; and though this had no further direct effect than that of inducing booksellers to publish them under fictitious titles (such as the debates of the kingdom of Lilliput in the Gentleman's Magazine), yet it certainly acted as a check upon reporters, who might previously have been in the habit of openly taking their notes in the gallery. For the most part, therefore, a general notion of the subject of debate, with a more or less vague recollection, or perhaps a few loose memoranda of the principal topics insisted upon by the speakers, were the only materials which the professional caterers for public curiosity could command. Upon this slender ground-work, or often upon none at all, they were in the habit of constructing compositions, which were given out as the actual record of the proceedings of the house; though for the whole of the language, and the greater part of the ideas, they were often indebted in a much greater degree to their invention than their memory. The account of the magazine speech-maker, in Jonathan Wild, is perhaps not very highly caricatured. Horace Walpole, and some few other writers of his class, who have acquainted us in a summary way with the most important transactions of Parliament during their own time, have not in any case attempted more than an outline of any particular debate. The highest credit is certainly due to the industry and the skill, with which the editors of the Parliamentary History have availed themselves of several important manuscript notes taken by different members, who were present at the debates; but from such imperfect and sometimes prejudiced accounts as these, we can no more form a just or adequate notion of Murray's powers as an orator, than from the mere general description of his commanding though not tall figure, his graceful gestures, his

sparkling eye, and his melodious voice, we can bring before our imagination a correct picture of the man.

The well-earned celebrity of Murray, both as a debater and as a statesman, raised a general expectation that he would be selected as the fittest person to succeed Mr. Pelham in the cabinet. His high parliamentary reputation, however, had never estranged him from his profession, to which, and to which alone, he had repeatedly declared he would look for preferment. Walpole, indeed, in speaking of his claims to the office of prime minister, insinuates that he was not disinclined to advance them, but "was always waiving what he was always courting." No one, however, who has read this affected writer's memoirs, and been fatigued with his incessant strainings after antithesis, will require to be told that he makes little scruple of sacrificing truth, and distorting if not wholly mis-stating facts, whenever by so doing he can contrive to torture his language into a point. In this he strictly resembles the school of French writers, on which he had evidently modelled his style. It must, however, be acknowledged that he involuntarily corrects many of his misrepresentations delivered inthe form of such conceits as the one just quoted, by contradicting them in some of the few places where he condescends to express himself in plain language. Thus, in a subsequent part of his memoirs, finding, no doubt, that what he was about to state could by no ingenuity be converted into a resting place for the see-saw of an antithesis, he distinctly and simply declares the fact mentioned above (which is besides authenticated by other authority), that Murray invariably refused to go out of his profession for advancement.

He had not long to wait for an opportunity of rising to the very eminence which had probably been, throughout his whole career, the object of his ambition. The Chief Justice of the King's Bench, Sir William Lee, died within a month after Mr. Pelham (8th April, 1754), and Sir Dudley Ryder being appointed to succeed him, the vacant post of Attorney-General fell to the lot of Murray. In little more than two years afterwards (July 1756), the death of Sir Dudley left the place of Chief Justice of England open to him. The claims of Murray to succeed to this office were incontestible, and indeed no attempt was made to deny them. But the peculiar circum-

stances in which the Duke of Newcastle was at that time placed, in consequence of the loss of Minorca, made him more than ever anxious to retain in the House of Commons his ablest and most powerful ally, without whose assistance he was aware it would be vain to indulge the hope of continuing at the head of the administration. Every effort was accordingly made by him to induce Murray to forego his claims at that critical period. We are assured by Horace Walpole, that he offered him (in addition to his place of Attorney-General, the emoluments of which were computed at about 7000*l.* a year), the Duchy of Lancaster with a pension of 2000*l.*, and the reversion of a tellership of the Exchequer for his nephew, Lord Stormont. At the beginning of October, after every attempt to procure a coalition with Pitt had failed, and as the approaching meeting of Parliament was about to bring matters to a crisis, the same authority informs us, that the Duke bid up as high as 7000*l.* a year in pensions, on condition that Murray would retain his seat in the House of Commons for a month, a week, nay even for one day. Murray, however, was resolute in his refusal. The office of Chief Justice of the King's Bench, with a peerage, was one he had long been aspiring to, and for which indeed he had forgone every opportunity of rising, by means independent of his profession. His professional reputation had kept pace with his political; and the bar at that time could produce none able to compete with him. He, therefore, justly considered himself entitled, as a matter of right, to an office of which no man in the kingdom was so able to discharge the duties, and which he had earned by a sufficiently long and extremely arduous course of services to government. Finding, therefore, the Duke of Newcastle selfishly resolved to neglect no means of withholding it from him, he at length gave his Grace to understand, that if his claims were disregarded, the ministry should gain nothing by his disappointment, as he would throw up the attorney-generalship, and leave them to encounter the coming storm by themselves. This intimation was decisive. The Duke had now no alternative but to resign, and consequently no motive for wishing to deprive Murray of the honours he had so well merited. Accordingly on the 8th November, 1756, he was called to the degree of serjeant, and the same evening was

sworn in as Chief Justice of the King's Bench, at the Chancellor's house in Ormond-street, the other judges and most of the officers of the court being in attendance. Immediately afterwards the great seal was appended to a patent, creating him Baron Mansfield, of Mansfield in the county of Nottingham. On the following Thursday (November 11th), he took his seat in the Court of King's Bench.

On the same day the Duke of Newcastle resigned his office of prime minister; and in the following week (Nov. 19), Lord Hardwicke gave up the great seal. The same political motives which had induced him to quit the woolsack were, of course, sufficient to prevent Lord Mansfield, who had been his colleague in the cabinet, from becoming his successor; and he accordingly declined accepting the vacant place, though repeatedly and earnestly pressed upon him. The seals were shortly afterwards put in commission; Sir John Willes, the Chief Justice of the Common Pleas, Sir John Eardley Wilmot, a puisne judge of the King's Bench, and Sir Sidney Stafford Smythe, third Baron of the Exchequer, being appointed to execute the legal functions of the Chancellor. The administration, however, under which these arrangements took place was not of long duration. The king's personal feelings of dislike against Pitt gave every advantage to the opponents of the minister, in their endeavours to oust him from his office; and they had not to wait later than the spring of the ensuing year before their efforts were successful. Pitt was displaced in the beginning of April, and for about eleven weeks there was actually no administration, this time being employed in fruitless attempts to unite the conflicting interests, passions, and pretensions of the adherents of Fox and the Duke of Newcastle. The endeavour miscarried, notwithstanding the Duke's readiness to make almost any concession for the purpose of effecting such a coalition, and the advantage he derived from the assistance of his friend, Lord Mansfield, in the course of the negociation. The chancellorship of the exchequer had been given up by Mr. Legge, on the resignation of Pitt; and the forms of that office not admitting the absence of a chief, it had been entrusted (9th April), till the new ministry should be formed, to the Chief Justice of the King's Bench, as it had been to Chief Justice Lee on the death of Mr. Pelham, and to

Chief Justice Pratt on the dismissal of Aislabie, in the time of George the First. This appointment gave Lord Mansfield frequent access to the king, by whom he was confidentially consulted on the subject of the different ministerial arrangements then in contemplation. The difficulties that stood in the way of the formation of a cabinet were, as it is well known, finally adjusted by a junction between Pitt and the Duke of Newcastle, the latter being appointed to the Treasury, and the former becoming secretary of state. The seals of the exchequer were then given up by Lord Mansfield, that Legge might be reinstated in the post he had quitted.

The new ministry kissed hands on the 29th of June, and on the day following the Chancery commissioners resigned in favour of Lord Mansfield's former school-fellow, Sir Robert Henley, who had succeeded him as Attorney-General. He took the seals, with the title of Lord Keeper, which he retained till the accession of George the Third, when, after the customary resignation, they were re-delivered to him as Lord Chancellor, and he was created Earl of Northington. More difficulties had been experienced by the Duke of Newcastle and his colleague in filling this office, than any other at their disposal. It had first been offered to Lord Hardwicke, who declined it on account of his advanced age. It was then once more tendered to Lord Mansfield; but he saw sufficient reason, in the apparently unsettled state of the ministry, to justify his refusal; and Sir Thomas Clarke, the Master of the Rolls, was also prudent enough to resist the temptation of quitting his own secure place for the sake of so precarious an elevation. Chief Justice Willes would not accept it without a peerage, which the ministry refused to give him; and the unambitious Sir John Wilmot would take it on no condition whatever. In short, the offer was not made to Sir Robert Henley till it had been the round of half the judges of the kingdom. This promotion enabled Pitt to insist on the appointment of his friend Pratt (afterwards Lord Camden) to the attorney-generalship. Charles Yorke kept his place as Solicitor.

The Duke of Newcastle had been the more anxious to overcome Lord Mansfield's objections against accepting the post of Chancellor, that he knew by experience how able a coad-

jutor he would prove as one of the administration. Finding himself, however, foiled in this object, and not being able to reconcile himself to the loss of his services, he had recourse to the dangerous and unconstitutional expedient, which has of late years been resorted to in the case of Lord Ellenborough, but which it is to be hoped will never again be attempted, of enrolling the Chief Justice of King's Bench among the members of the cabinet. With the exception, however, of a short period during the year 1765, when he was nominated as one of the council of regency, Lord Mansfield ceased to be an active member as early as 1763. He then refused to sit with the Duke of Bedford; and, though subsequently consulted by ministers on occasions when they required his assistance, he never afterwards resumed his place in the cabinet.

In the Court of King's Bench it was his lot to preside a much longer period than any other judge, either before or since, has sat in any English court of justice. In the course of nearly thirty-two years that he remained there, many changes took place among his colleagues. When he first took his seat, the puisne justices in the King's Bench were Sir Thomas Denison, Sir Michael Foster, and Sir John Wilmot; though the last, from the time he was named as one of the commissioners of the great seal, was rarely present in his own court till his resignation of that office. Sir Michael Foster died on the 7th of Nov. 1763, after an illness which had disabled him from attending to his duties for more than two terms previous, and on the 24th of the following January, his place was filled by the elevation of Sir Joseph Yates to the Bench. On the 14th of February, 1765, Sir Thomas Denison resigned, and the vacant post was occupied on the first day of the ensuing Easter term by Sir Richard Aston, who had been Chief Justice of the Common Pleas in Ireland. On the resignation of Lord Northington, Sir John Wilmot became Chief Justice of the Common Pleas (21st of August, 1766) in the room of Lord Camden, who was appointed to the chancellorship. Serjeant Hewitt, being created a judge of the King's Bench before the end of the long vacation, took his seat in court on the first day of Michaelmas term; and about a year afterwards, when he was promoted, with the title of Lord Lifford, to the chancellorship of Ireland, the Solicitor-General, Edward

Willes, who was the second son of the former Chief Justice of the Common Pleas, was made a puisne judge in his stead. He took his seat on the 27th of January, 1768. In the vacation between Hilary and Easter terms 1770, Sir Joseph Yates was transferred to the Common Pleas in the place of Mr. Justice Clive, who had resigned. He was succeeded in the King's Bench by Sir William Blackstone, who afterwards, on the death of his former predecessor, (7th June, 1770) removed to the Common Pleas. During the same month, the vacancy thus created in the King's Bench was filled by Sir William Henry Ashurst. On the 14th of January, 1777, Mr. Justice Willes died, and Sir Nash Grose was appointed to his place on the 9th on the following month. The death of Sir Richard Aston took place on the 1st of March, 1778, and on the first day of the next Easter term, the vacant seat was taken by Sir Edward Buller. All these changes occurred while Lord Mansfield occupied the station of Chief Justice of the Court. That his opinions on the many hundreds of legal points which came under the notice of himself and his colleagues during this long period, were almost without a single exception adopted or coincided with by a set of judges, than whom no period of our legal history can boast of more able or more upright men, is a fact which of itself forms a splendid eulogium on his learning, his genius, and his integrity.

We are told by Sir James Burrow, that while he continued to report the decisions of the court, which was from the time of Lord Mansfield's first taking his seat there to the end of Hilary Term, 1772, (12 Geo. 3.) and even up to the date of their publication (1776), there was no instance of a final difference of opinion among the judges in any case, except in the celebrated literary property cause, Miller *v.* Taylor, and the equally well-known one of Perryn *v.* Blake. With the exception, too, of these cases, no judgment given during that time was reversed either in the Exchequer Chamber or in the House of Lords; and even in these, the decisions of the Court of King's Bench were not overruled without much doubt and diversity of opinion among the other judges. During the same period, not a single bill of exceptions had ever been tendered; and, although the average number of causes annually disposed of was upwards of eight hundred, it had

never happened in the course of a year that so many as thirty came before the court a second time, in the form of special cases, or by motions for new trial. "And yet," says Burrow, "notwithstanding this immensity of business, it is notorious, that in consequence of method and a few rules which have been laid down to prevent delay (even where the parties themselves would willingly consent to it), nothing now hangs in court. Upon the last day of the very last term, if we exclude such motions of the term as by the desire of the parties went over of course as peremptories, there was not a single matter of any kind that remained undetermined, excepting one relating to the proprietary lordship of Maryland, which was professedly postponed on account of the present situation of America. One might speak to the same effect concerning the last day of any former term, for some years backward."

The efficiency and dispatch with which the whole business of the court was conducted, was due in a great degree to several improvements in practice introduced by Lord Mansfield. Before his time, whenever a special case or special verdict had been agreed upon, it had been usually left to be drawn up and settled at the leisure of the parties, without the interference of the court; a custom which often occasioned considerable delay before the case could be set down for argument, since frequent disputes arose as to trifling matters of fact which could only be decided by repeated attendances before a judge, and in some instances, only by a new trial. Lord Mansfield remedied this evil, by causing the special case or verdict to be drawn up before the jury was discharged, so that doubts as to matters of fact could be satisfactorily decided by a reference to them, and any other disputed points could be settled on the spot by the judge. It was then signed in court by the counsel on either side, after which, of course, no further contest could take place on the subject. When a cause was set down for argument, the parties could not only calculate with certainty on a speedy judgment, but they had no power, even were they so disposed, to procrastinate the decision. The former custom of permitting counsel or their clients to put off the hearing by consent, was no longer allowed by Lord Mansfield. No delay could be procured, except when applied for beforehand by motion, and on shewing by

affidavit good cause for postponement. Again, it had formerly been usual to hear, at different intervals, two, three, or even four successive arguments on every case of importance, before judgment was given. Lord Mansfield seldom allowed more than one; and instead of postponing the decison, he always, except in cases of difficulty, made it a point to give judgment immediately. In the very first case reported by Burrow (*Raynard* v. *Chace*), which was argued the day after he first took his seat on the bench, the counsel and their clients, who expected as a matter of course that there would be at least a second, and perhaps a third hearing, before the judges would undertake to pronounce their decision, were surprised to hear from the new Chief Justice, that the Court, having no doubts on the subject in dispute, considered itself bound as well to spare the parties the cost and delay of further discussion, as to terminate the suspense of others who might he interested in the decision of the question, and would accordingly give judgment at once.

Those who are conversant with the routine of the courts will have no difficulty in conceiving how much these alterations, and others of the same tendency, must have done towards facilitating and expediting the administration of justice. It is obvious, however, that mere rules of practice can never be of themselves sufficient to effect this object; and, indeed, that their efficacy must always depend on the learning and the energy of those who sit on the bench. That energy was not wanting, is sufficiently attested by the amount of business annually disposed of. To prove that there was legal knowledge in abundance, it would be enough, one would think, simply to state the fact, that out of the multitude of judgments given by the Court of King's Bench, not only during the period mentioned by Burrow, but during the whole course of Lord Mansfield's chief-justiceship, two only were reversed by the House of Lords. Even putting this out of the question, we confess ourselves quite unable to conceive how any one familiar with his reported decisions can countenance the notion that he was deficient in professional learning. Nevertheless, as such an imputation has been brought against him from more than one quarter, it is incumbent on us to enquire, not what foundation there is for the charge, (for this we candidly

acknowledge our inability to ascertain), but what causes may have contributed to give it birth.

In the first place, then, it is highly probable that the brilliancy of his genius, together with the extent and the variety of his acquirements, may have obscured and thrown into the shade whatever of mere learning he possessed. That this has frequently happened, it would be easy to prove by a number of examples. A very great majority of the admirers of Bacon, for instance, are not at all aware of his celebrity as a practical lawyer; and those who are, in enumerating his titles to fame, seldom think it worth while to dwell much on his legal knowledge, because this, and indeed, mere knowledge of any sort, being within the reach of a very ordinary intellect, the fact of his having possessed it could add nothing to a reputation such as his. The same may have been the case, though in a less degree, with regard to Mansfield; and his panegyrists having constantly expatiated rather on the qualifications which distinguished him from most of his contemporaries at the bar or on the bench, than on the single one which he possessed in common with perhaps the majority of them, his detractors have been enabled, without much fear of contradiction, to assume, that in this very qualification he was deficient.

"It is with genius," says Pope, "as with a fine fashion: all those are displeased at it who are not able to follow it." This apophthegm, there can be no doubt, has something of the fault of most smart sayings, namely, that it is not altogether true. But partially so it assuredly is; for whenever any individual outstrips his competitors in the toilsome ascent up the steep of Fame, there will always be many among them who, in despair of being able to raise themselves up to his level, will console themselves by endeavouring to pull him down to their own. And the general reluctance, which prevails among a large class of mankind to acknowledge a superiority of any sort in their fellows, is augmented in a rapidly increasing ratio when superiority is aimed at in more than one particular. A single claim to excellence is rarely admitted without cavilling and dispute; but he that puts in several must look to have them contested without end. If such a man be a lawyer, he will still further have to contend

against the popular notion almost universally prevalent in this country, and warranted, it is to be feared, by too many examples, that a thorough lawyer cannot by possibility be any thing else: of which proposition the converse being necessarily implied, it follows, as an unavoidable consequence, that he who makes good his title to any other species of excellence is assumed to be no lawyer at all.

Another circumstance which, in the eyes of many, was likely to lend some countenance to this opinion with respect to Lord Mansfield, was that he was entirely above the solemn pedantry and affectation of learning, which often pass current for learning itself. We have heard it related of a barrister not many years since deceased, who by means partly of this very species of affectation, and partly of other even more unworthy artifices, had contrived to insinuate himself into a tolerably large practice, that when this desired end was once attained, he often, in familiar conversation with his friends, was wont exultingly to exclaim, "Thank God, I can now afford to dispense with humbug." Lord Mansfield chose to dispense with it all his life. The respect and admiration he always felt and professed for the general wisdom and beauty of our jurisprudence, did not prevent him from making light of some of the blemishes that disfigure it. The science of pleading, for instance, he valued, because he could understand its spirit; but for the solemn fooleries which lessen its utility and detract from its dignity (excrescences which mere men of routine think themselves bound to admire, simply because they cannot perceive them to be excrescences and nothing more), he seldom scrupled to avow his contempt. A mind like his could distinguish the chaff from the grain; and he never attempted to impose either on himself or on others, by considering both as of the same value. He was equally above the silly attempts made by many to enhance the dignity of legal science, or the merit of those who have distinguished themselves among its professors, by overrating the difficulties that attend the acquirement of it. He used to say, that the number of books it was necessary for a student to make himself familiar with, was commonly very much exaggerated, and that many were read merely for the sake of acquiring knowledge which it was not absolutely essential

to possess, but of which it might be hurtful to a lawyer's general reputation that he should be supposed ignorant. It was a mistake, he observed, to think that the increase of legal works added to the necessary amount of reading, since several of the older treatises were entirely superseded by others of more modern date; as, for example, in the case of Finch's Law, and Wood's Institutes, which had formerly been put into the hands of every beginner, but which no one thought of studying after the appearance of Blackstone's Commentaries. Of Coke he always spoke disparagingly; and to speak in any other than terms of admiration of an author whose fame has been in a great degree acquired by his immense fund of learning, no matter how confusedly heaped together, is, we all know, a great crime in the opinion of those who can rest their pretensions to celebrity on no other foundation: besides which, as the sneers such persons are constantly wont to vent against enlarged views of legal science, have generally no other motive than their own inability to conceive or to comprehend any enlarged notions at all, so they, in general, think fit to assume that mere erudition can be held cheap only by men who possess little or none of it themselves. Were it worth while to enter upon a formal refutation of this very common fallacy, we might dwell much on the incontestible fact, that the most learned men are by no means universally the most forward to make parade of their erudition, any more than the most wealthy are those who take the greatest pride in speaking of their riches, or the most nobly descended in boasting of their ancestry. The real benefit of learning, it has been said by a man well qualified to speak on the subject, is to be seen in the general tenor of a man's thoughts and style; and the profuse citing of authorities and repeating of quotations is, for the most part, confined to smatterers, just on the same principle that tradesmen, whose stock of goods is scanty, seldom fail to make a great display in their shop windows. And we may further observe, without wishing to impugn the use, nay the necessity, of learning, with which, indeed, a lawyer can no more dispense than a handicraftsman with his tools, that it is after all but a mere instrument, the effect whereof depends entirely on the skill of him who wields it. The self-same brush and the self-same

colours with which a dauber contrives to disfigure a sign-board, might breathe life into the canvass under the hands of a Vandyck or a Reynolds.

Perhaps the occasional departure of Lord Mansfield, in his judgments, from the strict rules which had been laid down by his predecessors, may have caused it to be inferred by some that he was not sufficiently imbued with the knowledge of them. However this may be, it is certain that his anxiety to decide every case on the merits rather than on mere matter of form; his disposition to slight or to overrule judgments which had been founded on principles obviously no longer applicable to the state of affairs and of society; in short, his constant wish to administer justice as well as law (they are not always synonymous), gave rise to much discontent and murmuring among many of the older practitioners of the bar. They might all shut up their old law books, they used to say, and content themselves with the only authority that had any weight in court, namely Burrow-Mansfield, by which appellation Burrow's Reports were at that time generally designated among the profession. The same charge was explicitly made by Junius, in his well-known Letter to the Chief Justice, dated November 14, 1770. "Instead of those certain positive rules by which the judgments of a court of law should invariably be determined, you have fondly introduced your own unsettled notions of equity and substantial justice. Decisions given upon such principles do not alarm the public so much as they ought, because the consequence and tendency of each particular instance is not observed or regarded. In the mean time the practice gains ground; the Court of King's Bench becomes a court of equity; and the judge, instead of consulting the law of the land, refers only to the wisdom of the court, and the purity of his own conscience." The probable consequence that would arise from a system of purely discretionary judgment in a court of law, is here, no doubt, well and forcibly pointed out: but who that reflects for an instant can believe that Lord Mansfield, or any other English judge, ever did or ever could lay himself open to so sweeping a charge as this? Surely the single fact, that his decisions were rarely appealed from, and, when appealed from, were

almost invariably ratified by the courts above, is of itself quite sufficient to prove that, as a general imputation, the charge is groundless.

It cannot be denied that his anxiety to remedy particular grievances did occasionally lead him to overpass the strict boundaries which, without regard to isolated cases, wherein they may work partial inconvenience, or even injustice, our laws have set up for the general security and advantage of the community. We may quote, as an example, his well-known dictum in the case of Corbet v. Poelnitz, (1 T. R. 5) where he overruled the established doctrine, that a feme covert can neither sue nor be sued, nor can possess any property in her own right; giving as his reason, that as times alter, new customs and manners arise, in consideration of which exceptions must be made, and must be variously applied. However, it would not be easy to find many other instances such as this. There can be no doubt that, even long before he was called to the bench, he had come to the settled conviction that the adaptation of judicial decisions to the manners, the wants, and the spirit of the times, was a benefit too great to be sacrificed for the sake of maintaining a rigid and literal uniformity with precedents which may have had their origin in a very different state of society. But he was always aware of the necessity of considering attentively the decisions of his predecessors, even when he could not follow them to the very letter. Indeed, he used to say his situation often resembled the one in which Sir Joshua Reynolds placed Garrick, between tragedy and comedy, inclination pulling him one way, and precedent the other.

Burke, in commenting on the principles of evidence discussed in the case of Omichund v. Barker (1 Atkyns), says: —"The sentiments of Murray, then Solicitor-General, afterwards Lord Mansfield, are of no small weight in themselves, and they are authority, by being judicially adopted. His ideas go to the growing melioration of the law, by making its liberality keep pace with the demands of justice and the actual concerns of the world; not restricting the infinitely diversified occasions of men, and the rules of natural justice, within artificial circumscriptions, but conforming our jurisprudence to the

growth of our commerce and of our empire. This enlargement of our concerns, he appears, in the year 1744, almost to have foreseen, and he lived to behold it."

This, and several other passages of the like tenor, wherein the most brilliant encomiums are applied to Lord Mansfield, ("that great light of the law," as he is called,) are to be found in the report of the committee of the House of Commons, appointed to inspect the Lords' Journals (5th March 1794) with reference to the proceedings in the trial of Warren Hastings, which report was wholly drawn up by Burke, and is inserted in most of the editions of his works. We shall make one further extract from it, which appears to us to account very satisfactorily, and with great judgment as well as acuteness, for the severe enforcement, in former days, of many of those very rules Lord Mansfield is especially commended for palliating, or even dispensing with. "In ancient times it has happened to the law of England (as in pleading, so in matters of evidence), that a rigid strictness in the application of technical rules has been more observed than at present it is. In the more early ages, as the minds of the judges were, in general, less conversant in the affairs of the world, as the sphere of their jurisdiction was less extensive, and as the matters which came before them were of less variety and complexity, the rule being in general right, not so much inconvenience on the whole was found from a literal adherence to it, as might have arisen from an endeavour towards a liberal and equitable departure, for which further experience, and a more continued cultivation of equity as a science, had not then so fully prepared them. In those times that judicial polity was not to be condemned. We find, too, that, probably from the same cause, most of their doctrine leaned towards the restriction; and the old lawyers being bred according to the then philosophy of the schools, in habits of great subtlety and refinement of distinction, and having once taken that bent, very great acuteness of mind was displayed in maintaining every rule, every maxim, every presumption of law creation, and every fiction of law, with a punctilious exactness. And this seems to have been the course which laws have taken in every nation."

The evils which have resulted from a too strict adherence

to the practice of earlier times, particularly with respect to pleading, have been admitted by the numerous modifications wherewith, as well before as since the time of Lord Mansfield, both the legislature and the courts of law have interfered to temper their severity. Nothing, indeed, could be so much calculated to produce among the public a feeling of disgust and dissatisfaction against the laws, as to find matters of litigation frequently put an end to without the slightest reference to the facts of the case, but solely and entirely on account of some technical flaw, some slip of the pen, some casual oversight of the judgment, committed in the course of a process of which the public in general can neither comprehend the meaning, nor even perceive the necessity. And this the rather, that such cases are not only decided on grounds quite distinct from their merits, but almost invariably are decided against and in defiance of those merits; because it is for the most part only the party who is conscious of the weakness of his cause in point of fact, that is anxious to avail himself of technical objections of law. It is obvious that this must occasionally happen under every system of law, and every mode of administering it; but surely it is the bounden duty of every legislator, and of every judge, to palliate, though he may not be able to remedy, the evil—to diminish the frequency of its occurrence, though he cannot prevent it from ever occurring—to catch at every opportunity of discountenancing it—in short, to use every effort towards securing the substance, though by the sacrifice of the shadow, of justice.

Lord Mansfield, then, surely deserves commendation instead of censure, for making this, as he did, his constant object. Thus, where an attempt was made (Hart v. Weston, Burrow, 2586), to impugn the validity of a writ, because it was inadvertently recited in the declaration as if it had been issued in vacation, the lawyer, we think, must have had more pedantry than sense who could have refused to agree with him that it was an odious objection, and an endeavour to make the practice of the court a means of eluding justice rather than obtaining it. He was, however, by no means inclined to depart from the very strictest rules of law, whenever they could by possibility be made subservient to the administration of substantial equity and right. In most cases, where technical

objections or mere formal impediments stood in the way of justice, he did, indeed, openly express his wish that the merits should have a fair trial; but this was brought about by such means as the practice of the court had long sanctioned. An example may be found during the first week he presided in the King's Bench, when a case of this description was tried, and decided wholly on a point of form, but he afterwards left it to counsel to devise their own plan for bringing it a second time under the notice of the court, so that the real question in dispute might be discussed. So, too, in the case of The King v. Mayor of Carmarthen (Burrow, 293), where, a swearing-in under a mandamus having been inadvertently laid in the plea on a wrong day, the judge at Nisi Prius had refused to let the jury receive evidence of a swearing-in on a different day, and a new trial was moved for in the King's Bench, on the ground of misdirection, Lord Mansfield, conceiving the direction to be, in point of law, strictly correct, very properly refused to make the rule absolute; but at the same time, in order that the merits might have a trial, he suggested to counsel that an application should be made to set aside the verdict, and award a repleader. It would be easy to make out a long list of similar cases, wherein he reconciled rigid law with true equity, and converted the forms of legal practice to their proper purpose and object, the administration of right. "General rules," he remarked, on delivering final judgment in this very case, "are wisely established for attaining justice with ease, certainty, and dispatch. But the great end of them being to do justice, the court are to see that it be really attained. This seems to be the true way to come at justice, and what we ought therefore to do; for the true text is '*boni judicis est ampliare justitiam*,' not '*jurisdictionem*,' as it has been often cited. This is what I would wish to do, if we can do it."

And this his favourite object of enlarging, as it were, the boundaries of justice, he had opportunities of achieving by other means besides his spirited interpretation and equitable administration of the laws already established. As no body of laws, however excellent and however copious, can possibly foresee or provide for the countless variety of circumstances that are made the occasion of litigation, every judge must of

necessity be more or less frequently obliged to take upon himself, in some degree, the office of a legislator; and this duty Lord Mansfield was called upon to perform far oftener than any magistrate who has ever presided on the courts. The length of time during which he sat on the bench would of itself be sufficient to account for such a peculiarity as this in his career. But there were also other causes that increased it beyond all proportion to the mere difference in point of duration of judicial authority between himself and other judges. During the latter half of the eighteenth century, the rapid growth and extension of our foreign commerce gave birth to a host of novel sources of litigation connected, for the most part, with matters which had not only been entirely overlooked by the legislature, but had been very little brought before the notice of the courts, or when they had been referred to them, had been decided with reference not so much to any settled principles as merely to the facts of each particular case. Lord Mansfield treated them in a very different mode. "Within these thirty years," said Mr. Justice Buller, in giving judgment in the case of Lickbarrow v. Mason (2 T. R. 63), "the commercial law of this country has taken a very different turn from what it did before. We find in Snee and Prescott (1 Atkyns), that Lord Hardwicke himself was proceeding with great caution, not establishing any general principle, but decreeing on all the circumstances put together. Before that period, we find that, in courts of law, all the evidence in mercantile cases was thrown together: they were left generally to a jury, and they produced no general principle. From that time, we all know, the great study has been to find some certain general principle which shall be known to all mankind, not only to rule the particular case then under consideration, but to serve as a guide for the future. Most of us have heard these principles stated, reasoned upon, enlarged, and explained, till we have been lost in admiration at the strength and stretch of the understanding. And I should be very sorry to find myself under a necessity of differing from any case upon this subject which has been decided by Lord Mansfield, who may be truly said to be the founder of the commercial law of this country."

The fact that there were no precedents or authorities to

control the exercise of his judgment in this department of law, as it must add considerably to our admiration of the wisdom that dictated his decisions upon it, so it has also materially contributed to enhance their utility, and to widen the application of them. Not being here, as elsewhere, under the necessity of reasoning on principles which, though they still hold good their footing in Westminster Hall, are virtually obsolete elsewhere, and are totally at variance with the actual customs and exigencies of society; having no occasion, for instance, as in some real property cases, to frame a judgment at the close of the eighteenth century on the same grounds that Glanville might have done in the reign of Henry the Second, he was enabled to indulge without restraint his favourite wish of accommodating the administration of justice to the spirit and the wants of his own time. Among other obvious advantages which this has imparted to his decisions in mercantile cases, it is by no means a trifling one, that they are of equal authority in courts of law and in courts of equity. "During the fifteen years I have sat on this bench," said, on one occasion, the distinguished judge whose testimony we have just quoted (Tooke v. Hollingworth, 5 T. R. 215), "I have never known any case which established a distinction between courts of equity and courts of law, on subjects of this kind. I have always thought it highly injurious to the public, that different rules should prevail in different courts on the same mercantile case. My opinion has been uniform upon that subject. It sometimes, indeed, happens that in questions of real property courts of law find themselves fettered with rules from which they cannot depart, because they are fixed and established rules; though equity may interpose, not to contradict, but to correct, the strict and rigid rules of law. But in mercantile cases, no distinction ought to prevail." Nor is it in English courts alone, whether of law or equity, that this uniformity subsists with respect to Lord Mansfield's decisions on matters of commercial jurisprudence. As they were invariably framed in conformity with those broad principles of justice and policy which, having received the unanimous assent and sanction of all civilized communities, form the groundwork of what (for want of a more correct term) is called the law of nations, it may safely be affirmed, that there are

very few tribunals in Europe where they might not be quoted as authorities.

To all those who are conversant with these judgments, it would be superfluous, and to those who are not so, impossible, (at least within such space as we could here afford), to point out how much of their intrinsic merit, and of their extended application, is attributable to Lord Mansfield's knowledge of the civil law. This splendid monument of human wisdom was to him a well filled storehouse of reasoning, from which a ready supply of principles and of rules might always be drawn to guide him in the decision of cases unprovided for by our own jurisprudence. And it was not only in such cases as these that he derived advantage from it. There are very few departments of our own law on which some light may not be thrown by it, in the way of analogical illustration; and with respect to very many, as he has frequently had occasion to shew, it is of more direct application, being in fact the source from which they have been either partially or entirely deduced. The happy facility with which, in each of these points of view, he so often brought it to bear on the legal questions submitted to his notice, must excite the admiration of every one who is competent to appreciate the merits of a judge: that the same quality should ever have been made the ground of censure or invective by any one, would doubtless seem little less than incredible, but for the jealousy of the civil law notoriously prevalent among the vulgar of this country. This most unfounded prejudice, we might almost say superstition (and, like all other superstitions, it is the offspring of folly and ignorance), has been turned to account by Junius, in a manner that proves the writer either to have been strongly imbued with it himself, or at least to have been perfectly conscious of its prevalence, and, consequently, well aware of the effect he might produce by humouring it. "In contempt or ignorance of the common law of England," he writes, addressing himself to Lord Mansfield, "you have made it your study to introduce into the court where you preside, maxims of jurisprudence unknown to Englishmen. The Roman code, the law of nations, and the opinion of foreign civilians, are your perpetual theme; but who ever heard you mention Magna Charta, or the Bill of Rights, with approbation or respect? By such treacherous

arts, the noble simplicity and free spirit of our Saxon laws were first corrupted. The Norman Conquest was not complete, until Norman lawyers had introduced their laws, and reduced slavery to a system." This is quite as well calculated to catch the attention of the mob of readers, and to excite the contempt of sensible men, as the charges so often repeated by the same powerful libeller against Lord Mansfield, that he was a Scotchman, that he had once drunk the health of King James, and that he had a brother who had been in the service of the Pretender. The insinuation, that the spirit of the civil law is incompatible with the spirit of freedom, is, in truth, as admirably adapted to find favour with those who, having no knowledge of the subject, cannot detect the utter falsehood of it, as the assertion concerning the Saxon laws and the Norman lawyers to pass current with such as, exercising no reflection of their own, cannot at once detect it to be worse than irrelevant as connected with the matter under consideration, and do not instantly perceive that whatever principles, and maxims, and statutes, the Norman lawyers may have introduced, those very principles and maxims and statutes it is the duty of an English judge to interpret and to administer. But the accusations of Junius cannot always bear, nor indeed were they originally intended to meet, calm and impartial investigation. They were addressed to the passions much more than to the reason. They were levelled against men in power, at a time when any charge against men in power was sure to find abundance of willing believers in its truth; at a period when there existed a predisposition to condemn, that lent every advantage to the accuser, in a word, during a season of political excitement, when the majority of the public never fail to honour at sight the most extravagant drafts upon their credulity, provided they be presented to them by the demagogues or the agitators to whom they may have for the time surrendered the use of their senses and their judgment.

What first gave occasion to the direct attack of Junius upon Lord Mansfield, and certainly constituted the most weighty of all the accusations with which he was charged, was his mode of directing the juries, in the various prosecutions for libel which were instituted (1770) by the government against

Woodfall, and the other persons concerned in the publication of the letters previously written by the same author. The doctrine delivered in each of these cases, and in others of the like nature, was substantially the same; namely, that it was the province of the jury to decide, not on the legality or illegality of the writings alleged to be libellous, but merely on the fact of their publication, and on the meaning intended to be conveyed by the writer. In the two cases of The King v. Woodfall, which are reported in Lofft, 778, part of the Chief Justice's charge is thus worded: "The evidence is very clear; Mr. Hardinge has rightly argued that you must see the author *meant* what was imputed to him. It is not that he is accurate as to dates and facts: you must see what ideas the author meant to convey, according to your sense of what he has written." Thus, the verdict, not guilty, would negative the fact of the defendant's having published a paper of the tenor and meaning set forth in the indictment; and the verdict of guilty, on the other hand, would affirm both the fact of his having published the paper, and of its bearing, by the intention of the writer, the meaning ascribed to it; the question as to the legality or illegality of that meaning (in other words, as to whether the paper was or was not a libel) remaining a point of law to be determined by the court. That this doctrine was a highly dangerous one, and one that tended to undermine the great constitutional bulwark of the trial by jury, in a quarter where it affords the best barrier against the encroachments of arbitrary power, we certainly are very ready to admit; but to infer therefrom, without any further evidence to warrant the supposition, that Lord Mansfield propounded it merely from an anxiety to extend the authority of the crown, or (what some may think much the same thing) of the judges, is certainly unjust and unreasonable. Even had he been the original inventor of it, we should be fully justified in demanding some evidence to support the charge that he invented it for such a purpose. But this view of the law of libel was one that had been frequently taken by his predecessors on the bench, and had guided them in their administration of it; nor would it be a very difficult matter to shew that (whatever its effects) it is strictly reconcileable with principle. Indeed, the fact that an act of Parliament

was considered necessary to place the rights of a jury, in cases of libel, on the footing they at present hold, was an acknowledgment on the part of the legislature that the doctrine acted upon by Lord Mansfield was so well established, that it could not be overruled without their interference. Doubtless, the thanks of every friend of liberty are due to Charles Fox for bringing forward the bill that did so overrule it; but Charles Fox acted in the capacity of a legislator, Lord Mansfield fulfilled the duties of a judge; Fox introduced a new law, Mansfield expounded the law as it existed, or at least as he understood it. Some authorities, it is true, leant the other way; but the general current of precedents, particularly in later times, fully justified his doctrine; and though we do not mean to say that this was not a case which might have excused or justified a disregard of legal authority; yet it must be admitted, that the same persons who blame him for ever having taken upon himself to depart from precedent, cannot, with much show of consistency, also censure him for adhering to it in this instance.

Of the purity of his motives we think there can be no question. Though he never enlisted himself among the advocates of the popular party, he was equally far from being an uncompromising supporter of prerogative. To steer a middle course between the opposite extremes, was in politics his favourite object. Except, however, in so much as every judge must necessarily bring to the bench the same cast of mind which leads him to adopt a particular line of conduct or of opinion elsewhere, he certainly never suffered political considerations of any kind to influence his judicial decisions. But so far was he from entertaining in his own person, or endeavouring to encourage among his colleagues, any feeling of subservience towards government, that it is to him we owe the earliest and most popular act of George the Third's reign, which entirely emancipated the judges from the control of the crown, and secured their independence in such a manner as to place them, as far as possible, beyond the reach of temptation to swerve from their duty. Even had he not been himself the author of this measure, the very fact of its having been adopted at all is quite sufficient to prove that no motives of self-interest could by possibility have had any undue influence over his conduct,

Had he been only a puisne judge, it might have been said that he courted promotion. But he had already attained the summit of his ambition. He was Chief Justice of the King's Bench: the chancellorship he had more than once refused; and the Crown had no preferment to offer, of which the prospect could have induced him to feel anxious about cultivating its favour.

Were all these considerations to be entirely neglected, the general integrity and nobility of Lord Mansfield's character ought of itself to exonerate him from all suspicion of ever having introduced corruption into the seats of justice. A strong presumption, to say nothing more, that his opinions on the law of libel were the result of honest and sincere conviction is afforded by his anxiety to submit them to revisal, and even to correct them himself if it could be shewn they were erroneous. This he frequently professed his readiness to do. We quote one instance out of several (Rex v. Woodfall, Burrow, 2668): "That the law, as to the subject matter of the verdict, is as I have stated, has been so often unanimously agreed by the whole court, upon every report I have made of a trial for libel, that it would be improper to make it a question now, in this place. Among those that concurred, the bar will recollect the dead and the living not now here. And we all again declare our opinion, that the direction is right and according to law. This direction, though often given with an express request from me, that if there was the least doubt they would move the court, has never been complained of in court. And yet, if it had been wrong, a new trial would have been of course. It is not now complained of."

The occasion on which he thus expressed himself, was when the verdict of the jury, on the trial of Woodfall for having published Junius's letter to the King, was brought under the consideration of the Court of King's Bench (November 20, 1770), in consequence of two cross motions, the one made on behalf of the crown, the other of the defendants. The jury, after deliberating for many hours, had been conveyed in hackney coaches to Lord Mansfield's house in Bloomsbury Square (the objection of its being out of the county being cured by consent), and had there delivered to his Lordship their verdict, that the defendant was guilty of printing and publishing

only. Nothing further had passed at the time, and the verdict had been entered word for word on the record. Upon this the defendant's counsel moved, either that it should be considered tantamount to an acquittal, or that at all events a new *venire* should be awarded, on the ground that it did not pronounce him guilty of all the charges contained in the information. The counsel for the crown, on the other hand, applied for a rule to shew cause why the verdict should not be entered according to the legal import of the finding of the jury. The opinion of the court, as delivered by Lord Mansfield, was in favour of a *venire de novo*. It is well worth while to quote another passage from the report, to shew how plainly he acknowledged the right of the jury to decide on the meaning and intent of a libel, that is, whether or not it corresponded with the meaning and intent imputed to it in the declaration or indictment. "If," he said, "by 'only,' they meant to say they did not find the meaning put upon the paper by the information, they should have acquitted the defendant. If they had expressed this to be their meaning, the verdict would have been inconsistent and repugnant; for they ought not to find the defendant guilty, unless they find the meaning put upon the paper by the information: and judgment of acquittal ought to have been entered up. If they had expressed their meaning in any of the other ways, the verdict would not have been affected; and judgment ought to be entered upon it. It is impossible to say, with certainty, what the jury really did mean. Probably they had different meanings. If they could possibly mean that which, if expressed, would acquit the defendant, he ought not to be concluded by this verdict. It is possible some of them might mean not to find the whole sense and explanation put upon the paper by the innuendos in the information. If a doubt arises from an ambiguous and unusual word in the verdict, the court ought to lean in favour of a *venire de novo*. We are under the less difficulty, because, in favour of a defendant, though the verdict be full, the court may grant a new trial. And we are of opinion, upon the whole of the case, that there should be a *venire de novo*."

With this mode of disposing of the case one would think it impossible to find fault. And yet even for this decision Lord Mansfield was abundantly visited with the scurrility of

the popular press, which, ever since the institution of the proceedings against Wilkes, some years previous (1764), had plentifully poured out the vials of its wrath against the Chief Justice, for the part he had taken in them. Abuse, calumny, and invective had been all along doing their utmost to impugn the justice of his decisions, to misrepresent his motives, in short, to blacken in every way his character as a judge. Every topic of accusation dwelt on by Junius, and many more to boot, had been previously expatiated upon, with a degree of rancour and unfairness not often to be met with in the annals even of political hostility; and indeed Junius himself professed to do nothing more than collect, as he phrases it, these scattered sweets, "till their united virtue should torture the sense." In the opinion of men of sense and calm reflection, these aspersions on such a character as that of Mansfield were like nothing more than the tinkling of Priam's feeble weapon against the shield of Pyrrhus. But with the multitude they had their effect. Wilkes and Liberty, (or as his lordship's old schoolfellow, Bishop Newton, chooses to expound it, "in plain English, the devil and licentiousness") had set the whole nation in a ferment; and it fell to the lot of very few to preserve, amid the universal turbulence and excitement of party feeling, any thing like cool consideration or dispassionate judgment. Under these circumstances, it is hardly surprising that Lord Mansfield should, for some years of his life, have been in reality, as his enemies did not fail to remind him, the most unpopular man in England. How far the fact of his having incurred so much odium is a proof of his having deserved it, will be best understood by those who have been in the habit of observing by what sort of impulses the veerings of the weathercock of popularity are most commonly guided. We shall presently have an opportunity of shewing what degree of importance he himself attached to them.

After the records had been made up for trial in the two informations filed by the government against Wilkes, for the libels contained in No. 45 of the North Briton, and the Essay on Woman, an application had been made to the court on the part of the crown, for leave to amend them, by striking out the word 'purport,' and substituting the word 'tenor' in both the informations. A summons was accordingly granted, in

the usual way, and no cause being shewn why the alteration should not be allowed, it was made as a matter of course. Wilkes not appearing at the trial, and no objection being offered by his counsel in respect of this amendment of the records, he was found guilty in each cause. Writs of capias were then issued, the usual forms of proclamations and exigents were gone through, and the defendant, who still remained abroad, was duly outlawed. Somewhat more than four years afterwards, (20th April, 1768), he voluntarily made his appearance in the Court of King's Bench, objected to the validity of the verdicts on the ground of alterations in the record, assigned errors in the outlawries, and demanded to be admitted to bail: the Attorney-General, on the other hand, moved that he should be committed to custody. The Court refused to grant either application, as the defendant had not been regularly brought before it; and it was decided that the question as to the legality or illegality of the outlawry must be set at rest, before any proceeding could be taken upon the judgments. The Attorney-General then granted his fiat for writs of error on the outlawries, and Wilkes, having surrendered to the sheriff of Middlesex, was committed, on the motion of the Attorney-General, to the custody of the marshal. The errors were finally argued on the eighth of June following, and Lord Mansfield, at the close of a beautiful and luminous exposition of the law on the subject, delivered it as his opinion, in which the other judges concurred, that although the errors assigned could not be allowed, yet as the court found the outlawries to be deficient in point of form, they should be reversed. It was in the course of this speech from the bench, that he thought proper to allude to the menaces by which it had been attempted to frighten him into a decision, which Wilkes and his party had rather hoped than anticipated. The annals of oratory can boast few more splendid specimens of calm and dignified eloquence:—

"These are the errors which have been objected; and this the manner and form in which they are assigned. For the reasons I have given, I cannot allow any of them. It was our duty, as well as our inclination, sedulously to consider whether upon any other ground, or in any other light, we could find an informality which we might allow with satisfaction to our

own minds, and avow to the world. But here let me pause!—It is fit to take some notice of the various terrors being held out; the numerous crowds which have attended and now attend in and about the hall, out of all reach of hearing what passes in court; and the tumults which, in other places, have shamefully insulted all order and government. Audacious addresses in print dictate to us, from those they call the people, the judgment to be given now, and afterwards upon the conviction. Reasons of policy are urged, from danger to the kingdom by commotions and general confusion.

"Give me leave to take the opportunity of this great and respectable audience, to let the whole world know, all such attempts are vain. Unless we have been able to find an error which will bear us out to reverse the outlawry, it must be affirmed. The constitution does not allow reasons of state to influence our judgments. God forbid it should! We must not regard political consequences, how formidable soever they might be; if rebellion was the certain consequence, we are bound to say 'Fiat justitia, ruat cœlum.' The constitution trusts the king with reasons of state and policy; he may stop prosecutions; he may pardon offences; it is his to judge whether the law or the criminal should yield. We have no election. None of us encouraged or approved the commission of either of the crimes of which the defendant is convicted: none of us had any hand in his being prosecuted. As to myself, I took no part (in another place) in the addresses for that prosecution. We did not advise or assist the defendant to fly from justice; it was his own act, and he must take the consequences. None of us have been consulted, or had anything to do with the present prosecution. It is not in our power to stop it; it was not in our power to bring it on. We cannot pardon. We are to say what we take the law to be; if we do not speak our real opinions, we prevaricate with God and our own consciences.

"I pass over many anonymous letters I have received. Those in print are public; and some of them have been brought judicially before the court. Whoever the writers are, they take the wrong way. I will do my duty unawed. What am I to fear? That *mendax infamia* from the press, which daily coins false facts and false motives? The lies of calumny

carry no terror to me. I trust that my temper of mind, and the colour and conduct of my life, have given me a suit of armour against these arrows. If, during this king's reign, I have ever supported his government, and assisted his measures, I have done it without any other reward than the consciousness of doing what I thought right. If I have ever opposed, I have done it upon the points themselves; without mixing in party or faction, and without any collateral views. I honour the king, and respect the people; but many things acquired by the favour of either, are, in my account, objects not worth ambition. I wish popularity; but it is that popularity which follows, not that which is run after; it is that popularity which, sooner or later, never fails to do justice to the pursuit of noble ends by noble means. I will not do that which my conscience tells me is wrong upon this occasion, to gain the huzzas of thousands, or the daily praise of all the papers which come from the press: I will not avoid doing what I think is right, though it should draw on me the whole artillery of libels; all that falsehood and malice can invent, or the credulity of a deluded populace can swallow. I can say, with a great magistrate, upon an occasion and under circumstances not unlike, 'Ego hoc animo semper fui, ut invidiam virtute partam, gloriam, non invidiam putarem.'"

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

"Once for all, let it be understood, that no endeavours of this kind will influence any man who at present sits here. If they had any effect, it would be contrary to their intent; leaning against their impression, might give a bias the other way. But I hope, and I know, that I have fortitude enough to resist even that weakness. No libels, no threats, nothing

that has happened, nothing that can happen, will weigh a feather against allowing the defendant, upon this and every other question, not only the whole advantage he is entitled to from substantial law and justice, but every benefit from the most critical nicety of form, which any other defendant could claim under the like objection. The only effect I feel, is an anxiety to be able to explain the grounds upon which we proceed; so as to satisfy all mankind that a flaw of form given way to in this case, could not have been got over in any other."

As to the alteration made by Lord Mansfield in the record, for which so much senseless clamour had been raised against him, it was afterwards clearly shewn by the court, when the validity of the judgments in the two informations was disputed, that nothing had been done in this respect which was not clearly warranted, as well by abundance of written precedents, as by the traditionary recollections of practice preserved among the officers of the Court. It was, moreover, explained that Wilkes could not possibly have been, in any way, injured by the allowance of the amendment; because, had the advisers of the crown considered the records imperfect as they originally stood, they would have been at liberty to file fresh informations, the only effect of which must have been to burden the defendant with additional expense. Other objections had been taken against the judgments, but they were equally overruled; and the idol of the mob was accordingly sentenced to fine and imprisonment. An appeal to the House of Lords was afterwards tried, but without effect. Lord Camden and the rest of the judges were unanimous in their opinion as to all the points whereon error was assigned; and the decision of the King's Bench was accordingly affirmed.

It was not always that the opinions of Lord Camden on legal subjects coincided with those of his illustrious contemporary. His elaborate argument in the case of Doe d. Hindson v. Kersey, wherein he overruled the decision relative to the construction of the Statute of Wills, given by Lord Mansfield in Wyndham v. Chetwynd, will probably occur to the recollection of many of our readers. The difference of their sentiments with respect to the power of juries in cases of libel,

is no doubt known to all; it stands on record in many pages of the Parliamentary History, where the Chancellor appears more than once as an impugner, not only of the doctrine of the Chief Justice, but of his motives for propounding and upholding it. In the strain of accusation he always thought fit to assume when this topic was brought forward in the House of Lords, he was constantly seconded by his ally Lord Chatham. As the ties of party which united these two great men were drawn closer by those of private friendship, so the political hostility which both professed against Lord Mansfield seems to have derived additional poignancy from a common feeling of personal dislike. We have already intimated our opinion of the probability, that jealousy may have done much towards engendering this feeling in the mind of Pitt; and although the fact, that a similar one grew up in the breast of Lord Camden, may be sufficiently accounted for by the facility with which we often involuntarily adopt the very prejudices of our friends, yet this same infirmity of jealousy is one from which even the noblest natures are so seldom entirely exempt, that we are warranted in suggesting at least the possibility of its having exercised some influence over the one as well as the other. Many more causes, no doubt, may have had their share, either in kindling the first sparks of such sentiments of animosity, or afterwards fanning them into flame. Giving credit to both Chatham and Camden for a sincere devotion to the political opinions they professed, we consider it far from unlikely that they may have fallen into the very common error, of supposing that all those who differed from them did so from unworthy motives, and not from honest conviction. That most persons who interest themselves warmly in politics, in times of violent party disputes, do adopt this sort of prejudice against their opponents, is likely, we think, to be contested by no one who has accustomed himself to mark the tone of the public press, and even of private conversation, during such seasons, when Tories appear to look upon Whigs as factious promoters of sedition, while Whigs are apt to regard Tories as little better than unflinching advocates and supporters of downright despotism. We by no means mean to say it is probable that men like Chatham or Camden could ever go such lengths as this; but as we have no right to suppose them altogether su-

perior to a weakness so generally prevalent, we certainly do think it likely that something of it may have contributed to bias their judgments, with respect to the principles and conduct of one who generally thought and acted in opposition to them.

These causes, and perhaps many others (for the motives of every man's thoughts and actions are mixed and complicated in a wonderful degree), probably combined to generate and to foster the repugnance of these two eminent men against Lord Mansfield, and will account for the general asperity of their tone whenever allusion was made to his conduct. From what we have already said of the timidity of his character, it may be supposed that, with every requisite of an orator except confidence, he did not always appear to advantage on these occasions. Sometimes, indeed, he rose manifestly superior to his antagonists, and not only vindicated himself with success, but ventured to leave the defensive, and attack in his turn: as, for example, when he dwelt upon the gross ignorance displayed in the assertion of Lord Chatham, that an action might be brought against the House for the expulsion of Wilkes, and deduced from it the very plausible inference, that not much reliance ought to be placed on his lordship's legal opinions. But for the most part, he endured too patiently their tone of superiority, or even of scornful sarcasm; and instead of replying in the same strain, meeting invective with invective, and defiance with defiance, he would often plead not guilty to their accusations, and exculpate himself from the charges made against him, with reasoning and language, indeed, that might have made the reputation of an advocate at the bar defending a client arraigned by the laws, but had far less effect in the mouth of a peer of Parliament rebutting, in the presence of his fellow peers, the aspersions cast on himself. This (if the accounts given in the Parliamentary History be correct) was fully exemplified during some of the debates in which his opinions on subjects of constitutional law, and particularly his charges to juries in cases of libel, were visited with the censure of his opponents. After the House of Lords had refused to listen to Lord Lansdowne's proposition for the institution of an enquiry into the state of the courts, and the administration of justice, and the House of

Commons had negatived, by a majority of more than two to one, a similar motion brought forward by Serjeant Glynn, Lord Mansfield thought fit to summon the Peers (7th Dec. 1770), and inform them that he had deposited with the clerk of the House a copy of the judgment given by the Court of King's Bench in the case of The King v. Woodfall, in order that they might have an opportunity of reading or copying it. This was in some measure provoking an inquiry, and showing that he thought he had nothing to fear from the result of it. The mode of proceeding was, indeed, much less direct than it might have been; and the House certainly had reason to be disappointed in their expectation of what was to ensue after they were thus specially assembled, when they found that their attendance had been required merely to inform them they could procure a sight of a report which had previously been the round of the newspapers. This course certainly was not the most manly or dignified one that might have been adopted; but had the design of bringing on the discussion been plainly manifested and boldly persisted in, the mode of doing so would have been immaterial. However, if he had originally conceived such a design, he eventually wanted the resolution to carry it into effect. He refused, at the time, to have the paper entered on the Journals; and a few days afterwards (December 11th), when Lord Camden announced his intention of taking up the gauntlet he had thrown down, and boldly proclaimed his readiness to maintain that the doctrine of the Chief Justice was contrary to the law of the land, Lord Mansfield, instead of accepting the challenge, evidently shrank from the encounter. Instead of affording every facility in his power for bringing on the investigation with despatch, his object evidently was to procrastinate or prevent the discussion. With much difficulty a promise was drawn from him, that the matter should not be suffered to drop; but on the Duke of Richmond's congratulating the House that he had thus pledged himself, he again rose, disclaimed any thing like a pledge, and merely said that he intended to take a future opportunity of giving his opinion. He was pressed to name a day, but even this he declined; and as we find no further notice of the subject, it is to be presumed no debate afterwards took place upon it.

We mention these circumstances as they are related in the

Parliamentary History (vol. 16), because, in the first place, being mere matters of fact, they are not so liable as matters of doctrine and opinion to the suspicion of being either wilfully or undesignedly misrepresented by the writers who have recorded them; and secondly, because they agree so well with what we know from other sources of Lord Mansfield's timidity and indecision, that they carry with them internal evidence of probability. It is right, however, to mention, that a great majority of the periodical publications which have furnished most of the materials of this compilation, were enlisted in the cause of the party opposed to that of which Lord Mansfield was an adherent. There is, therefore, some probability that (considering the imperfections of the system of parliamentary reporting at that time, when no publication professed to follow every speaker closely through the debates, and the aid of imagination was often called in to fill up the blanks left by memory) some of the writers unconsciously, and others by design, may have endeavoured to throw the weight of argument into the scale of the party whose opinions they themselves espoused. An example of this may be found in the case of Lord Mansfield himself, on that memorable occasion when Lord Chatham and Lord Camden, in general the champions of popular privileges, undertook (being at the time ministers) to defend the cause of arbitrary prerogative; and the Chief Justice, who was usually considered a staunch supporter of the crown, ably combated its right to entrench on the privileges of Parliament, by issuing proclamations. The discussion arose on the proposition of the bill of indemnity (Dec. 1766) for those who had been concerned in advising the measure of the embargo laid by the sole authority of the king, during the recess, on the exportation of wheat. The circumstances will probably be in the recollection of many of our readers, from the fact of their having been dwelt on at some length by Mr. Canning, when, anticipating the necessity of some similar restrictions, he adopted the more constitutional course of applying to Parliament beforehand, for authority to impose them. The speech on the suspending and dispensing prerogative (as it is entitled) which was printed in Almon's Register as the report of what had been delivered by Lord Mansfield, contains, we are assured by one who was

present at the debate, more than three times as much matter as the speech he actually did make. It was, in fact, a digest of all the principal arguments that had been employed on the same side of the question. Now, if much was intentionally added to the record of what he was supposed to have spoken on the popular side, it may be presumed that, on the other hand, something was occasionally taken away of the reasoning with which he supported opinions or measures of a different tendency. We have, therefore, cause to mistrust even the good faith of some of the reporters of that time. Their opportunities of gaining full and correct information were not always very great; and when they did contrive to obtain genuine accounts, they were not always disposed to impart them unalloyed.

We can only repeat our regret that nothing but so imperfect and meagre a record should exist of those powers of eloquence, which for so many years astonished and delighted both Houses of Parliament. Some few of the speeches we know to be authentic, as, for instance, that celebrated one in which he supported (3d Feb. 1766) the right to tax the American colonies, in answer to Lord Camden, who had denied it: and that on the appeal of the dissenter Evans, which we shall presently mention more particularly. Both of these were revised by himself, and made public with his sanction. The speech also (8th May, 1770) against the exemption of peers' servants from arrest, seems to have been touched either by his own hand, or by that of no ordinary reporter. But these specimens may be said to give us a glimpse rather than a view of his talent as a parliamentary debater. A much better idea may be formed of his judicial oratory, from the specimens of it which have been preserved in the reports of Burrow, Wilson, Lofft, Cowper, Douglas, and Durnford and East, particularly the first. Sir James Burrow was not in the habit of taking short-hand notes in court, and he professes to give rather the substance than the exact words of what was spoken by the Chief Justice; but Lord Mansfield, it is well known, looked over and corrected the greater part of his proofs before they were published, so that if this work does not contain all he actually said, it at least conveys his arguments as nearly as possible in his own language. The eloquent passage we have

already transcribed from the judgment in Wilkes's case, bears evident marks of having been carefully revised by the orator himself; and there are several others that carry with them the same stamp of authenticity. Even these, however, convey an inadequate idea of the peculiarities of his style as a speaker. In common with many eminent orators, he often disregarded the niceties of grammatical accuracy. The construction of his sentences, too, was frequently what in writing might have been called slovenly, abounding in parentheses and inversions. But such was the consummate art with which he modulated his voice, that by its inflexions the exact bearing and relation of every member of a long sentence was distinctly marked; so that passages which on paper would have appeared intricate and obscure, left on the mind of those who heard them from the lips of Lord Mansfield, a clear and vivid impression of their meaning. Indeed, perfect clearness and intelligibility were the leading characteristics of his speeches, notwithstanding these peculiarities (we will not call them defects), partly, perhaps, in consequence of them; for they imparted to what he said a sort of colloquial air, which sometimes has more effect than any particular forms of language, in enabling an auditory to catch a just apprehension of the sense intended to be conveyed.

This manner he most commonly adopted when delivering his opinions on obscure or difficult questions of law, the intricacies of which he unravelled with a facility that not only shewed how fully he himself was master of the subject, but materially aided his hearers in comprehending it. In Parliament, he could soar into a higher region of eloquence; and when the occasion called for it in court, he never failed to rise to the level of his matter. We may instance the different opportunities afforded him while he sat on the bench, of exposing his views on the subject of religious toleration. Such, among others, was the case of the Catholic priest, Webb, who was prosecuted at the suit of a common informer, for saying mass. The penal statutes which had disgraced the reign of King William were still in force, and the judge had no alternative but to obey them: but, with very justifiable latitude of interpretation, he contrived to reconcile the performance of this duty with strict adherence to his own principle of troubling

no man for conscience' sake, by explaining to the jury, that the reasons of policy which produced the acts in question had ceased to exist; that the Pope no longer possessed the power he then had, or was supposed to have; that the influence of the Jesuits had decreased still more; and that even during the reign of William the Third, when the penal laws were enacted, the legislature had no intention of putting them in force, unless some urgent necessity might call for the execution of them. This charge to the jury is printed at length, from the notes of a short-hand writer, in Barnard's Life of Dr. Challoner. Another case, which occurred not long before that of Webb (1767), furnished him with an occasion of upholding the same great principles of religious liberty in the House of Lords. This was the case of Evans, a dissenter, who had been called upon to serve the office of sheriff in the city of London, and had refused to do so, because he could not conscientiously submit to the religious test required by the corporation. For this refusal he was subjected, as a matter of course, to the usual fine, which, however, he determined not to pay. From the decision of the Chamberlain's court, he appealed to the court of Hustings, and finding no redress there, he carried his cause before the Delegates, who decided in his favour. A writ of error was afterwards brought in the House of Lords, and it was then that Lord Mansfield had an opportunity of expressing his sentiments on the particular question before the House, and generally on the broad principles of toleration, by which he contended that the decision of it ought to be governed. The masterly speech he delivered has fortunately been preserved to us in a much more perfect state than any other of his parliamentary discourses. Dr. Furneaux, a man of much reputation among the dissenters, was present throughout the whole discussion, and took copious notes of all that passed: he submitted the draft of Lord Mansfield's speech to the orator himself for revisal; and his Lordship, after correcting and retouching it, authorised him to publish it as an authentic report.

In accordance with the principles of religious toleration, of which, both on the bench and in Parliament, Lord Mansfield thus always professed himself the advocate, he was, of course, amongst the supporters of the bill passed in 18 Geo. 3, for the

removal of a portion of the disabilities imposed on the Catholics by the too famous "act for preventing the growth of popery," 11 & 12 W. 3. He was not immediately concerned in bringing forward the bill, which originated in the Commons: and as it met with very little opposition in either house, he had no opportunity, on this occasion, of signalizing his zeal for the cause of religious liberty. But his sentiments on the subject had long been well known; and he was, accordingly, one of the many marked out for the vengeance of the 'no popery.' mob. Friday, the 2nd of June, 1780, witnessed the beginning of those disgraceful outrages which, for a whole week, filled the inhabitants of London with consternation and dismay. On that day the wretched leader of the faction, Lord George Gordon, proceeded to the House of Commons for the purpose of petitioning, as he chose to call it, for the repeal of the obnoxious act. In pursuance of his real design, which was to extort by intimidation what he knew there was little chance of obtaining by legal means, he had previously given out that he would not proceed thither unless he found full twenty thousand persons assembled to accompany him. A greater number had congregated together; and the government, though fully warned, having neglected to take reasonable precaution against the disturbances that could not but be anticipated, the fury of lawless multitudes was checked with nothing that deserved the name of opposition. The obnoxious members of either house met with little mercy at their hands. As they drove down to Westminster, many of them were dragged out of their carriages, pelted, hustled, and otherwise maltreated. The equipage of Lord Mansfield's nephew, Lord Stormont, who was at that time Secretary of State, was literally knocked to pieces by the mob, and he remained nearly half an hour in their power, when they were prevailed upon to let him retire. The windows of Lord Mansfield's own carriage were smashed with stones, the pannels stove in, and he himself had great difficulty in making his way into the lobby of the House of Lords, before they could proceed to wreak their utmost rage on his person. The Chancellor, Lord Thurlow, not being present, the duties of Speaker devolved upon him; and he remained in his place while the rest of the peers were contriving, each for himself, to make good their departure under the cover

of darkness and disguises. It certainly redounds little to the credit of these noble lords, that their venerable president, then in his seventy-sixth year, should have been thus at length left entirely alone, and without any protection but such as his own servants, or the officers of the House, could afford him. The dangers that threatened him on his return, he luckily contrived to evade. But he was not long left unmolested.

After four whole days more of pillage, havoc, and devastation, on the evening of the following Tuesday (June 7th), an immense body of the mob took their way towards his house in Bloomsbury Square, with the avowed design of burning it to the ground. This intention had been made so public, that Lord Mansfield had time to take measures for thwarting the accomplishment of it; and had he possessed that firmness of character which nature had unfortunately denied him, there is little doubt but he might have succeeded in repelling the meditated attack, or even in preventing it from being attempted. At least his neighbour, Lord Thurlow, who was nearly as much the object of popular resentment as himself, contrived effectually to intimidate the rioters, by making a stout show of resistance at his house in Great Ormond Street, though provided with no greater force than a serjeant's guard of soldiers. Lord Mansfield, in his dread of consequences, resolutely persisted in his refusal to post the military in the same manner. A detachment of the guards was sent for by Sir John Hawkins, who, with two other police magistrates, had hastened to the spot on the first intimation of the approaching danger; but no persuasion could induce Lord Mansfield to have them stationed beneath his own roof. By his desire they were marched to the vestry room of St. George's Church in Hart Street; and from that distance, had their numbers been trebled, there was little chance of their being able to make their way through the dense phalanx of the mob in time to afford any effectual resistance against an attack upon a house in Bloomsbury Square. They had not long been dispatched to this post, when the shouts of the advancing multitude were heard. Many persons had previously assembled in the square, to witness the spectacle of the threatened conflagration. The incendiaries did not keep them long in expectation. The front entrance of the house was instantly

forced, and Lord Mansfield and his lady had barely time to save themselves by a precipitate retreat through a back door, before the leaders of the mob were seen at the upper windows, tearing down and throwing below curtains, hangings, pictures, books, in short every thing they could lay their hands on likely to serve as fuel for the burning. So intent were these ruffians on their work of destruction, that no time was lost in pillaging; and one of them, it is said, by way of setting an example against any such digression from their main object, threw into the pile which was already blazing underneath a valuable piece of plate, and a large sum of money in gold. In a very short time the whole building was enveloped in flames: and as no attempt was or could be made to arrest their progress, long before morning nothing of it was left standing but the bare and blackened skeleton of the walls.

The loss thus sustained by Lord Mansfield must have been very considerable, even leaving out of the calculation all that to himself must have had a value entirely beyond any pecuniary estimate. The house itself, the furniture, the paintings, all were of a kind befitting the establishment of a wealthy English peer; and all this was destroyed, This, however, money might have replaced: but no sums could restore the cherished memorials of early friendship with the great and the illustrious—the volumes inscribed to him by Pope or by Bolingbroke; the remarks noted down on the margin of others in the hand-writing of the poet or the statesman; nor the records of his own thoughts during the greater part of a life spent in constant intercourse and collision with the learned, the witty, and the wise:—

"And Murray sighs o'er Pope and Swift,
And many a treasure more,
The well-judged purchase and the gift,
That grac'd his letter'd store.

Their pages mangled, burnt, and torn,
Their loss was his alone;
But ages yet to come shall mourn,
The burning of his own."

Independently of such precious relics as these, there are

associations connected with the books of every man who is fond of literature, which make him look upon them with a feeling almost of affection. Surrounded by them, he feels himself in the presence of old friends; he recollects the date of his first acquaintance with each individual volume;—what motive first led him to make himself master of it;—what new train of thoughts or of emotions was awakened by the perusal of it; and merely by casting his eye along the backs of them as they stand ranged on the shelves, he can read the history of his own mind, and of his own actions which that mind has governed, perhaps almost from the earliest infancy of his reason. We have no fear of subjecting ourselves to the ridicule of those who have experienced such feelings, and can appreciate the force, as well as the delicacy of such associations, when we say that no other than the very identical volumes that have first created them can call them up again in the imagination with anything like the same vividness or reality. We may purchase the self-same works—better editions of them, in handsomer bindings; but the fine thread has been snapped; the charm is dissolved. This will doubtless appear very extravagant and absurd to those who consider books as nothing more than pretty furniture for the walls, and order them as they would hangings or papering—by the yard. To such persons we must despair of conveying any notion of the pang the destruction of his library must have inflicted on Lord Mansfield. "I speak not from books," he once said in the House of Peers, after this event, "for books I have none!" Those only who know what it is to feel a warm attachment, we had almost said friendship, for their books, can appreciate the full pathos of this simple sentence.

It was not till a week after the conflagration, that Lord Mansfield again appeared in his place in the King's Bench. A note in Douglas's Reports informs us, that a reverential silence, much more expressive than any set speech of condolence could have been, was the greeting given him by the bar, on his first entry into court. This was on the 14th of June. In the course of the following month, a vote of the House of Commons gave him an opportunity of shewing that, however great his loss might be, he was above receiving any indemni-

fication for it out of the public money*. And here we may remark, in further disproof of the insinuations we have already alluded to, as to his supporting the measures of government from corrupt or interested motives, that he never, during the whole course of his life, took advantage of his influence with ministers to make himself or any of his family or dependants a charge to the nation. The only person, as he himself once stated in the House of Lords, for whom he ever solicited the slightest provision out of the funds of the public, was the unfortunate Lady Jane Douglas, who had no claims to interest him in her behalf, but her distress. For her he obtained a pension of £150; and assuredly, if the admitted privilege of the crown to provide by such means against the utter decay and ruin of ancient families had never been exerted but in cases of such extreme urgency as this, the people of England would never have felt inclined to murmur as they have very naturally done, at the abuses of the pension-list. It may doubtless be said, that small praise is due to a man who, being himself in the possession of great wealth, chooses to

* The following is a copy of the letter sent by him to Mr. Keene the government surveyor, who had been directed to apply to him for an estimate of the amount of his loss:—

"21*st August*, 1780.

"Sir—I am extremely obliged to you for your attention in calling upon me before I went the circuit, and last Friday again since my return, and in now communicating to me by your letter of Saturday the unanimous vote of the House of Commons, and the reference of the Lords of the Treasury of the 18th July to your board, desiring me to enable you to comply with the order of the Lords of the Treasury; and so far as I am concerned, I return you my thanks for your great civility. Besides what is irreparable, my pecuniary loss is great. I apprehended no danger, and therefore took no precaution. But how great soever that loss may be, I think it does not become me to claim or expect reparation from the state. I have made up my mind to my misfortune as I ought, with this consolation, that it came from those whose object manifestly was general confusion and destruction at home, in addition to a dangerous and complicated war abroad. If I should lay before you any account or computation of the pecuniary damage I have sustained, it might seem a claim or expectation of being indemnified. Therefore you will have no further trouble on this subject from

"Your most obedient and humble Servant,

"Mansfield."

refrain from quartering on the public purse, those he is bound, and is well able, to provide for himself. This is incontestibly true. Such conduct is only entitled to the negative praise, that it is not unworthy. But we have only to cast our eyes around us, and we shall unfortunately be compelled to allow that it has also, if not the merit, at least the peculiarity, of being extremely rare. That it has not been at all more common among chancellors and chief justices, than with ministers, secretaries, and lords of the bedchamber, may be demonstrated by a very cursory inspection of the list of sinecure offices, wherein by no means a small or an unconspicuous space is occupied by the posterity of deceased judges, and the relatives or connexions of the living.

On Lord Camden's resignation in the beginning of 1770, the Great Seal had been again offered to Lord Mansfield, and again he had declined it. After the death of Charles Yorke, it was once more tendered to his acceptance, and it was only on his positive refusal that it was finally committed (January 23rd, 1771) to Lord Bathurst. A higher dignity in the peerage was also at his command; but having no children of his own, nor for some time, indeed, any prospect of male heirs in his family, he declined for himself the honours of a more elevated hereditary rank. The king had already conferred upon him the personal honour of creating him a Knight of the Thistle. At length, however, on hearing that the lady of his nephew, Lord Stormont, was about to become a mother, he felt a very natural anxiety that his own should be taken as the first title in his family, and he accordingly expressed his desire to exchange his baron's coronet for an earldom. From his own account, given in a letter to Bishop Newton, the manner in which this dignity was conferred was such as to give him great pleasure. The patent of his creation bears date October 31st, 1776. He was therein designated as Earl Mansfield, of Mansfield in the county of Nottingham. The title was granted to himself and his heirs male, or in default of such, to Louisa Viscountess Stormont, and her heirs by Lord Stormont. The patent was thus drawn out, because it was held at the time that an English peerage could not be limited, even in remainder, to one who was already a peer of Scotland. Some years afterwards (1792), when it had been decided that this could be

done, a new patent was granted, in which he is styled Earl Mansfield of Caen Wood, in the county of Middlesex, with remainder to Viscount Stormont, and the heirs male of his body. The later of these patents not having the effect of superseding the other, it happens that, at this time (1830), a son of the then Lord Stormont bears the title of Earl Mansfield of Caen Wood, in the county of Middlesex, while the then Lady Stormont, who is still living, is, in her own right, Countess Mansfield of Mansfield, in the county of Nottingham.

Caen Wood, the place named in the later patent, is a villa and small estate so called, in the neighbourhood of Highgate. This, which had only been his occasional residence before the destruction of his town mansion in Bloomsbury Square, afterwards became his more constant abode. The death of his lady, which happened four years afterwards (1784), deprived him of an affectionate companion, with whom he had enjoyed nearly forty-six years of uninterrupted domestic happiness. The loss must have been to him irreparable: but his friends and acquaintances found her place supplied, and the honours of his hospitable board equally well performed, by his two nieces; who had, for some time before, been constant inmates of his house, and continued so as long as he lived. The same elegance and propriety for which his domestic establishment had always been remarkable, still continued to distinguish it. We are assured by some who have had good opportunity for observation, that in no situation did Lord Mansfield appear to greater advantage than at his own table. The dignified manner of the judge was there laid aside for the affability and ease of the polished gentleman. Nor did he ever suffer the pride of genius, or of great acquirements, to seduce him into the habit of displaying his intellectual superiority in the moments of social intercourse. If, as Johnson said of his friend Burke, the man of genius could be detected even by an ostler to whom he might give directions about his horse, or by a stranger who might take refuge from a shower under the same gateway with him, we may suppose it is not very likely any one should pass several hours in the society of such a man as Lord Mansfield, without making the same discovery. But there never was on his part any studied or voluntary exhibition of his powers. Indeed, he was generally averse from introducing any topic of

conversation that might call for much exertion of thought. His public duties gave sufficient occupation to the severer faculties of his mind; and as (to make use of Coke's favourite phrase) the bow cannot be kept always bent, he was glad to avail himself of opportunity to relax its tension.

An anecdote is related of him, which shews that, even much earlier in life, he not only enjoyed but felt the necessity of granting himself this indulgence, and which at the same time displays his character in a very favourable light. He had reason to feel himself under considerable obligation to Lord Foley, who, if report speaks true, had persuaded his family to let him make the law his profession, instead of the church, for which they had originally designed him; and had obviated all objections as to pecuniary matters, by volunteering to defray the additional expenses of his legal education out of his own purse. The debt of gratitude thus incurred by the young lawyer was never afterwards forgotten. When he had risen to eminence at the bar, he was in the constant habit of spending his Saturday afternoons and Sundays at the old nobleman's country mansion; and upon some of his acquaintance expressing their surprise that he should forego all the social pleasures at his command to pay his accustomed visit at so dull a house, he assured them that he thereby enjoyed the double gratification of giving pleasure to a tried friend, and of allowing his mind an interval of complete repose.

Probably many persons were in the habit of winding up to the highest pitch their expectations of the instruction they were to derive from the conversation of one, whose reputation for wisdom and eloquence ranked so deservedly high; and in that case it was not at all unlikely they should experience a feeling of disappointment, when they found him merely bear his part, like an ordinary guest, in the familiar chit-chat of the dinner table. In the same manner, we have no doubt, many an idler who had consumed his morning in doing nothing, and would fain have babbled of books when he found himself, towards evening, in the same room with such a man as Gibbon, must have been surprised to see the philosophic historian sit down to the card-table, and bestow as much apparent attention upon the kings and knaves in his hand, as he had been giving during the previous part of the day to the kings and the knaves

who make a figure in the affairs of the Lower Empire. But we venture to say, any one who had known what it was to keep all the faculties of his mind for a long time together on the stretch, would be as little likely to participate in this astonishment or disappointment, as a sportsman to wonder at seeing a brother fox-hunter fast asleep in his chair after a hard run. Only the indolent or the unemployed are apt to commit the common injustice (common as indolence and the want of occupation) of estimating the mental powers of a hard-working lawyer, or author, by such a display of them as he may choose to make in private society, when he is perhaps making an effort to keep them, as much as possible, in a state of inaction.

It is not every Chief Justice of the King's Bench who has the same multiplicity of public duties to burthen his mind, that fell to the share of Lord Mansfield. There has never been one, for example, among those who have had a seat in the House of Peers, who took such a prominent part in the debates; and the weight attached to his opinions, on all questions of foreign as well as of domestic policy, entailed upon him the necessity of bestowing deep consideration, thought, and sometimes also research, before he uttered them. Then his duties as a privy councillor were not to be performed without much labour. For many years, government relied almost solely upon him for the decision of appeals from the colonies; and these were much more numerous at that time, than they have been since the separation of America from the mother country. Perhaps it may be needless to add, that his attendance in court by no means constituted the whole of what he was called upon to do in his capacity of Chief Justice alone. Besides the customary attendance at chambers, many of the decisions pronounced by the bench required study that occasionally occupied the evenings not spent in attendance at the House of Lords. In a note to one of his fellow judges, at the time he was preparing his elaborate argument in the case of Taylor v. Horde, he gives an account of the time he chose for putting his materials together:—"I am very impatient," he writes, "to discharge myself entirely of it. While the company is at cards, I play my rubbers at this work, not the pleasantest in the world; but what must be done I love to do,

and have it over." Now when the mind is thus continually kept on active duty, occasional relaxation is as necessary to recruit its strength, as cessation from bodily toil to repair the animal forces. In both cases, too, repose is a positive enjoyment, and like most other enjoyments, is better appreciated in proportion as it is more seldom tasted. Another of his letters, giving an account of the zest with which he indulged in complete idleness, during a long vacation, he concludes by quoting the very just remark: "Liber esse mihi non videtur qui non aliquando nihil agit."

Perhaps it was partly in consequence of Lord Mansfield's general abstinence from any severe exertion of his mental faculties, except such as the duties of his station demanded, that he contrived to keep them unimpaired up to the latest period of a long life. Little more than a week before his death, his nephew, Lord Stormont, on asking his opinion concerning a law case in which he was concerned, found that he still retained the same clearness and quickness of perception for which he had been always remarkable, and that his powers of reasoning remained also entirely unimpaired. About three years before this, one of his nieces was reading Burke's work on the French Revolution, which formed at that time the general topic of conversation, and happening to to meet with the word *psephismata*, she applied to a gentleman near her for an explanation of its meaning. His answer was, that he had considered it to be a misprint for *sophismata*; but Lord Mansfield immediately corrected his error, and after a short pause, recited from memory a tolerably long passage from Demosthenes, wherein the word in question was employed, and explained by the context. He was then in his eighty-sixth year. His bodily strength did not last so long. His increasing infirmities prevented him from taking his place in court after Michaelmas Term, 1787. Probably he then anticipated a return of health that might enable him to resume his seat there, for he did not immediately resign his situation; but finding his expectations on this score disappointed, he gave in his resignation, on the 4th of June in the next year; having thus held the situation of Chief Justice within a few months of thirty-two years. As soon as his secession was made known, the bar came to the re-

solution of deputing Mr. Erskine, then one of the leading counsel in the Court of King's Bench, to convey to him an address of farewell in their name; and accordingly, about a fortnight afterwards (June 18), the following letter was sent to him at Caen Wood. In less than five minutes from the receipt of it, his answer, which we shall also subjoin, was delivered to the bearer:—

"My Lord,—It was our wish to have waited personally upon your lordship in a body, to have taken our public leave of you, on your retiring from the office of Chief Justice of England; but judging of your lordship's feelings upon such an occasion by our own, and considering, besides, that our numbers might be inconvenient, we desire, in this manner, affectionately to assure your lordship, that we regret, with a just sensibility, the loss of a magistrate whose conspicuous and exalted talents conferred dignity upon the profession, whose enlightened and regular administration of justice made its duties less difficult and laborious, and whose manners rendered them pleasant and respectable. But, while we lament our loss, we remember with peculiar satisfaction, that your lordship is not cut off from us by the sudden stroke of painful distemper, or the more distressing ebb of those extraordinary faculties which have so long distinguished you among men; but that it has pleased God to allow to the evening of a useful and illustrious life the purest enjoyments which Nature has ever allotted to it—the unclouded reflections of a superior and unfading mind over its varied events; and the happy consciousness that it has been faithfully and eminently devoted to the highest duties of human society, in the most distinguished nation upon earth. May the season of this high satisfaction bear its proportion to the lengthened days of your activity and strength!"

"Dear Sir,—I cannot but be extremely flattered by the letter which I this moment have the honour to receive. If I have given satisfaction, it is owing to the learning and candour of the bar: the liberality and integrity of their practice freed the judicial investigation of truth and justice from difficulties. The memory of the assistance I have received from them, and the deep impression which the extraordinary mark they have now given me of their approbation and affection has

made upon my mind, will be a source of perpetual consolation in my decline of life, under the pressure of bodily infirmities, which made it my duty to retire.—I am, dear Sir,

With gratitude to you and the other gentlemen,

Your most affectionate and obliged humble servant,

"MANSFIELD."

Caen Wood, June 18th, 1788.

There was nothing of exaggeration or of insincerity in the language of affectionate attachment towards the venerable Chief Justice, thus eloquently expressed by Erskine on behalf of the bar. The affability and kindness of his manner towards the whole of the profession had always in reality been such, as to convert into a pleasure those duties which are certainly as irksome as can well be, when such qualities are not to be found on the bench. And they were displayed, too, with perfect impartiality towards every member of the bar. The differences of silk gown and stuff gown, of large or small practice, of a seat in the front or in the back row, never caused the slightest distinction in the uniform urbanity of Lord Mansfield's address and demeanour. That sort of undue influence with the bench, which, every one who attends the courts will admit, has sometimes been painfully conspicuous in the case of particular counsel, whether acquired by favouritism, or by the presumption of superior knowledge, or eminently successful practice, was never to be remarked in the King's Bench while Lord Mansfield presided there; although, like most other judges, he had his private friends among them, and although the bar could boast of such men as Mingay and Bearcroft, and Dunning and Erskine, and many others whose names will long continue to live in the recollection of their successors. The junior barristers had particular reason to feel gratified by his attention to them. He would often relieve the timidity or the embarrassment of an inexperienced young man, by a few words of encouragement, or an observation that would throw a sudden ray of light upon his case. He also instituted a custom, for which not only the younger members of the profession, but the public in general ought still to hold themselves indebted to him; one that does as much towards facilitating the dispatch of the term business in court, as equalizing the distribution of a considerable portion of it among counsel

of different standing. This was the going through the bar. Previous to his time, it had scarcely ever happened that in one day motions were heard from more than the two or three first rows of benches; and when on the following day the hour would arrive for moving the court, it had been usual to commence again with the Attorney-General, or senior king's counsel, and go on as before, according to the established form of precedence. Thus, a junior on one of the back rows might wait for a term or more without having an opportunity afforded him of moving; the necessary consequence of which was, that clients, rather than incur the certainty of great delay in the progress of a cause, never thought of entrusting this sort of business to any but those who claimed the right of pre-audience. Lord Mansfield's practice was to go entirely through the bar, if possible, every day, in the same manner as now is done; but if time pressed, and he could only call on a portion of the barristers, he began the next day precisely where he had left off, and heard those who had previously missed their opportunity, before he began again within the bar. The benefits of this method are obvious; and it is to be regretted that it is not still adhered to, so far as regards the alternative adopted whenever the court could take but part of the motions at one sitting.

The only fault ever found by the bar with Lord Mansfield's demeanour on the bench, was the habit he sometimes indulged in of reading the newspaper, or writing letters, while counsel were addressing the court or the jury. This is a custom we certainly shall not attempt to defend. But it must be remarked, that this neglect of the speaker was always more apparent than real, for in summing up the evidence, or delivering his opinion, as the case might be, it was evident that nothing of importance had escaped him; and it is to be supposed, that those who were convinced by constant experience how fully he possessed the power of thus dividing his attention, were ready to pardon the mere semblance of bestowing it altogether upon matters foreign to the business in hand. Casual frequenters of the court, who were not daily accustomed to witness the display of his astonishing memory, would occasionally expect nothing less than to find him embarrassed and confused, when he began the recapitulation of evidence or argu-

ments, of which he had not only taken no note, but had been to all appearance a very inattentive auditor; so that when, on laying down his newspaper, he went minutely through the whole, not forgetting or mis-stating so much as the name of a single case or a single witness, their wonder knew no bounds. But there was much more to admire than the mere display of memory. There was the statement of the case, in itself worth an argument, the clear arrangement of facts, the acute deduction of inferences, the ready replies to objections, and the conclusion so plainly suggested to the hearers, long before it was announced, that the least able reasoners might be betrayed into a high opinion of their own discernment, for perceiving what the consummate art of the speaker had made it quite impossible they should not perceive.

During the whole period of his chief-justiceship, the court seldom or ever failed to be crowded in term time with a concourse of students, who frequented it as the best school of legal instruction they could attend. Indeed, previous to Mr. Justice Buller's rapid rise at the bar, and early promotion to the bench, which induced young men to pursue the same course of study he had so ably profited by, and first rendered general the practice of passing the greater part of their noviciate in the chambers of a special pleader, a constant attendance upon the courts had been the most usual method adopted for the acquirement of practical knowledge of the law. Lord Mansfield always appears to have taken quite a fatherly interest in their progress, and to have made it a part of his duty to afford them every facility of acquiring solid and correct information. Whenever he was about to pronounce the decision of the court, in a cause that had been argued some time before, he generally called upon one of the counsel concerned to give a statement of the case, for the benefit of the students, before he began to deliver the judgment; and numerous instances are recorded in Burrow's Reports, of his stopping to explain obscure points of law or of history connected with the case, to give his opinion upon the character of particular books, or to refute some erroneous doctrines supported by strong authority; all, as he expressly used to state, that the students might not be misled. We know not what finer or more instructive lectures they could have listened to

than the elaborate arguments, rich with historical illustration and judicious comment, by which he explained the grounds of the decisions in such cases as Taylor v. Horde, or Millar v. Taylor, or Wyndham v. Chetwynd, or a host of others we might quote.

Though his general deportment on the bench was characterised quite as much by dignity, as by courtesy and suavity of manner, he did not consider it incumbent upon him to preserve so much stateliness, but that he might occasionally relax the muscles of the court with a jest. When Macklin had recovered seven hundred pounds damages in an action for a conspiracy to hiss him off the stage, and after the delivery of the verdict declared it was not his intention to demand the sum, he received for his generosity and forbearance a compliment from the Chief Justice, which he afterwards used to tell of with as much delight as of Pope's exclamation on seeing him play the part of Shylock. "Mr. Macklin," said his lordship, "I have many times witnessed your performances with great pleasure; but in my opinion you never acted so finely as upon this occasion." A prisoner being once tried before him for stealing a watch, he was directing the jury to find the value of it under one shilling, with the view of avoiding the conviction for grand larceny, when the prosecutor interrupted him by calling out: "A shilling, my lord! why the very fashion of it cost me more than five pounds!" "Oh! sir," said Lord Mansfield, "we cannot think of hanging a man for fashion's sake." The facetious Serjeant Davy had, one morning, been subjecting a Jew to a long cross-examination, in order to prove his incompetence to be received as bail. The amount required happened to be a very small one, and the Jew was dressed in a tawdry suit, all bedizened with tarnished lace. His lordship at length interfered: "Nay, brother Davy," he said, "you surely make too much of this trifle—don't you see the man would burn for a greater sum?" With another brother of the coif (Hill) he sometimes ventured upon a species of joke that, it must be owned, almost trespassed on the bounds of indecorum. The Serjeant was a man who possessed deep and varied stores of learning. He had been distinguished at Cambridge both as a classical scholar and a mathematician, and had since acquired extensive reputation for the profundity of

his legal knowledge, particularly on the subject of real property. Indeed, there is no doubt he had more of mere legal learning than Lord Mansfield; but he was so wholly deficient in the art of turning it to account in public, that there was as much difference between the practical value of the knowledge possessed by them, as between that of a block of coal and a diamond, both of which are but different modifications of the self-same substance. Among his contemporaries at the bar, he always went by the name of Serjeant Labyrinth; for he never attempted to argue a case, without speedily involving himself in such a maze as bewildered himself no less than his hearers. On such occasions, his intellect and his senses would seem alike enwrapped in a mist; he would stand motionless in one posture, his eyes half closed or dimly fixed on vacancy, and, wholly unconscious of the presence of the auditory, would roll forth sentence after sentence, heap tautology on tautology, and, in endeavouring to explain one obscurity, go on propounding others still more obscure, like a heavy-laden horse floundering in soft mire, and sinking the deeper the more he labours to extricate himself. It may be supposed the gravity of the bar was not altogether proof against so ridiculous an exhibition. By the time smiles had increased to tittering, and tittering was well nigh expanding into a most audible laugh, Lord Mansfield would generally interfere, and call upon the learned Serjeant by name. As he was rather deaf, and besides wholly wrapt up in his own speculations, the call was generally repeated three or four times before he stopped; and then some inquiry after the state of his health would often turn out to be the only matter for which the Chief Justice had interrupted him. We know not whether Serjeant Hill inwardly resented this sort of quizzing, but it certainly is sufficiently evident from the notes he was in the habit of writing on the margin of his copy of Burrow's Reports (which notes are inserted in the modern edition of that work), that he felt anything but a friendly disposition towards Lord Mansfield.

The long and eminently useful career of this illustrious magistrate was finally closed on the 19th of March, 1793, he being then in his eighty-ninth year. Though not free from the infirmities of age during the latter part of his life, he underwent little or no bodily suffering. Nor was his death occasioned by

any painful or violent disease. The first symptoms of illness were felt on Sunday, March 10th: he shortly afterwards fell into a kind of stupor, and this settled into a trance so complete, that no other mode could be devised to afford him the slightest sustenance, except that of occasionally wetting his lips with a feather dipped in wine or vinegar. On the 15th, very little appearance of life could be detected; some appearance of mortification began already to be visible; and in this state he lingered on till the 19th, when he sank by an almost imperceptible transition into death. On the morning of the 28th of the same month, his body was privately interred in the same tomb with the remains of his lady, in Westminster Abbey; according to a wish expressed in his will, that he might be suffered to show this mark of respect to the place of his early education. It had been the intention of the judges and members of the bar to testify their respect for his memory, by assembling in full numbers to attend the funeral; but the design was abandoned, on their being informed it had been his own desire that the ceremony should be as private as possible. A bequest of fifteen hundred pounds having been left some years previously, by a Mr. Bailey, to defray the expense of a monument to his memory, Flaxman, who had then just returned from his studies at Rome, was deputed to execute one, and it was placed on the spot where he had been buried, between the tombs of Lord Chatham and Lord Robert Manners. The bulk of his fortune, which was very considerable, comprising, it is said, upwards of 26,000*l.* a year on mortgages, besides property otherwise invested, descended with his title to his nephew, Lord Stormont. Considerable legacies were left to his two nieces, the honourable Anne and Marjory Murray, to whom the king, in compliment to the memory of their uncle, shortly afterwards (April 1793) granted, by his royal sign manual, the same pre-eminence and precedence as if they had been daughters of an Earl of Great Britain. Among the other bequests was one of 2000*l.* to Mr. Justice Buller, who had been indebted to the friendship of Lord Mansfield for his early promotion to the bench; and would have been nominated as his successor, but for the debility of his health, in consequence of which the chief-justiceship was given, with a peerage, to Sir Lloyd Kenyon, the Master of the Rolls.

With the exception of the celebrated answer (drawn up in 1752, when he was Solicitor-General) to the memorial of M. Michel, the secretary to the Prussian embassy, which, though it bears the signature of other law officers besides himself, we know to be entirely his composition, we are not aware that any proofs of his talents as a writer have been preserved. The protest against the repeal of the American Stamp Act, which was entered on the journals of the House of Lords in 1776, during the time when he was in opposition to the administration, is also supposed to have been dictated by him throughout. It is allowed to be one of the ablest performances contained in the records of Parliament; as the former production assuredly is a model for state papers. The general belief, which is expressed in the verses of Cowper we have already quoted, was, that several manuscript compositions of his own were consumed by the conflagration of his house in Bloomsbury Square; but this was merely a vague supposition, and as it is well known that he never was fond of writing, we may infer that it was incorrect. The grandest monument of his genius is assuredly the commercial jurisprudence which he created and brought to maturity.

In stature Lord Mansfield was not above the middle size. His personal appearance was extremely prepossessing, and this natural advantage, which is of more importance to an orator than is perhaps usually supposed, he improved by the consummate grace and propriety of his gesture in speaking; in the same manner as he gave additional effect to the natural melody of his voice, by his skill in modulating it. The brilliancy and vivacity of his eye was such as could not fail to catch the attention, and gave token of the acuteness and vivacity of his intellect. The general expression of his countenance is probably familiar to most of our readers, from the many likenesses of him that have been painted, and reproduced in the shape of engravings. The originals of two miniatures by Vanloo, taken in the earlier part of his professional life, are still, we believe, in the possession of private individuals. Besides the portrait painted by Martin for Christ Church, there is another by the same artist, representing him in the court dress he wore when presented to the king and queen of France, during a short visit he paid to his nephew at Paris in the year

1774. He also sat twice to Copley, at the request of his friend Mr. Justice Buller; and once to Sir Joshua Reynolds, on the solicitation of the Corporation of London, who were anxious to adorn Guildhall with the portrait of one who had done so much, on that very spot, to claim the gratitude and the respect of the merchants of England. Trinity Hall, Cambridge, has a bust of him by Nollekens.

There can be little occasion, we think, for adding to this sketch, however feeble and imperfect, of the life and character of Lord Mansfield, any formal refutation of the calumnies which personal jealousy or political enmity have directed against him. We have already alluded to the most serious of them; and we are even not without apprehension that, in so doing, we may appear sometimes to have committed the fault which of all others we should be most anxious to avoid, namely, that of pleading for him as an advocate, rather than endeavouring with strict impartiality to form a calm judgment as to his merits. If this be so, we can only say that we have, at least, done all in our power to guard against this besetting sin of biographers. It is only on mature consideration of the charges made against him, that we have arrived at the conviction of their injustice. As to his political opinions, we think it quite unnecessary to uphold them, in order to justify his adoption of them. That he was sincere and honest in his belief of their soundness, and always consistent in his advocacy of them, is, in our estimation, quite sufficient for that purpose. With respect to his merits as a judge, we consider them beyond all praise. We believe, indeed, that the opinion of the public in general, as well as of the legal profession, is quite made up on this point; and that we shall run little risk of contradiction, when we declare that, in our estimation, he has done more for the jurisprudence of this country, than any legislator, or judge, or author, who has ever made the improvement of it his object.

LORD CAMDEN.

THE possession of the highest offices in the law has so unfrequently been found united in the same individual with a declared opposition to the encroachments of prerogative, and a zealous assertion of popular privileges, that it is matter of surprise that the biography of Lord Camden, in whom this union was most conspicuous, and who was in consequence, during a great part of his political life, the object of unbounded national applause and reverence, instead of being fully written by some of his contemporaries qualified for the task by intimate personal knowledge, should never even have been detached, except in the most meagre and imperfect manner, from the general history of English politics, and the bulk of contemporary memoirs. Even in the recently published "Lives of Eminent Lawyers," imbued as the volume is throughout with its author's attachment to the principles of Whiggism, the life of this most eminent Whig lawyer, judge, and statesman, has not found a place.

The name of Lord Camden was mentioned in a former memoir*, as one in the catalogue of lawyers by descent. His father, Sir John Pratt, descended from a family of some antiquity and consideration, which had been settled since the reign of Elizabeth at Careswell Priory, near Collumpton, in Devonshire, was called to the bar about the year 1684, and practised with much reputation during the three following reigns, and represented the borough of Midhurst in two Parliaments, until, on the accession of George I., he was ap-

* Life of Lord Hardwicke, ante, p. 326.

pointed a judge of the King's Bench; and in Easter Term, 1718, on the elevation of Lord Parker to the Chancellorship, was raised to the dignity of Chief Justice of the same court, in which he presided until his death in February 1724. Many a young sessions subaltern, who might otherwise have remained unconscious of the existence and dignities of Sir John Pratt, has been made familiar with his name from the well-known doggerel version of a settlement case, preserved by Burrow, and transplanted into Burn's Justice, wherein his lordship as Coryphæus, and the puisne judges as the Chorus, are made to chaunt forth the judgment of the court touching the case of a woman who

> ——— "having a settlement,
> Married a man with none."

Sir John had by each of two marriages a family of four sons and four daughters. Charles, the subject of this memoir, the third son by his second wife (daughter of Hugh Wilson, a Montgomeryshire clergyman and canon of Bangor), was born about the close of 1713 or the beginning of 1714. Of his boyhood and early youth we can find little recorded, beyond the general statement that he was already distinguished as a lad of much promise, and reasonably diligent and studious, possessing at the same time a flow of animal spirits, and a cheerful and affectionate temper, which made him a great favourite amongst his companions. He was sent early as a *colleger* to Eton, and had for his contemporaries there, amongst others, the elder Pitt, Lyttleton, and Horace Walpole; the two former, however, a few years his seniors. It is most probable that he laid there the foundation of that friendship with the first of them, which lasted unbroken and undiminished till his death, and which in their mature years was drawn into so close a political as well as personal attachment. That young Pratt did not much misemploy his time at school is manifest from the circumstance of his obtaining the election to King's College, Cambridge, where he entered into residence in the October Term, 1731.

The scholars of King's, as our readers are aware, being entitled to their degree without the necessity of appearing in the

university schools, or passing the ordeal of a senate-house examination, it was not necessary for him to employ the period of his undergraduateship in the prosecution of the ordinary academical studies, and he was left at liberty to apply himself to others more congenial with his taste, and, as it proved, more subsidiary to his success and reputation in the world. Destined from the first for the legal profession (for he had been entered of the Inner Temple at the age of fifteen), it appears, accordingly, that his favourite reading (of a serious kind) was directed, while at college, to the history and constitutional law of England; and he exhibited already that predilection towards the popular principle in the constitution, by which his public life was so uniformly marked. In all the contests in which his college was engaged, whether for the election of its own officers, or the establishment of its exclusive privileges, Pratt was found espousing the *popular* side, and opposing himself to "unstatutable influence," with as much warmth and tenacity as he afterwards was wont to display on the wider arena of national dispute. He became as of right, at the end of three years from his election, a fellow of his college, and proceeded in due course to his bachelor's degree in 1735-6, and to his master's in 1740; having in the interval, viz. in Trinity Term, 1738, been called to the bar*.

He practised, or rather waited for practice, some years at the common-law bar, and travelled the western circuit, without obtaining that reasonable share of business, which his own talents, application, and professional acquirements, aided by the influence derived from his father's name and reputation, and his family connexions in the West of England, might have been expected to secure to him, without undergoing that melancholy period of long probation, which many an aspiring youth has fondly anticipated would have been sufficient to clothe him in the honours of silk, if not to open a near prospect of the dignities of ermine—instead of leaving him

* His entry of admission bears date 5th June, 1728; his call 17th June, 1738. He is designated in the entry "Carolus Pratt, generosus, filius quintus (that is, the fifth surviving son) honorabilissimi Joannis Pratt, eq." &c.

with the sad adjuncts of a bag as empty, and a pocket emptier, than it took him up. For eight or nine long years did Pratt travel the same dull and almost hopeless round *, until, if tradition speak truth, he was at last introduced to business by one of those lucky incidents which have been attributed to more than one lawyer of eminence dead or living. The story bears, that he was at length so dispirited by his continued ill success, as to entertain serious thoughts of relinquishing his profession, returning to the seclusion of his college, and qualifying himself for orders; so that, with the proceeds of his fellowship to eke out for the present the scanty portion of a fifth son (if aught yet remained of it†), and with the certainty of succession to a college living in the course of a few years, he might be able to assure himself of an honourable though limited independence. With this melancholy prospect, he went to make one final experiment on his circuit, and then, if fortune were still unpropitious, to give up the pursuit. He communicated his determination to his friend Henley, afterwards Lord Chancellor Northington, who was some years his senior, and also went the western circuit. Henley combated his purpose, first with raillery, and then with serious expostulation; but finding both insufficient to beat him out of it, managed to get

* It was during this unpromising season that his school and college friend, Sneyd Davies, addressed to him a poetical epistle, (it is printed in the sixth volume of Dodsley's collection,) in which he set before him the examples of Somers, Cowper, Talbot, Yorke, who, in spite of difficulties,

> "Sped their bright way to glory's *chair* supreme,
> And worthy fill'd it. Let not these great names
> Damp, but incite; nor Murray's praise obscure
> Thy younger merit; for these lights, ere yet
> To noonday lustre kindled, had their dawn:
> Proceed familiar to the gate of fame;
> Nor deem the task severe—its prize too high
> Of toil and honour, for thy father's son."

† Pratt himself, in a familiar letter of the date of 1741 (the third year only of his probation), bears witness to his state of *impecuniosity:* —"Alas, my horse is lamer than ever; no sooner cured of one shoulder than the other began to halt. My losses in horse-flesh ruin me, and keep me so poor, that I have scarce money enough to bear me out in a summer's ramble; yet ramble I must, if I starve to pay for it."

him engaged as his own junior in a cause of some importance; and being, or contriving more probably to absent himself on the plea of being, taken ill, it fell to Pratt to hold the leading brief; and he acquitted himself so well, and displayed at once so much professional knowledge and ready power of elocution, as to ensure the verdict for his client, and to acquire among the dispensers of business, as well as among his brethren at the bar, the reputation of a sound lawyer and eloquent advocate.

The ice was now broken, and we see him henceforward swimming stoutly with the stream. Circuit business first flowed in upon him; his friend Henley, we are told, continued his good offices; we find his name occurring here and there in the reports of the period*, until, in the course of some five or six years, he came, more particularly in cases wherein general principles or constitutional rights were involved, into extensive and profitable employment. In 1752 we find him second counsel in defence of Owen the bookseller, who was the subject of a government prosecution for publishing a pamphlet in vindication of Alexander Murray, the proceedings against whom by the House of Commons for sedition attracted for some time so much attention: and on that occasion he strenuously maintained, in his address to the jury, the doctrine which he afterwards asserted with such energy in Parliament, of their right to return a general verdict, and to pronounce upon the intention of the accused, as well as upon the fact of publication and the correctness of the innuendos. Some years afterwards, when, in his character of Attorney-General, he conducted the prosecution against the Jacobite pamphleteer, Dr. Shebbeare, (the first libel case tried before Lord Mansfield), he equally assumed the same right in the jury, and accordingly, as he tells us himself, turned his back upon the judge while opening the case and commenting on the alleged libel, so as to intimate that in his view the whole question was one which the jury had the sole cognizance of, and the bench had no part in. In Owen's case, the jury adopted his view of the matter, and found an unqualified ver-

* The first printed case in which we have found his name appearing is a settlement case in Michaelmas Term 1750; but the names of counsel were at that time of day given and omitted very irregularly.

dict of "not guilty," to which they adhered, in spite of the inquiry which the Chief Justice (Lee), at the Attorney-General's suggestion, addressed to them, whether or not they were satisfied with the evidence of publication. We see him also engaged in several other important crown cases within the two or three following years, and learn that he obtained besides considerable practice and reputation at the bar of the House of Commons; and it appears to have been, thus far at least, principally as an advocate well read in constitutional law, and known as a liberal interpreter of it, that he established himself in general estimation. He does not appear at all in the courts of equity, until after his appointment as Attorney-General; and in the minor matters of daily discussion in the King's Bench, his name occurs less frequently than that of many others. But he was about to be busied upon a wider and more important scene.

The Duke of Newcastle's administration began, early in the year 1756, to exhibit unequivocal symptoms of disorganization, and promised speedily to fall asunder before the combined assault of the two parties of Rockingham and Pitt. The timid and irresolute spirit of the minister crouched before the fulminations of his great opponent, and sunk within him at the gathering difficulties which the disasters of the war abroad, and increasing discontents at home, brought round him. In November of that year, the disjointed cabinet, notwithstanding all his attempts to patch it up, fell irretrievably to pieces. The series of negotiations and intrigues which occupied the next half year are well known to all readers of the memoirs of the time. They ended at last, in June 1757, in the restoration of the Duke to the nominal head of the government, Pitt being, as Secretary of State, its presiding spirit; and the post of Attorney-General becoming vacant by Sir Robert Henley's acceptance of the great seal, Pitt insisted, as a personal favour to himself, on its being filled by Pratt, his early friend, and in whose coincidence of opinion on political subjects he could place full confidence. He was accordingly installed in it, over the head and to the great chagrin of Charles Yorke, who had been some time Solicitor-General, and who, years afterwards, in Pitt's second administration, endeavoured to revenge himself by privately plotting with Charles Townshend, then Chancel-

lor of the Exchequer, the undermining of the ministry of which they both were members, and the formation of a new one, in which Yorke himself should occupy the woolsack; an intrigue to which the young king George III. (already a worthy proficient in that science of dissimulation which has been pronounced by high authority a necessary qualification in a sovereign) was also a secret party, and which was rendered abortive only by Townshend's unexpected death.

A seat in Parliament was obtained for the new Attorney-General for the borough of Downton, which he continued to occupy as long as he remained a member of the House of Commons. Almost the first parliamentary duty imposed upon him was one which conveyed a high compliment—that of preparing and conducting through the House the bill for explaining and extending the provisions of the Habeas Corpus Act*, the introduction of which arose out of a decision of the Court of King's Bench, that the statute of Charles II. did not apply to the case of a party impressed into the king's service, unless he were charged with some criminal matter. In performing this office, "he declared himself," says Horace Walpole, "for the utmost latitude of the Habeas Corpus; and it reflected no small honour on him, that the first advocate of the crown should appear as the firmest champion against prerogative." No distinct report of his speeches on this occasion is extant, the debates in the Commons, as we have them in the Parliamentary History, being all thrown into the form of a single argument on either side. The bill, as is well known, after encountering little opposition in that house, was rejected by the Lords, "in compliment to Lord Mansfield," according to Walpole; at all events, in deference to his and Lord Hardwicke's authority and influence, and the undisguised hostility of the king: nor was it until more than half a century afterwards, and even then not without much opposition, that the legislature adventured on an extension of the act, absolutely necessary to give effect to its spirit and principles, and to which

* A pamphlet published on that occasion, entitled "An Inquiry into the Nature and Effect of the Writ of Habeas Corpus, the great bulwark of English Liberty, both at Common Law and under the Act of Parliament, and also into the propriety of explaining and amending that Act," was attributed to Pratt.

no argument could be opposed beyond the ordinary topics of prejudice and feebleness,—vague declamation about the dangers of innovation, and the absolute and unimproveable excellence of the system to be changed.

It was about this time that Pratt, already past forty years of age, found out that he had remained long enough a bachelor, and that, for the full enjoyment of his brilliant prospects, it was expedient to share them with a partner. The lady of his choice was Elizabeth, daughter and co-heir of Nicholas Jefferys, Esq., of Brecknock Priory. Their first child, the late venerable Marquis Camden, was born on the 11th of February 1759: another son, Robert, who entered the army and died abroad, and three daughters, were the other issue of the marriage.

It fell to Pratt to conduct, as Attorney-General, the prosecutions against Dr. Hensey and Dr. Shebbeare for treason and sedition in 1758, and in 1760 that against the unfortunate Earl Ferrers: in all of which he demeaned himself after the honourable pattern of moderation and fairness set him by his predecessor Murray, and in a very different style from that in which state trials had been wont to be conducted. "As I never thought it my duty," he says in Lord Ferrers' case, "to attempt at eloquence when a prisoner stood upon trial for his life, much less shall I think myself justified in doing it before your lordships; give me leave therefore to proceed to a narration of the facts." He now enjoyed, besides his official emoluments, an almost engrossing private practice in the courts of equity, to which (in the anticipation, it may be, which was eventually realized, of succeeding his friend Lord Northington when gout or party should drive him from the much coveted seat,) he had confined himself since he became Attorney-General. We have had the curiosity to look through Lord Northington's Reports, where the names of the counsel are almost uniformly given, and find, during the four years from 1757 to 1761, five cases only in which the Attorney-General does not appear, in three of which five the counsel are not named at all. He had also received from the corporation of Bath the honour of being elected, in 1759, Recorder of that city.

The accession of the new sovereign, the ascendancy of Lord

Bute, and the resignation of Pitt, wrought no depression of Pratt's fortunes. He continued to occupy his post of Attorney General until December 1761, when the death of Chief Justice Willes created a vacancy on the bench of the Common Pleas, which the government had no difficulty in offering at once for his occupation; and in the present aspect of politics, he had as little hesitation in accepting a lucrative and now permanent dignity; and accordingly, having been first called to the degree of the coif, and knighted, he took his seat as Chief Justice on the 13th of January following; Justices Clive, Bathurst, and Noel, being his colleagues on the bench. A few weeks afterwards, he writes to his old friend Dr. Davies—"I remember you prophesied formerly that I should be a chief justice, or perhaps something higher. Half is come to pass: I am Thane of Cawdor; but the greater is behind; and if that fails me, you are still a false prophet. Joking aside, I am retired out of this bustling world to a place of sufficient profit, ease, and dignity; and believe that I am a much happier man than the highest post in the law could have made me." So men persuade themselves. His friend lived, however, to congratulate him on his elevation to that *highest* post, and might have exclaimed to him in turn—"Thou hast it now, King, Cawdor, Glamis, all."

Very few days elapsed, before the new Chief Justice gave a sufficient indication of the principles on which he intended to administer justice. In one of the first cases that came before him, a question arising as to the discretionary power of the court to receive or reject a plea *puis darrein continuance*, he took occasion to say, that "such discretion was contrary to the genius of the common law of England, and would be more fit for an eastern monarchy than for this land of liberty; nulli negabimus justitiam, nulli deferemus," &c. Nor was it very long before it appeared that he was not, in his judicial capacity, to be exempt from the discussion of questions of political right of the deepest concern to the liberty of the subject. In the spring of 1763, the memorable proceedings against Wilkes and his obnoxious North Briton, prosecuted by means of general warrants from the secretary of state, gave birth to numerous actions, at his own suit and that of the persons employed by him (there were fifteen or sixteen in all),

against the secretaries, Lords Halifax and Egremont, Mr. Wood, their under-secretary, and the officers engaged in the execution of the warrant. All these were brought in the Common Pleas; the known principles of the Chief Justice affording a sufficient guarantee, that, at all events, the objects of court vengeance would not meet with less countenance than the ministers of it. Before, however, any of them were ripe for trial, arose the question as to Wilkes' own right to be discharged from imprisonment. It was rested on three grounds; the incapacity of the secretary of state to issue a warrant of commitment at all; the want of particular statement in the warrant as to the nature of the libel; and lastly, the defendant's privilege of parliament. It was upon the last ground only, namely, that the publication of a libel was not, as a breach of the peace, such an act as deprived the libeller of his privilege, that the Court, Wilkes being brought up by Habeas Corpus, directed his discharge *; nor did the judgment pronounced by the Chief Justice on that occasion in any degree declare, as was commonly alleged, the illegality of general warrants, which was not then brought into discussion. That question arose, however, speedily afterwards, in the action brought by Leach the bookseller against the messenger, Money, who, under the authority of the same warrant, had seized his papers and imprisoned his person. The Chief Justice having stated a decided opinion that the warrant was illegal, and the defendants were not within the protection of the statute of the 24 G. 2, c. 44, requiring notice of action to magistrates, a bill of exceptions was tendered on behalf of the defendant, which was not, however, argued before the Court of King's Bench until 1765, when the case laid the foundation of Dunning's fame, and elicited from the Court a strong opinion against the validity of the warrant, although it ultimately went off on a bye point. In the same term with this (Michaelmas 1763), was tried also the case of Wilkes v. Wood, in which the Chief Justice gave way to all his

* Lord Kenyon intimated, in R. v. Despard (7 T. R. 742) that lawyers of eminence, who had considered the point since, were of opinion that Lord Camden had on this point rather overstepped the line of the law; and said, that at all events the judgment was irreconcileable with many cases solemnly decided.

constitutional warmth, in denouncing the proceedings under the warrant:—

"The defendants claim a right, under precedents, to force persons' houses, break open escrutoires, seize and detain their papers, upon a general warrant, where no inventory is made of the things thus taken away, and where no offenders' names are specified in the warrant, and therefore a discretionary power given to messengers to search wherever their suspicions may happen to fall. If such a power is truly invested in a secretary of state, and he can delegate that power, it certainly may affect the person and property of every man in these kingdoms, and is totally subversive of the liberty of the subject. And as to the precedents, shall that be esteemed law in the secretary of state, which is not law in any other magistrate in the kingdom? If they should be found to be legal, they are certainly of the most dangerous consequences; and if not legal, must aggravate the damages . . . . . Upon the maturest consideration, I am bold to say that this warrant is illegal: but I am far from wishing a matter of this consequence should rest solely upon my opinion; it may be referred to the twelve judges, and there is a still higher court before which it may be canvassed, and whose decision is final. If these superior jurisdictions shall declare my opinion erroneous, I submit, as will become me, and shall kiss the rod; but I must say, I shall always consider it a rod of iron for the chastisement of the people of Great Britain."

These opinions he had not formed hastily. When, in the discussion in the House of Commons upon the same question, in the February following, Mr. Pitt's usage, when in office, to grant such warrants was quoted from the ministerial bench, he admitted that in the first instance in which he issued one (which was for the seizure of some persons on board a vessel sailing for France during the war), he had first consulted the Attorney-General, who told him at once the warrant would be illegal, and if he issued it he must take the consequences. On the present occasion, either the charge to the jury, or their impression that the chief object of ministerial attack was now seeking redress at their hands, produced a verdict for a considerably larger amount of damages—£1000, namely—than was given in any of the other cases. After it was returned, the

defendant's counsel tendered a bill of exceptions, which the Chief Justice rejected as being too late. In several of the cases, also, motions were made for new trials on the ground of excessive damages, which the whole Court agreed in refusing; considering the jury as the constitutional judges of the compensation due to the subject for the unlawful restraint on his person and outrage on his property. The Court concurred also with the Chief Justice (and this is a matter on which more difference of opinion has existed, and which admits perhaps of more question) in considering the illegality of the proceedings, and their importance as affecting the rights of the subject generally, justifiable grounds for aggravating the damages in the particular case, which were not necessarily to be limited by the amount of actual imprisonment or injury sustained*.

Another obnoxious publication—the "Monitor or British Freeholder"—was not long afterwards the object of prosecution, and the government were equally unlucky in the result of their proceedings. In one of the actions brought by the printer against the king's messengers (Entick v. Carrington), the question arose and was solemnly debated on a special verdict, as to the power of the secretary of state to issue a warrant for the seizure of a party's papers, for the purpose of obtaining evidence to fix him as the publisher of a seditious libel. The Chief Justice, after the Court had taken a considerable time for deliberation, delivered a most elaborate and masterly judgment, in which the several points that had been raised in argument were discussed in order, and the authorities and legal principles applying to each of them, it may be affirmed, as nearly as possible exhausted. They were, first, whether the secretary of state, as such, or as a privy councillor, was invested with the character of a conservator of the peace, and the power of issuing a warrant against a party charged with a state offence; secondly, whether, if he were such a conservator, he was within the equity of the statute of the 24 Geo. 2; thirdly, whether the defendants had in fact duly pursued their authority; and lastly—by much the most important of all—whether the warrant was in its nature legal.

* In Leach v. Money, the damages were £400; in Huckle v. Money, £300; in twelve other cases verdicts were taken by consent for £200.

On all the points except the first the opinion of the court was expressed unequivocally in the negative. To the argument, that the legality of such warrants ought to be inferred from the long usage to grant them, and the absence of any recent instance in which they had been questioned, the Chief Justice gave its fit answer,—that *no* argument could be drawn from the submission of guilt and poverty to power and the terror of imprisonment; that it would be strange doctrine, to assert that all the people of this land were bound to acknowledge that to be universal law, which a few criminal booksellers had dreaded to dispute. This judgment was not long afterwards (22nd April, 1766), followed by a resolution of the House of Commons, declaring warrants for the seizure of papers in cases of libel illegal*.

The popular sentiments thus announced from the judgment seat, and the liberation and victory of Wilkes, the idol of the hour, lifted the Lord Chief Justice Pratt into the full tide of national favour. Addresses of thanks flowed in upon him from every side: London, Dublin, Norwich, Exeter, Bath, voted him the freedom of their corporations; and his picture, painted by Reynolds, was solicited to adorn the Guildhall of the metropolis, with a Latin inscription "in honour of the zealous assertor of English liberty by law." So popular did his name become, that he was at this period, as we find from a letter of Horace Walpole to Lord Hertford, one of the *lions* that a foreigner visiting London went to see. More permanent honours from the gift of the crown were soon to follow, and which might less reasonably have been looked for than demonstrations of favour from the people. One of the first and most popular acts of the short-lived Rockingham administration, on its accession to power in July 1765, was to advance him to the peerage, by the title of Baron Camden, of Camden Place, in the county of Kent; a property which had once belonged to the celebrated antiquary of that name, and had passed, after several changes of ownership, into the pos-

* Lord Camden and Dunning were believed to be the joint authors of the celebrated "Letter concerning Libels, Warrants, Seizure of Papers," &c. printed a few years afterwards in Almon's Register, and for which a prosecution was commenced against the publisher by Lord North's government, but dropped.

session of the Pratts. But he did not therefore yield an undiscriminating support to the measures of the government. On the contrary, the very first occasion of his speaking in the House of Lords (February 10, 1766) was in vehement opposition to the resolution which, as a condition precedent to the repeal of the Stamp Act, affirmed the right of Great Britain to make laws binding on the American colonies. He denied the favourite doctrine of the omnipotence of Parliament; he denied that they could impose a tax upon the subject which he had not consented by his representatives to grant, with any more right than they could take away private property without making compensation, or condemn a man by bill of attainder without hearing him. He affirmed that in all past instances —in the case of the clergy, of the counties palatine, of Wales, of Ireland,—taxation had been accompanied, as its necessary adjunct, by representation. Disclaiming, as a consequence of his reasoning, the conclusion that America would be justified in claiming her independence, or resisting by rebellion the acts of the British legislature, although made without authority, he insisted nevertheless on the exclusive right of the colonists in law to tax themselves. And, lastly, he urged forcibly on the attention of the government the wisdom and expediency of abstaining from the assertion of a right, which, even if well-founded, could not be exerted without exasperating America and endangering Great Britain.

These doctrines, from which not many would now be found to withhold their assent, at least in theory, were characterised from the woolsack as "new, unmaintainable, unconstitutional;" the Chancellor declared that he had heard a paradox in every law he knew of; and in the other House of Parliament they were visited with even stronger denunciations. A few weeks afterwards, on the introduction of the declaratory bill founded on the resolution of the two Houses, Lord Camden re-asserted still more strenuously his opinion, that taxation and representation were inseparable. "This position," he said, "is founded in the laws of nature; nay more, it is an eternal law of nature itself: for whatever is a man's own, is absolutely his own; no man has a right to take it from him without his consent, expressed by himself or his representative; whoever attempts to do it attempts an injury; whoever does it commits

a robbery*; he throws down and destroys the distinction between liberty and slavery. I wish the maxim of Machiavel were followed, that of examining a constitution at stated periods, according to its first principles; this would correct abuses and supply defects: I wish the times would bear it, and that men's minds were cool enough to enter upon such a task, and that the representative authority of this kingdom were more equally settled." He ridiculed the idea that the House of Commons began to exist at any definite æra: "It began with the constitution, it grew up with the constitution; there is not," he continued, in words which have become familiar almost to every school-boy, but are nevertheless a good deal more rhetorical than true,—"there is not a blade of grass growing in the most obscure corner of this kingdom, which is not, which was not ever, represented since the constitution began; there is not a blade of grass which, when taxed, was not taxed by the consent of the proprietor." We need hardly add, that he was found among the most strenuous supporters of the repeal of the Stamp Act.

The fall of Lord Rockingham's ministry—"that heterogeneous compound of youth and caducity," as it was termed by Chesterfield—in the following year, opened to the other section of the Whig party the road to power and patronage. The great seal, left at Pitt's disposal by the resignation of Lord Northington, he could have no hesitation in bestowing upon him, who, while he was his firmest political ally and among his most valued personal friends, had perhaps in other respects also the best title to the advancement. Lord Camden was accordingly, on the 30th of July, 1766, sworn into office as Lord Chancellor; receiving by way of compensation for his removal from a permanent to a precarious dignity, the same terms which had been secured to his predecessor†—the reversion of a tellership of the exchequer for his son, with a salary of about

* George Grenville, the author of the American Stamp Act, was very angry at this phrase, and declared that the House ought to take some notice of such language; but the House was something wiser than to meddle in the matter.

† Lord Henley, by the way, denies that this bargain was made for Lord Northington, but it is asserted by both Walpole and Lord Waldegrave.

3500*l.*, and a pension of 1500*l.* to himself, in case he should be dismissed from the chancellorship before the office in the exchequer became vacant. This arrangement, which certainly had at that time of day considerable excuse (for no retiring pension was then awarded to the office of Chancellor), was afterwards made matter of reproach against Lord Chatham by Lord North's followers, and defended by him in terms of such indignant bitterness at his friend's dismissal, as to provoke a motion that his words should be taken down; a proceeding, however, from which his assailants, reminded by his haughty defiance with whom they had to deal, deemed it prudent quietly to recede.

During the four years of Lord Camden's presidency in the Common Pleas, the business of the Court, with the exception of the political trials we have spoken of, and a few other cases of some importance, was not of a nature to involve the discussion of general principles of jurisprudence, or to call forth much display of juridical learning, or of that argumentative eloquence for which he was distinguished. Of mercantile questions, more especially, the Court of King's Bench, where they were adjudicated on by the great architect of our system of commercial law, had almost an entire monopoly. But all his contemporaries unite in bearing testimony to the combination of dignity, impartiality, and courtesy, with which he presided over the deliberations of his court. On no occasion was there a final difference of opinion between him and his fellows on the bench, except in the important case of Doe dem. Hindson v. Kersey, wherein Lord Camden, in an argument of great power and learning, maintained, in opposition to the other judges of his own court, and also to the unanimous decision of the King's Bench in Wyndham v. Chetwynd, that the true construction of the Statute of Wills required an attestation by witnesses whose competency was *then* unimpeached, and that *they* were not "*credible* witnesses," in the meaning of the legislature, whose interests might induce them to dishonest dealing at the time of the attestation, although their incompetency were removed when called to establish the will in a court of justice. The legislature, by passing the statute of the 25th Geo. II, evinced their sense of the policy, if not of the legal correctness, of this

construction; and more recently, we believe, it has received the sanction of eminent real property lawyers on purely legal principles. We may particularise also the cases of Freeman v. West (2 Wils. 165, on the law of freeholds *in futuro*), Syllivan v. Stradling, (id. 209, deciding that a plea of *nil habuit in tenementis* is no bar to an avowry under the stat. 11 Geo. II, c. 19), and Johnson v. Kennion, (id. 262, as to the extent of the indorsee's claim against the drawer of a bill of exchange), as cases of importance and authority, decided under the auspices of Lord Camden.

It was an unlucky period at which the new administration assumed the functions of government, and the first occasion on which Lord Camden publicly appeared in the character of a cabinet minister, was one which drew upon him the reproach of having already deserted the defence of constitutional right to maintain a usurpation of prerogative. The increasing high prices of grain, arising from the entire failure of the harvest, induced ministers, a few weeks before the time fixed for the assembling of Parliament, by an order in council, to lay an embargo on the export of wheat, in contravention of the existing law. All parties admitted the necessity of the measure; but the ministry justified it as a *legal* exercise of prerogative, on the principle that *salus populi est suprema lex*, and that the power of providing against such extreme contingencies, which must of necessity exist somewhere, was *constitutionally* lodged in the sovereign *; while the opposition insisted, that the crown could no more legally dispense with or suspend the operation of this law, than that of Magna Charta or the Bill of Rights; that Parliament ought to have been specially convened for the purpose of sanctioning the measure *à priori*, or, at all events, that the government should have sought the earliest possible occasion of admitting its illegality, excusing themselves by its necessity, and obtaining regular parliamentary absolution by an act of indemnity. Although the matter in dispute between the parties was thus narrowed into a question of mere theory, it involved undoubtedly a constitutional principle of the highest importance; and it was, accordingly, the

* Lord Camden at least took this ground; it seems doubtful whether Lord Chatham ever distinctly asserted the *legality* of the measure.

subject of long and very acrimonious debates in both Houses, in the course of which began that personal strife between Lords Camden and Mansfield, which afterwards manifested itself on almost every question of a politico-legal character that came before the House of Lords. Lord Camden (who had been, as he subsequently avowed, the chief adviser of the measure) allowed his warmth of temperament somewhat to overbear his discretion, when he let slip the expression, that if the act in question was an illegal exercise of the prerogative, "it was but forty days' tyranny at most;" words which called down upon him the dignified rebuke of Lord Temple, and brought him under the scalpel of the more formidable Junius. The ministry subsequently admitted their want of confidence in their own vindication, by introducing a bill of indemnity for the officers who had acted in execution of the order, in which, however, they persisted in refusing to include themselves who had advised it*.

The motley administration which had thus been called into existence by Lord Chatham, and which Burke so pleasantly depicted as "a cabinet so curiously inlaid—such a piece of diversified mosaic—such a tesselated pavement without cement, here a bit of black stone and there a bit of white,"—and of which the only chance of coherence lay in the controlling genius of its framer, as soon as his immediate influence was withdrawn, fell apart at once into its natural disunion. Early in 1767, frequent and severe attacks of gout disabled Lord Chatham from any effective participation in the measures of government; and disgust at the arbitrary tone they presently assumed completed his estrangement. Lord Camden, entertaining sentiments entirely in correspondence with his, viewed the proceedings of his colleagues with little less distaste, although he did not so soon make a formal secession from their ranks. Having protested without effect against the imposition of the American import duties in 1767, and against the illegality of their proceedings with regard to the Middlesex election in the following year, he withdrew himself from the cabinet whenever those subjects were under discussion, and

* Our readers will recollect that Mr. Canning, in a similar case in 1826, applied for an indemnity of the most comprehensive kind.

watched their progress through Parliament in moody silence. At length, on the opening of the memorable session of 1770, the smothered flame burst forth, and with a fury proportioned to its long suppression. On the discussion of Lord Chatham's amendment to the Lords' address (Jan. 9), which expressed a strong censure on the incapacitating vote of the House of Commons, the Chancellor broke out into unmitigated opposition. He declared that "he had accepted the seals without any conditions, but he had too long submitted to be trammelled by his majesty—he begged pardon—by his ministers; but he would be so no longer; that for some time he had beheld with silent indignation the arbitrary proceedings of the government; that he had often drooped and hung his head in council, and disapproved by his looks those steps which he knew his avowed opposition would not prevent; that, however, he would do so no longer, but openly and boldly speak his sentiments." He characterised the vote of the Commons as a direct attack on the first principles of the constitution, and protested that if he were as a judge to pay any regard to it, he should look upon himself as a traitor to his trust and an enemy to his country. And he followed up his declaration of hostility by voting in favour of the amendment.

The standard of defiance thus openly unfurled, it was not to be expected he would abide long in the ministerial tents. On the very same evening, accordingly, Lord Weymouth, the Secretary of State, moved an adjournment for a week, evidently for the purpose of giving time for the removal of the Chancellor, and the appointment of his successor. Lords Temple and Shelburne inveighed loudly against this proceeding:—"After the dismission of the present worthy Chancellor," said the latter, "the seals would go a begging; but he hoped there would not be found in the kingdom a wretch so base and mean-spirited, as to accept them on the conditions on which they must be offered." So long, however, as the unnatural union subsists—which we have still a lively hope of seeing severed—of judicial and political functions in the person of the same individual, it is rather too much to expect that he should be retained as a coadjutor in the exercise of the latter, by men against whose policy he has declared open war on points of vital importance. Nor was it long before the allurements of

power, aided by the personal solicitation of the sovereign, found a successor for the vacant office in the person of Charles Yorke, and that under such painful circumstances of defection from his political principles, as to call down upon him the bitter reproaches of his party, to close his brother's door against him, and to irritate his remorseful feelings into the cause of a premature and melancholy death.

The premier himself, embarrassed by the difficulties with which he was surrounded, increased as they were by the defection of Lord Camden, and of Dunning, his ablest supporter in the House of Commons; writhing too under the envenomed attacks of Junius, and himself a reluctant supporter of many of the measures of his own cabinet, abandoned the helm before the end of the same month of January. He also, as well as Lords Shelburne and Camden, subsequently avowed that he had been opposed in principle to the adoption of coercive measures against America, and that in 1769 he had unsuccessfully originated in the cabinet a proposition for the repeal of the duties imposed two years before. Taunted with their inconsistency in remaining ostensible partners in measures they condemned, their common defence was, that the temper of the House of Commons was too strong to contend against, and that they should have withdrawn only to leave the whole power in the hands of those by whom a system of policy more uniformly objectionable would have been pursued without condition or restraint;—an excuse too much akin to that of the delinquent school-boy, who robs an orchard on the principle that if he do not steal the apples, somebody else will. Had Lord Camden's presence in the cabinet availed to overbear or moderate the measures he disapproved, his justification would have stood on better grounds; but by his own avowal it had no such effect; and we cannot, therefore, but consider his submission, for above two years, even to a silent participation in councils which he considered prejudicial to the best interests of his country, as detracting from the independence and purity of his political character.

In the exercise of his judicial functions, he appears to have conciliated the respect and good opinion of all parties. His extensive legal information, the acuteness and sagacity of his

judgment, the perspicuity with which his opinions were propounded, his dignified politeness, more graceful by contrast with the unrefined manners of his predecessor, combined to attract to him the high esteem, as well of the profession as of the public at large. Of the soundness of his decrees no proof need be adduced beyond the fact, that one only of them (so far as we can discover) appears to have been reversed on appeal, and that only as to part; and his judgments still continue, we believe, to maintain an authority as high as those of any of the great lawyers who have occupied his seat. The meagre (and sometimes inaccurate) notes of Ambler and Dickens, confined to the task of giving the dry conclusions of law in the fewest and most ordinary words, convey not, of course, the least idea of the style or effect of his judicial oratory. But that it was of a highly attractive character, we have the testimony of a valuable witness. "I distinctly remember," says Mr. Butler, "Lord Camden's presiding in the Court of Chancery. His lordship's judicial eloquence was of the colloquial kind—extremely simple; diffuse, but not desultory. He introduced legal idioms frequently, and always with a pleasing and great effect. Sometimes, however, he rose to the sublime strains of eloquence: but the sublimity was altogether in the sentiment; the diction retained its simplicity; this increased the effect."

Some of the cases which reached the House of Lords while Lord Camden occupied the woolsack, were of the highest interest, and of them we possess fuller and more faithful reports. We may particularise the writs of error in the cases of Wilkes and Evans the dissenter, and the appeal in the "great Douglas case," in which the Chancellor warmly seconded Lord Mansfield in affirming the legitimacy of the appellant, and even went so far as to impeach those who held a contrary opinion of something approaching to atheism:—"The question before us is short," he concluded: "is the appellant the son of the Lady Jane Douglas or not? If there be any lords within these walls who do not believe in a future state, they may go to death with the declaration that they believe he is not." We may here, also, most fitly advert to another legal question of much interest, in which he took a prominent part, although it did not come before the House

until some time after he resigned the great seal: we mean the case of Donaldson v. Becket, in 1774, by which the law of copyright was finally settled as it now* stands. A few years before, in the case of Millar v. Taylor, the Court of King's Bench had recognised the existence of a common-law right in an author to publish his works in perpetuity, and determined that such right was not abridged by the statute of Anne. Lord Camden, without directly contesting the natural justice of the principle on which this right at common law was rested, maintained, and was supported in his opinion by a majority of the judges, that at all events it was restrained by the statute, which would otherwise be inoperative altogether. He then proceeded to vindicate the *policy* of thus construing the law, in language which, though it has been often quoted, we extract as furnishing a favourable specimen of his declamatory eloquence:—

"If, then, there be no foundation of right for this perpetuity by the positive laws of the land, it will, I believe, find as little claim to encouragement on public principles of sound policy or good sense. If there be any thing in the world common to all mankind, science and learning are in their nature *publici juris*, and they ought to be free and general as air or water. They forget their Creator as well as their fellow-creatures, who wish to monopolise his noblest gifts and greatest benefits. Why did we enter into society at all, but to enlighten one another's minds, and improve our faculties, for the common welfare of the species? Those great men, those favoured mortals, those sublime spirits, who share that ray of divinity which we call genius, are intrusted by Providence with the delegated power of imparting to their fellow-creatures that instruction which Heaven meant for universal benefit: they must not be niggards to the world, or hoard up for themselves the common stock. We know what was the punishment of him who hid his talent, and Providence has taken care that there shall not be wanting the noblest motives and incentives for men of genius to communicate to the world the truths and discoveries which are nothing if uncommunicated. Knowledge has no value or use for the solitary owner; to be enjoyed, it

* 1833.

must be communicated: *scire tuum nihil est, nisi te scire hoc sciat alter.* Glory is the reward of science, and those who deserve it scorn all meaner views. I speak not of the scribblers for bread, who tease the world with their wretched productions; fourteen years is too long a period for their perishable trash. It was not for gain that Bacon, Newton, Milton, Locke, instructed and delighted the world.... When the bookseller offered Milton five pounds for his Paradise Lost, he did not reject it and commit his poem to the flames, nor did he accept the miserable pittance as the reward of his labours; he knew that the real price of his work was immortality, and that posterity would pay it."

On this question of literary property, we feel bound humbly to take part against his lordship, at all events as to the policy of the law as thus established, and to avow our concurrence in the sentiment of Mr. Justice Wilmot, that "the easiest and most equal mode of encouraging the researches of men of letters, is by securing to them the property of their own works;"—the same property in the produce of their mental labour, which all other persons enjoy in the produce of their labour of every other kind. The latter part of his lordship's argument appears to us (with all deference be it spoken) to border somewhat upon the region of cant. Can it be believed that Milton—however exalted his views in the composition of his great work—would not gladly have received for it as high a price as the booksellers would have been willing to pay? Lord Camden, we suppose, would have heard with much astonishment, if not with some scorn, of the sums which the great author of our time, whose memory his country is now delighting to honour, received without scruple, because without reproach, as the price of *his* works;—"not displeased," as he feared not to avow, "to find the game a winning one, although he should most probably have continued it for the mere pleasure of playing." The question is not, however, what may be the views of authors in publishing, but what is the fair and just reward that should be rendered to them for the labour of which society enjoys the benefit. Nor do we see why the "scribblers for bread"—those of them at least who do not prostitute their pens to unprincipled and vicious purposes—are to be visited with such contempt. We suspect that

William Shakspeare, when he gave to the world some of the first and noblest of the immortal products of his genius, was pretty much in the situation of a "scribbler for bread:" and one of the greatest of Lord Camden's own contemporaries—Samuel Johnson—might have furnished him with an example of one who, for years together, had no resource for a scanty subsistence but in the exercise of his pen, from which certainly flowed nothing that could deserve the contemptuous designation of "perishable trash." We close this digression with repeating, that we cannot but consider the Copyright Act, construed as it has been since the case of Donaldson v. Becket, as operating, so far as it operated at all, no less against policy than justice.

The administration of Lord North, framed upon the avowed principle of carrying into effect the coercive policy of the court, found in Lord Camden, as was to be expected, a vehement and uniform opponent. Wilkes's interminable affair first engaged the attention of Parliament. In all the successive debates that arose on this subject during the session of 1770, we find the ex-Chancellor assailing, with all the force of his argumentative eloquence, the proceedings in the House of Commons, and embracing, moreover, every opportunity of measuring weapons individually with Lord Mansfield. In the same year, the doctrine again propounded by the Chief Justice, on the trials of Woodfall and Miller, as to the province of the jury in cases of libel, made his own personal conduct and judicial character the object at once of the rancorous invective of Junius, and of the more tempered but scarce less pointed hostility of his rival in the House of Lords. Whether the personality of attack which seasoned the political warfare of Lord Camden against his great opponent had its source, as is affirmed by Horace Walpole, in a long-cherished personal animosity, or was imbibed from the prejudiced resentments of Lord Chatham, or grew unconsciously out of the many subjects of party strife between them, we have now no means of ascertaining. Whatever was the cause, he, as well as Lord Chatham, indulged in an acrimony of censure, not only upon the opinions, but upon the motives of the Chief Justice, which certainly little dignified the cause they advocated, while it was unwarranted by the circumstances of

the case, and entirely undeserved by the general character of the great magistrate who was the object of it. We need not enter into the detail of this controversy, which has been observed upon in the Life of Lord Mansfield *, and which must be familiar to many of our readers. The constitutional timidity of the Chief Justice shrunk from taking up the glove which his bolder and more ardent antagonist threw down to him, and the question did not, until twenty years later, become the subject of a formal discussion.

During the whole progress of the ill-advised struggle with America, Lord Camden opposed the fatal measures of impotent and wanton exasperation which were successively proposed, with a force and fervour second only to those of his illustrious friend Chatham. We find him supporting, by his speeches as well as his votes, almost every one of the successive motions, by which the opposition endeavoured to force upon the government a conviction of the obstinate and ruinous folly of their proceedings; and he continued an active and efficient labourer in the cause, when the energies of its great leader were oppressed by bodily infirmity, and when, after kindling afresh into a brilliant but short-lived splendour, they were quenched finally in death. Nor did his opposition, any more than that of Lord Chatham, admit of compromise or modification, or content itself with arraigning the impolicy and danger of the contest. He unreservedly denounced Great Britain as the original aggressor, and justified the resistance of America as that of a brave people, standing upon the natural rights of mankind and the immutable laws of justice, to a vindictive and intolerable oppression. In 1775, he originated a bill for the repeal of the Quebec Government Act, and on that occasion came again into angry collision with Lord Mansfield. In 1778, he drew up the lords' protest against the manifesto of the American commissioners, which placed the hostile provinces under martial law, and upon which, in a speech of great power and effect, he had poured out in vain the full vials of indignant execration. At length, on the discussion of the address relative to the rupture with Holland, in January 1781, he expressed his determin-

* Ante, p. 425.

ation to withdraw himself from his fruitless attendance in the House:—"He had discharged his duty to the best of his poor ability, so long as it promised to be productive of the slightest or most remote good; but he declined giving their lordships or himself any further trouble, when hope was at an end, and when even zeal had no object which could call it into activity." During the remainder of that session, accordingly, his name occurs no more in the debates. But on the re-assembling of Parliament in November, the supremacy of the minister had begun to totter, and his lordship re-appeared to contribute his efforts towards its final overthrow, which took place, as is well known, in the March following: and on the formation of the new ministry, Lord Camden was installed in the honourable and not too laborious post of President of the Council.

In most of the other questions of public interest, not connected with the war, which were agitated during Lord North's administration, we find Lord Camden taking an equally active share. He warmly seconded the motion for an inquiry into the affairs of Greenwich Hospital; was among the foremost in censure of the conduct of the government with regard to Ireland; supported with much zeal Lord Shelburne's motion for an inquiry into the civil list, in February, 1780; and on the Contractors' Bill of the same session, ventured single-handed to engage both Lord Mansfield and Lord Thurlow. Immediately on the accession of the Whigs to power, the latter bill was reintroduced, and again Lord Camden lent his zealous assistance to secure its success, against the open hostility of the king and the "king's friend"—the self-seeking and double-dealing Thurlow.

We must glance rapidly over the remaining years of Lord Camden's life, in which, with one or two exceptions, he played a less prominent part in the political drama. During the brief reign of the Coalition ministry, he returned to the ranks of opposition, and warmly attacked Mr. Fox's India Bill, as calculated, while it violated to a wanton and unreasonable extent the chartered rights of the Company, to augment dangerously the influence of the crown, and to call into existence a "fourth estate," which might ultimately overturn the constitution altogether. When the coalition vessel had

gone to wreck upon that memorable measure, Lord Camden would have been reinstated at once in his former office, but for the necessity of providing for Lord Gower, who had spontaneously tendered to the new premier the aid of his influence and services, some post of prominent dignity and consideration. That noble lord, accordingly, held the presidency of the council for a short time, until the difficulties which beset the ministry were overcome, and then resigned it to Lord Camden.

This interval he had employed in visiting Ireland, and acquiring a mass of information as to her condition and grievances, which he made eminently available on the discussion of the Irish Commercial Propositions in the following session. Although he had now attained his seventy-second year, his health and personal activity, despite an occasional fit of the gout, continued little impaired, and he was still able to take an active part in most of the important measures that distinguished the early years of Mr. Pitt's ministry—as the East India Judicature Bill, the Wine Excise Bill, the East India Declaratory Bill of 1788, &c. The second of these he defended purely on the ground of the necessity created by the great defalcations in the revenue, and the extensive frauds practised in the trade; admitting at the same time the unconstitutional and dangerous character of the powers committed to the excise officers. "The extension of the excise laws," he said, "was a dangerous system, and fraught with multifarious mischiefs. It unhinged the constitutional rights of juries, and overturned the popular basis of every man's house being his castle: it armed petty officers with powers against the freedom of the subject, and put it into the power of the excise to insult the innocent, and disturb the tranquillity of an unoffending subject. He had long imbibed these principles; he had been early tutored in the school of our constitution, as handed down by our ancestors, and he could not easily get rid of his early prejudices. They still remained hovering about his heart, and must, on this occasion, come forward as the new sprouts of an old stalk." He had by this time received a new accession of dignity, having been created (May 13, 1786) Viscount Bayham, of Bayham Abbey, in the county of Kent, and Earl Camden. His virtuous and

patriotic successor was worthily honoured with the coronet of a Marquis.

At the period of the king's illness in the winter of 1788-9, the conduct, in the House of Lords, of the measures introduced by government for the establishment of a regency, devolved upon the President of the Council. The opposition, while they contended strenuously in favour of the paramount right of the heir apparent, as strongly deprecated its being drawn formally into discussion, and charged principally upon Lord Camden the odium (which no doubt belonged equally to the whole cabinet) of its being made a parliamentary question. One of the proposed restrictions upon the exercise of sovereignty by the Regent—the suspension of the prerogative of creating peers—Lord Camden denied could possibly produce any inconvenience, since Parliament might in effect grant a peerage in any case of peculiar desert, by passing an act enabling the Regent to bestow the dignity; and he quoted several instances of such creations. Called sharply to order for the *republicanism* of his doctrines, he endeavoured to explain and qualify, and at last condescended to something very like a retractation; while the Chancellor (all the while engaged in an unprincipled intrigue with the Prince's party) sturdily re-asserted the correctness of his colleague's theory in its full extent. The rival doctrines that figured in these debates were throughout curious specimens of the political *asymptote*—approaching nearer and nearer to each other, but effectually prevented by party hatred and self-interest from the chance of ever coalescing. Thus, Fox fell foul of Lord Camden for imputing to him that he had contended for the Prince's right to *assume* the sovereignty, while, as he explained, he had only maintained his superior right to exercise it when accorded to him by Parliament—a *superiority* which must be inherent in his person, and therefore independent of and antecedent to the vote of Parliament. It was a contest, however, in which, we fear, the maintenance of abstract principles had in truth as little concern as might be.

Dr. Watson gives us an ancedote from which he would have us infer the entire subserviency of Lord Camden at this period to Pitt. "I asked him," says the bishop, "if he foresaw any danger likely to result to the church establish-

ment from the repeal of the Test and Corporation Acts; he answered at once, none whatever; Pitt was wrong in refusing the former application of the dissenters; but he must be now supported." Now, even supposing the worthy prelate's partizanship has not a little distorted the facts, the anecdote itself proves that Lord Camden was not in the habit of cloaking his opinions with any disguise; and the circumstances of the time (1790), when, if ever, the union of a strong and efficient government was necessary to the country, ought to be taken into consideration. The bishop records another expression of Lord Camden about the same period, to the sincerity of which the political conduct of his whole life bore testimony:—"I remember his saying to me one night, when the Chancellor (Thurlow) was speaking contrary, as I thought, to his own conviction,—'There now, I could not do that; he is supporting what he does not believe a word of.'" The very next occasion (and it was the last) on which Lord Camden bore a part in debate, was one which eminently displayed his continued independence of thought and action, while it called into exercise a host of old associations and sympathies; we mean the introduction of Mr. Fox's Libel Bill in 1792. He rose, says the Parliamentary History, and prefaced his speech by a very affecting address, declaring that he had thought never to have troubled their lordships more:—"The hand of age was on him, and he felt himself unable to take an active part in their deliberations. On the present occasion, however, he considered himself as particularly, or rather as personally, called upon. His opinion on the subject had been long known; it was upon record; it was upon their lordships' table. He still retained it, and he trusted he should be able to prove that it was consonant to law and to the constitution." He then proceeded to vindicate his opinions in a speech which, as we may pronounce from the report of it in the Parliamentary History, displayed much constitutional knowledge and laborious research, and, if we may judge from the encomiums lavished on it by the succeeding speakers, rivalled in the graces of a dignified and forcible eloquence the best efforts of his more active years.

This was, as we have intimated, the last public appearance of Lord Camden on the stage of political life. He continued,

however, to occupy his post of President of the Council until his death, which occurred on the 13th of April, 1794, at his house in Hill Street, Berkeley Square, in his eightieth year; thirteen months only after that of his great antagonist Lord Mansfield. His remains were deposited in the family vault at Seal, in Kent.

Few public men, probably, have been more generally or more enduringly beloved in private life than Lord Camden. Benevolent and affectionate, fond of social intercourse, and gifted with a flow of spirits which scarcely ever failed him, he not only retained his intimacy with the associates of his early years, but made numberless new friends, from all of whom he seems to have won golden opinions and warm attachments. In the several relations of private of life he is represented as having been most exemplary. The love of money was the chief fault imputed in his lifetime to him, as to others who have filled the same exalted station before and since. He does not certainly appear to have been profuse, but we find in no part of his conduct evidence that he was sordid. Horace Walpole, whose praise, as well of friends as foes, was "venomously nice," has left us an encomiastic portrait of him, disfigured only by a single shade. "Chief Justice Mansfield had a bitter antagonist in the Attorney-General Pratt, who was steady, warm, *sullen*, stained with no reproach, and a uniform Whig. Nor should we deem less highly of him, because private motives stirred him on to the contest;—alas, how cold would public virtue be, if it never glowed but with public heat! So seldom, too, it is that any considerations can bias a man to run counter to the colour of his office and the interests of his profession, that the world should not be too scrupulous about accepting the service as a merit, but should honour it at least for the sake of the precedent." In reproaching with *sullenness* a man whose disposition was of the very essence of cheerfulness and good-humour, the noble writer seems to have been most unfortunate in his choice of a depreciatory epithet.

It was quite in keeping with the other features of Lord Camden's character, that he should be a little of an epicurean, and a little indisposed towards exertion, bodily or mental, unless when roused to it by the necessity of business or the excitement of strong feeling. He seems to have been, in his

younger days at least, a professed disciple of the noble science of gastronomy in general, and (as became a native of a western county) an especial enthusiast in his admiration of that more pleasant than wholesome beverage, cider. Almost every one of his letters to an early friend, who had settled upon a Herefordshire living (written during the first five or six years of his bar life), contains a commission to send up a hogshead for his own or his friends' behoof, or records the receipt of one. We have detected also occasional notices, occurring here and there in postscripts, respecting the transmission to the Temple of hares, woodcocks, and other such desirable products of the plains of Herefordshire. Like many other distinguished persons, he was throughout his life a great reader of novels, his taste for which extended itself even to the interminable and now forgotten tomes of Scuderi:—the Grand Cyrus and Philidaspes furnished many an evening's repast, after the weightier matters of the law had occupied the morning. He was also, at least before law un-harmonized him, a professed votary of Euterpe; and we have him recommending his friend Davies, who was planning an opera to be set to music by Handel, to "lie upon his oars" until he, Pratt, could give him directions as to the genius of musical verse, the length of the performance, the numbers and talent of the singers, the position of the choruses, and all the details of an accomplished adept in the science of harmony. Many of the literary men of his time enjoyed an intimacy with him. Among them was Garrick, who was not a little vain of the distinction. He accosted Boswell in the street one morning—"Pray now, did you —did you meet a little lawyer turning the corner, eh?" "No, Sir," said Boswell; "pray what do you mean by the question?" "Why," replied Roscius, with an affected indifference, yet as if standing on tiptoe,—"Lord Camden has this moment left me. We have had a long walk together."—"Well, Sir," pronounced Johnson on hearing the story, (Johnson, as Sir Joshua Reynolds observed, considered Garrick in a manner his own property, and would allow nobody either to praise or blame him without contradicting them), "Well, Sir, Garrick talked very properly. Lord Camden *was a little lawyer*, to be associating so familiarly with a player." Poor Goldsmith, whose happy vanity set him down in his own esteem as the

prime object of interest and admiration in whatever company he graced with his presence, was sadly piqued that Lord Camden, whom he met at Lord Clare's table, did not render him due homage. "He took no more notice of me," complained the doctor, "than if I had been an ordinary person." The general courtesies of society did not compose a condiment sufficiently piquant for Goldsmith's taste, which hungered for the more highly-seasoned dishes of compliment and flattery.

Lord Camden was in stature below the middle size. His full fair-complexioned countenance, blue eye, and clear open brow, were more expressive of a frank good-humour than of profundity of thought. He was subject, as we have before stated, to occasional attacks of gout, which did not however make such a martyr of him as of Thurlow. We are told he was particularly afraid of catching the small-pox, which he had never had; especially when Lord Waldegrave died of it, on which occasion he fled from its dangerous neighbourhood into the country. He long survived, however, all these apprehensions, and sunk at length only under the gentle and gradual pressure of old age.

Our readers, we fear, will have had too much reason to complain of the absence, in these pages, of those traits of personal portraiture, those lesser lights and shades of individual habits and manners, which constitute after all the life and soul of biography. But no kindred or friendly pen has been employed to lay before the world, like a North or a Boswell, with all the freedom and detail of familiar intercourse, the daily doings of Lord Camden's private life, and all the minute picture of his thoughts, his habits, his peculiarities, and his foibles; nor have the outpourings of his heart, as in the case of Cowper, being unveiled to us in his familiar correspondence: few of his letters are in print, but they are such as to make us wish for more. We are driven, therefore, to seek such memorials of him as are to be found scantily dispersed over the memoirs and reminiscences of his contemporaries. Had his nephew, Mr. Hardinge (the Welch Judge), lived to fulfil a promise he made to the late Mr. Nichols, of furnishing a memoir of his uncle for the "Literary Illustrations," we might have had a far richer mine of anecdote and interest to work into: as it is, we have some apprehension

that our sketch may less resemble a faithful portrait, exhibiting the features and expression of its original, than a figure in an indifferent caricature, whose identity is made known chiefly by the quotation that issues from its mouth.

Besides the two pamphlets we have already mentioned as being attributed to Lord Camden, he avowed himself to Mr. Hargrave the author of a tract entitled "An Inquiry into the Process of Latitat in Wales," printed in that gentleman's collection of law tracts. Like many others of our most eminent lawyers, he never applied his powers to the production of any work of permanent utility and importance. Nevertheless, his name will not yet perish. As a lawyer, his authority continues to be held in reverence by the profession; as a politician, his memory must he honoured while independence and public worth are valued among Englishmen; as a man, his virtues are embalmed in the affectionate remembrance of the few who yet survive to cherish the memory of his friendship.

LORD THURLOW.

EDWARD THURLOW was born some time between the years 1730 and 1735, at the village of Little Ashfield, otherwise called Badwell Ash, near Stowmarket, and about midway between Bury and Diss, in Suffolk. His father, the Reverend Thomas Thurlow, was at that time vicar of the parish, which he afterwards quitted for the rectory of Stratton St. Mary's, in Norfolk. The income derived from each of these livings was not by any means considerable, and as there were three sons to be put forward in the world, they of course could not expect any very great pecuniary assistance from him. Indeed, he used constantly to say that a good education was all he could afford to give them, and their prosperity in life must depend altogether on the use they might make of it. As far as Edward was concerned, he was wont to add, he had no fears or apprehensions, for he was very sure he would manage to fight his way. Edward eventually gave full proof of his ability to fulfil this prediction, whether it was meant in a figurative or a literal sense.

After going through the common routine of youthful education, partly under the eye of his father, and partly at Bury grammar school, he was sent to Caius College, Cambridge. His academical career, however, did not furnish any very hopeful prognostics of his future success in the world. While he remained at the university, he was much more often seen lounging at the gates of his college, or figuring in a convivial symposium, or loitering in some of the coffee-houses then frequented by the under-graduates, than attending in the chapel or the lecture room; and his frequent breaches of academic

discipline made him tolerably familiar with the impositions, confinements to gates and bounds, privations of sizings, and other such punishments as are awarded, by the parental tenderness of Alma Mater, to those of her sons who presume to disregard the rules she has prescribed for their government. It was the infliction of one of these tender mercies that indirectly became the occasion of his quitting the university. He was summoned, by no means for the first time, before the dean of his college, respecting some irregularity he had been guilty of (probably a neglect of the stated attendances at chapel, which is a misdemeanor that comes peculiarly within the cognizance of that functionary), and, not for the first time either, was required to expiate his offence by executing one of those extraordinary tasks, familiar to careless or refractory under-graduates by the name of impositions. The penalty imposed was, that he should translate a paper of the Spectator into Greek. There was no appealing against this decree; no resource but submission; and the conditions of atonement were accordingly fulfilled by the performance of the exercise. But young Thurlow, though he so far complied with the order of the dean, could not resist the opportunity of shewing that he entertained no great respect for him, whatever obeisance he might be under the necessity of paying to his office. When, therefore, the task was completed, instead of carrying it, as is usual, to him who had imposed it, he left his paper with the tutor. The reverend dispenser of punishments looked upon this as a breach of respect that called for a much more severe infliction; and he had recourse to a proceeding seldom adopted but in very aggravated offences: he caused the delinquent to be convened before the master and fellows of the college. It most frequently happens that a summons to appear before this solemn tribunal is but the prelude to rustication at least, if not to expulsion; and certainly, in the present instance, the culprit did not comport himself in a manner likely to mitigate the usual severity of its sentences. Being asked what he had to say in extenuation of the enormity he had been guilty of, he very coolly answered, that his conduct with respect to the delivery of the imposition had been entirely prompted by compassion and consideration for the worthy dean, who, he was very sure, could only have been sorely puzzled by the receipt

of any thing written in a language he was so little conversant with as Greek. This apology, it may very readily be imagined, was something worse than the original offence. The ire of the dean was now implacable. Rustication was too light a punishment for so gross an indignity. Expulsion began to be talked of; and matters might have assumed a more serious aspect than had probably been contemplated at first, had not the tutor been disposed to advocate lenient measures. Principally through his mediation, it was finally decided that the offender should merely be recommended to take his name off the books of the college; a recommendation which an undergraduate of either university can no more disregard, than an officer of the army or navy can affect to overlook an intimation that her majesty, having no further occasion for his services, has been graciously pleased to give him the liberty of withdrawing from the service. Thurlow accordingly quitted Cambridge without a degree.

In enabling him to leave the university upon no harder terms, the tutor of Caius (Dr. Smith, who afterwards became master) could have as little prospect that the young gownsman would find an opportunity of returning the favour, as the lion in the fable could have foreseen the emergency which made him glad to profit by the gratitude of the mouse. Nevertheless, among the many vicissitudes of life, it did so happen that the refractory disciple, thus discarded from the bosom of Alma Mater, became Lord Chancellor of England; and in that capacity he took occasion to reward the friendly interference of Dr. Smith, by causing him to be appointed Chancellor of the diocese of Lincoln. It is said that the dean himself was also made to feel the beneficial influence of his patronage. This story, it must be owned, has somewhat of an apocryphal appearance, and at all events we cannot take upon ourselves to vouch for its authenticity. However, we give it as it comes to our hands. It seems, then, that on one of the numerous occasions when Thurlow had been summoned before him, the language and manner of the under-graduate had been much less respectful than was pleasing to the reverend corrector of backslidings, who had interrupted him rather sharply with the question—"Pray, sir, do you know to whom you are speaking?" bidding him at the same time to recollect that he was in

the presence of no less a personage than the dean of the college. This hint was not lost upon Thurlow; and every sentence he addressed to him, both then and at other times, was gravely prefaced with the invocation of "Mr. Dean." This was a species of banter doubly displeasing to the owner of the title, because he could not with any shew of consistency appear to be offended by it. So deep an impression, indeed, did the annoyance leave upon his mind, that on meeting casually with the inflictor of it several years afterwards, when he had risen to be Attorney-General, and on being addressed by him as Mr. Dean, he is said to have left the room without making any answer, conceiving nothing short of an insult could be intended. When, however, the Attorney-General had become Chancellor, the divine received a summons to wait on him, which he obeyed, we may imagine, with about the same reluctance that his brotherhood of the cloth usually feel to intrude themselves on the notice of the chief dispenser of church patronage. The Chancellor's first salutation to him was: "How d'ye do, Mr. Dean?" "My Lord," he observed, somewhat sullenly, "I have quitted that office. I am no longer Mr. Dean now." "Well," replied his lordship, "then it only depends upon yourself to be so, for I have a deanery at my disposal, which is very much at your service."

The reputation Thurlow had acquired at the university was, it may be supposed, that of a mere idler. It appears, however, that notwithstanding the sort of life he then led, the time he spent on the margin of Camus was not altogether thrown away. The loss of a day devoted entirely to pleasure was sometimes made up for by the greater part of a night consumed in study; and though, as he had never aspired to academic honours, he had been at no pains to approve himself a sedulous student before his tutor, he was known by such as were intimate with him at that time to possess a very respectable stock of classical learning. Much stress is not to be laid on the testimony borne by Bishop Horsley to this effect, because (without adverting to the suspicious quality of eulogies bestowed by a churchman upon a living Chancellor, even an ex-Chancellor) the testimony is contained in a dedication, which, from time immemorial, has been privileged ground for the indulgence of a kind of poetical license in the description of the learning,

talents, and virtues of the persons to whom such productions are addressed. But general report has also given him the credit of a considerable intimacy with the works of the ancient authors. If the reputation be undeserved, he can very well afford to dispense with it.

When he removed to the Temple, which he did shortly after quitting Cambridge, he was not much more careful about keeping up the character of a hard reader than he had been at the university. There also he passed for an idler; and it is very certain that during at least a portion of his studentship he well deserved the character. The poet Cowper, who was one of his associates at the time, has attested this fact in a way that leaves no doubt of its being true; since he gives his account in a familiar letter, not intended, like his poetry, for the eye of the public. "I did actually live three years," he says, "with Mr. Chapman, a solicitor, that is to say, I slept three years in his house; but I lived, that is to say, I spent my days, in Southampton-Row, as you very well remember. There was I, and the future Lord Chancellor, constantly employed from morning till night, in giggling and making others giggle, instead of studying the law." It cannot be supposed, however, that Thurlow continued very long to lead this sort of life. Though the reputation of indolence certainly did continue to cling to him, it is probable that, later in his career, his want of application might be more apparent than real. He was fond of society; he had no particular antipathy to that mighty instrument of conviviality, the bottle; and a great part of the time he thought fit to devote to relaxation from study was passed at coffee-houses and taverns, and other such places of public resort, where the fact of his being for the time idle was visible to every one who entered. Had he been given to music, or to novel reading, or to any other occupation that would have kept him in his chambers, he might have had credit for great application, without perhaps bestowing half so many hours upon his books as he actually no doubt was in the habit of doing. The same would probably have been the result, had his loiterings and his potations been confined to the houses or the chambers of his acquaintance. But in his day men lived much more in public than they do at present, or have done since the beginning of this century.

Bachelors, who wished for male society in the evening, commonly sought it in a coffee-house (a practice long since entirely exploded), and parties of good fellows in particular seldom thought of sacrificing to Bacchus elsewhere than in a tavern. Now just in the same manner as a student of our time (even one of that class which is and always has been sufficiently numerous to countenance the derivation of the word *à non studendo*), may gain a high character for diligence with certain superficial observers of his proceedings, simply because they seldom meet with him abroad, and fondly imagine that he cannot possibly be employed at home otherwise than in hard reading; it was possible that, in those days, one who really devoted a great part of his time to study, but spent the rest of it as it were before the public, might with equal injustice by looked upon as a hopeless idler. In all probability, Thurlow was in the latter predicament. The late Mr. Cradock, who was intimate with him at the time, assures us he never called at his chambers in a morning, without finding him engaged over his books. This testimony to his diligence is, so far as it goes, direct and unequivocal. There is a piece of circumstantial evidence, however, to the same effect, on which we are disposed to place still more reliance; and that is the manner in which he was found to acquit himself, when his legal knowledge came to be put to the test in practice. It is true, the fact of eventual success at the bar, or even of high character for learning (which is not always the only or even the chief instrument of success), cannot, generally speaking, be taken as a decisive proof of assiduity during the regular period of studentship; because it most frequently happens that those who do gain such a reputation have abundance of leisure and opportunity to acquire the materials for it, between the time of their being called to the bar, and the time of their getting into that sort of practice which is likely to put them forward in a conspicuous situation. But this was not altogether the case with Thurlow. It was his lot to remain but very few years in the briefless state of probation, in which some of the greatest men our bar has produced have lingered so long; and, as we shall presently see, his adventurous spirit prompted him to take the place of a leader, almost at his very first starting into notice as a counsel.

From the registers of the Inner Temple, it appears that he was admitted a member of that society on the 9th of January, 1752*, and called to the bar on the 22nd of November, 1754. This could only have happened in the case of his name having been previously entered on the books of one of the other inns of court. Considering the length of probation many, if not most, young barristers have to go through, before they can get fairly launched into the stream of practice, the time that elapsed between his first embarking in the profession and his coming into full business, cannot certainly be called a very long one. It was long enough, however, to give him some taste of the bitterness of hope deferred; the rather that he looked forward to the holding of briefs as a means of earning subsistence as well as fame. His mode of living had always been irregular, and his expences, though not perhaps very large, sufficiently so to outpass the narrow bounds of the stipend his father could afford to allow him. This being so during his studentship, the case was not likely to be altered for the better while he remained an unemployed counsel, because to the same motives that had before actuated him, might then be superadded the vague expectation that a few well endorsed briefs could at any time enable him to repair the deficiencies of his purse or his credit. While he was, no doubt, devoutly wishing for this consummation, the state of his exchequer often reduced him to no small straits. It is told of him in particular, that being once upon circuit, he found it a matter of necessity to reduce his charges to the shortest possible span, in order to bring them within the very moderate compass of his finances. One device he hit upon for this purpose was to have the effect of abridging them by a tolerably considerable item, namely, the hire of a horse for the journey. To perform it on foot, however, formed no part of his plan; his determination being

* We suspect an error in this entry, and are inclined to think he became a member of the Inner Temple at an earlier period. In one of the memorandum books, he is put down as having come into commons in Hilary, 1751, and if this be correct, he must of course have been a member some time previous. He is described in the entry as "*Edvardus Thurlow, generosus*, (*generosus* being law or dog latin for gentleman), *filius et hæres apparens Thomæ Thurlow, de Stratton St. Mary, in comitatu Norfolk, Clerici.*

in fact to attempt no less a feat than the matching of his own wits against those of a horse-jockey. Big with this resolve he repaired to the stables of a dealer, and announced his intention of making a purchase out of his stud. After finding fault first with one and then with another of the beasts brought out for his inspection, and shewing the man he was by no means such a customer as would put up with anything that was offered, he at length fixed upon a steed which, so far as he could judge from its appearance, he said, seemed very likely to suit him as to quality and price; but he could not make up his mind to conclude the bargain without a trial. The proprietor having nothing to say against this, Thurlow was forthwith mounted, and went on his way, rejoicing in the success of his scheme. When the time appointed for the trial (and perhaps something more) had elapsed, the chapman beheld his customer riding into the yard, and already thought he held the stipulated number of guineas within his clutch. But he soon found that he had reckoned, as the saying is, without his host. The horseman turned upon him a countenance betokening the extreme of ire and indignation, which emotions, as he in no very measured language speedily gave it to be understood, had been kindled within his breast by the shambling paces, touched wind, and other faults innumerable of the Bucephalus. Indeed, the attempt to palm off such an animal upon him, had disgusted him to that degree, that he was determined he would have no dealings with a fellow who could endeavour to practise so gross an imposition.

Some years elapsed before the profits of his profession placed his finances in any better condition than that which drove him to such expedients. The first occasion of his coming into any notice, if not of his being employed at all, was a cause in which Luke Robinson was plaintiff, and the Earl of Winchelsea defendant. He happened to be opposed to Sir Fletcher Norton, who was at that time the leading counsel in the King's Bench, and, like some other leaders we could name, was very fond of treating juniors with superciliousness and rudeness. Some attempt of the kind he made upon Thurlow; but Thurlow was not a man to put up with an affront in silence, and he read the knight such a lesson, as might well make him much more cautious how he ventured to display his

arrogance for the future. The circumstance was a great deal talked of among the bar, and the spirit of the young man was universally applauded by his brethren. But the display he had made was not the sort of one that necessarily brings business after it, and his first introduction into the career of professional success was due to quite a different cause, to one of those lucky chances, in fact, that many a first-rate lawyer has looked back to as the foundation of his fortune, and for the want of which, no doubt, many a man whose ability might have done credit even to the bench, has been doomed to pass his life in obscurity and inaction.

A favourite evening lounge of Thurlow's, and indeed of a great many barristers of every age and standing, was Nando's coffee-house, hard by the Temple, the landlady whereof held forth two very potent temptations to insure their constant attendance; being notorious herself for a nice hand in the admixture of the different ingredients that compose a bowl of punch, and having, to dispense the same, a well favoured daughter, whose attractions, as the small wits used to remark, were always duly admired "at the bar and by the bar." At the time, of which we have now to speak, and which was somewhere about the year 1760, the disputed heirship to the titles and estates of the late Duke of Douglas was a very common topic of conversation in most companies, and not the least so among the members of the bar, some of whom had already been engaged on behalf of the respective claimants. The reputed son of Lady Jane Douglas (or rather Lady Jane Stewart, for she had been married to Sir John Stewart of Grandtully) had lately been declared by the Court of Session in Scotland to be a supposititious child. This decision, it must be owned, had been founded on a very strong mass of circumstantial evidence; but the curators of Lady Jane's son were satisfied they had good grounds for expecting to succeed in an appeal, and preparations were then making to bring the case before the House of Lords. Counsel had been already retained on behalf of the appellant; but before the briefs could be drawn, there was an immense body of documentary evidence to be sifted and methodized, and on account of the importance and the difficulty of this task, it was determined that, instead of devolving as usual upon the attornies, it

should be entrusted to counsel. Those who were already engaged in the cause positively refused to take this laborious and unusual duty upon themselves; and it so happened, that the difficulty which had thus occurred was a subject of discussion among some of them one evening, at Nando's, when Thurlow, according to his wont, was in attendance there. The thought of employing him in the cause had never, till that moment, occurred to any one connected with it; nor indeed was there much likelihood that he should be selected from among numbers of greater standing and repute than himself. But fortune favoured him. He had the advantage of a lucky combination of circumstances: first, that such a difficulty should occur; secondly, that it should be seriously discussed in a coffee-house; and thirdly, that he should be upon the spot, and present before the eyes of those who were discussing it, just at the time when their only anxiety was to pitch upon some barrister with leisure and ability to do what was required. The consequence was, that he was invited at once to undertake the arrangement of the papers; and that partly from professional etiquette, and partly from the masterly manner in which he performed this duty, a brief was afterwards delivered to him in the cause. This event was the foundation of his success at the bar.

The appeal was not entered in the Journals of the House of Lords till March 1762, and the great Douglas cause, as it was called, did not come on for a hearing before the nineteenth of January, 1769; but before the first of these stages had arrived, that change had taken place in Thurlow's condition, by means of which he was enabled to climb the eminence he afterwards reached. The task he had undertaken with respect to the arrangement and selection of the papers in the Douglas appeal, brought him into contact with several persons of rank and influence who were more or less directly interested in the event of the cause. Among the rest was the old Duchess of Queensberry, the well known friend of Pope and Gay and Swift, and the other worthies of Anne's reign; and what was more to Thurlow's purpose, the friend also of some who had the ear of the young king, George the Third. To her influence with Lord Bute, then in the very zenith of favour, the unknown and hitherto briefless lawyer was indebted for a

sort of promotion, which most barristers of his standing would probably have avoided as the death-blow of their practice, but which he courted as the means of bringing him at least into some degree of notice, and affording him opportunity for the display of his acquirements, to be attended with signal failure or signal success. He was made king's counsel. This appointment took place at the close of the year 1761, and on the 29th of January in the following year he was called to the Bench of the Inner Temple.

The bold and hazardous measure, of exchanging the stuff gown for the silk, was attended, in the case of Lord Thurlow, with complete success. If he had not that minute knowledge of the details of the law, which is only to be acquired by long practice either under the bar or as a junior counsel, he had other qualifications which stood him in good stead as a leader, a capacity, indeed, for which he appears to have been much better fitted than for the probationary state of subordination that commonly serves as a stepping-stone to it. One indispensable quality he possessed in a very remarkable degree, and that was a thorough confidence in his own powers. The embarrassment occasioned by timidity was totally unknown to him. No one ever observed him to falter or to hesitate from a dread of the learning and experience of his opponents, or of his own inability to cope with them; and if any one ever did conceive a doubt of his capability, it certainly could not be because he himself set the example. "A moderate merit," Lady Mary Wortley Montague very sensibly tells her husband, "with a large share of impudence, is more probable to be advanced than the greatest qualifications without it." Thurlow was certainly very fully impressed with the truth of this maxim, which indeed his brethren in general have the character of not being much inclined to undervalue. Not that we would be thought to apply the epithet impudent to him, in the invidious sense of the term, implying, as we conceive it does, a certain degree of pretension without the power to make it good; but giving to the word its more lenient meaning, and supposing it to mean neither more nor less than that he who deserves to be so called is not likely to let his merits be thrown into the shade by his bashfulness, there can be no pretext for denying that Edward Thurlow was a thoroughly impudent

man. If, however, to prevent any misconception on this score, the reader will take the trouble to put the word confidence in the place of impudence, we know not how we can better describe what we conjecture to have been his leading principle through life, than by borrowing another passage from the same admirable letter we have just quoted. "The first necessary qualification," then, writes Lady Mary, "is impudence, and (as Demosthenes said of pronunciation in oratory) the second is impudence, and the third, still impudence. No modest man ever did, or ever will, make his fortune. Your friends Lord Halifax, Robert Walpole, and all other remarkable instances of quick advancement, have been remarkably impudent. The ministry is like a play at court; there's a little door to get in, and a great crowd without, shoving and thrusting who shall be foremost; people who knock others with their elbows, disregard a little kick of the shins, and still thrust heartily forwards, are sure of a good place. Your modest man stands behind in the crowd, is shoved about by everybody, his clothes torn, almost squeezed to death, and sees a thousand get in before him, that don't make so good a figure as himself."

If this quality be of essential service in a court of law, there is another arena where it is, to say the very least, of quite as much effect; and that is the House of Commons. Here Thurlow first entered by being returned for Tamworth, at the general election in 1768; and he speedily took a footing as a member of parliament, that stood him in more stead, when there came to be a question of his promotion, than any degree of success in the courts of law could have been likely to do. To the leader of a party such a member as Thurlow is invaluable. No one could more unhesitatingly deal forth a good round assertion, or more unflinchingly disclaim the aid of everything like qualification, or more unsparingly bestow tokens of his contempt upon those who had the misfortune to differ with him. For this sort of duties, if duties they may be called, he had a physical as well as a moral fitness. A dark complexion, harsh though tolerably regular features, eyes overshadowed by thick and bushy brows, a sonorous and deep-toned organ of speech, all imparted to his appearance and to his delivery a degree of sternness, not to say

actual ferocity, well calculated to heighten the effect of that kind of oratory in which he most excelled and most delighted. These, however, were only his peculiarities, which distinguished him from every successful public speaker of his time. Other qualities, of course, he must have possessed in common with them, or he could never have ranked as one of their number. Possessing such capabilities, he was singled out by Lord North, on the formation of his ministry in the beginning of 1770, to take the place of Solicitor-General, which had been just resigned by Dunning; and the year afterwards (1776), when the post of Attorney-General became vacant, he as a matter of course was called upon to fill it. In this office he succeeded Sir Willam De Grey, afterwards Lord Walsingham.

It was a memorable and a stormy session, that in which Thurlow, as the avowed partizan and in some sort one of the official organs of the ministry, first took his place in the House of Commons: the same session, it is worthy of note, in which Charles Fox commenced his parliamentary career. Those discontents were then at their fullest height, which furnished the leading spirit of the opposition party in the House of Commons with the theme of one of the most masterly of his compositions, and gave Samuel Johnson the occasion of writing his much inferior production, "The False Alarm." All minor grievances, however manifold, were, as Junius, the fomentor and the organ of popular excitement, remarks, rendered comparatively insignificant by the importance of the great attack upon the constitution in the case of the Middlesex election. But this main cause of dissatisfaction did not entirely absorb the public attention. On the contrary, the clamour once raised, it was to be feared no opportunity would be neglected to swell and to prolong it; no abuse of power, real or imaginary, would be suffered to remain undetected and unmagnified. The ministry, therefore, though they had not immediately much to dread from the minority opposed to them within the walls of parliament, had still need of all their resources to maintain their footing. Parliament, however, was prorogued very shortly after Thurlow's appointment to the solicitor-generalship, so that it was not till the ensuing session, which commenced on the thirteenth of November,

that he found an opportunity of fairly taking up the cudgels in behalf of his party. That opportunity was afforded him by the violent debate that took place on the address, in which the subject of the Attorney-General's power to file *ex officio* informations for libel was descanted upon with a warmth and asperity, corresponding to the violence of the excitement that had been recently kindled by the prosecution of Almon for the publication of Junius's letter to the King. The Solicitor-General was of course one of the defenders of this privilege, and certainly not one of the least strenuous. His speech on this occasion, as it is reported in the Parliamentary History, does not, it must be owned, give us any very exalted opinion of his ability as a reasoner; though we are by no means sure that, considering the temper of the times, its sweeping assertions, its flat denials, and lofty and arrogant tone, may not have been better calculated for his purpose than any series of arguments he could have put together with the same end in view. He would allow no purer motive to the opposition than the desire of courting ephemeral popularity, affecting to believe it impossible that reasonable men could conscientiously deny the expediency and even the necessity of such a prerogative as that exercised by the Attorney-General. As to the charge often brought, and renewed against the then judges, particularly Lord Mansfield, respecting their mode of directing juries in cases of libel, he stigmatized it as utterly groundless and absurd. "The construction of libels," he said, "belongs by law and precedent to the judge, not to the jury; because it is a point of law, of which they are not qualified to judge. If any other rule prevailed, if the matter was left to the jury, there would be nothing fixed and permanent in the law. It would not only vary in different counties and cities, according to their different interests and passions, but also in the minds of the same individuals, as they should happen at different times to be agitated by different humours and caprices. God forbid that the laws of England should ever be reduced to this uncertainty! All our dictionaries of decisions, all our reports, and Coke upon Littleton itself would then be useless. Our young students, instead of coming to learn the law in the Temple and in Westminster Hall, would be obliged to seek it in the wisdom of petty juries,

country assizes, and untutored mechanics. Adieu to precision, adieu to consistency, adieu to decorum! All would be confusion, contradiction, and absurdity: the law would, like Joseph's garment, become nothing but a ridiculous patchwork of many shreds and many colours,—a mere sick man's dream, without coherence, without order,—a wild chaos of jarring and heterogeneous principles, which would deviate farther and farther from harmony." This is a fair specimen of the strength of argument he brought to bear upon the question. The prophecy, as to the consequences of the catastrophe he thus called upon God to avert, is of a piece with the rest; but from the very fact of its being a prophecy, it was secure at the time from a positive and flat denial. That denial the experience of some twenty years and more may now safely give. Books of reports, and dictionaries of decisions, aye, even Coke upon Littleton itself, still hold their ground as firm as ever; and if petty juries and untutored mechanics have gathered to themselves ever so strong a muster of legal pupils, we certainly do not find that the inns of court have suffered any very considerable diminution of members in consequence of so formidable a competition.

In the debate that took place on Serjeant Glynn's motion for an inquiry into the administration of criminal justice, we can gather nothing from Thurlow's speech that approaches any nearer to sound argument, so far as regards the law of libel. Among other positions he broadly laid down was this: that even supposing a jury could be competent to decide upon the intent and meaning of a publication alleged to be libellous (which, however, he by no means admitted they could), there is an insuperable objection against trusting them with the power of doing so, because in state prosecutions their passions are often excited in a manner that renders them little better than parties concerned against the crown. How far it was probable that the passions or interest of a judge might make him a party against the freedom of the press and the liberties of the subject, was left entirely out of the orator's calculations, as a matter of too little importance to be taken into account.

From the tenor of these opinions, it is easy to conceive what must have been the sentiments of Thurlow on such a subject

as the war with America. On the issue of that war depended the fate of the ministry, and none of its adherents gave it more vigorous support than the Attorney-General. In the discussion of this, as of every other question that came before Parliament, he scorned everything like palliation or concession. The Americans, according to him, were traitors and rebels; the mother country had a right to tax them to any extent she pleased; and since they had been daring enough to contest this point, no middle course was to be pursued, no half-measures were to be adopted. It might suit the character of one of his predecessors in office to contend that America could not reasonably complain of not being fully represented in Parliament, since, being described in the original charter of the colony as part and parcel of the manor of Greenwich, its interests were confided to the care and protection of the members for Kent. But Thurlow disdained such wretched quibbling. He had made up his mind to espouse one side of the question, and he advocated the cause heart and soul, without scruple or reservation of any kind. Throughout all that portion of the great contest, during which he remained a member of the lower house, he was Lord North's most able supporter. The facetious premier used to take his seat on the Treasury bench, as Gibbon informs us, "between his attorney and solicitor-general, the two pillars of the law and state, *magis pares quam similes*, and the minister might indulge in a short slumber, whilst he was upholden on either hand by the majestic sense of Thurlow, and the skilful eloquence of Wedderburne."

From the short specimen we have given of the notions he entertained on the subject of *ex officio* informations, it may readily be inferred that Thurlow was not likely to shrink from the exercise of an Attorney-General's most unpopular duty. The trial of Horne Tooke, in 1777, was one of those conducted by him. We do not find, however, that he rendered himself more obnoxious to public censure, or incurred a greater share of odium for prosecutions of this nature, than the average number of his official brethren have been commonly wont to do. None of those which he instituted were of sufficient importance to preserve much interest at present. Of all the trials in which he was engaged, that which most excited public attention at the time was the trial of the Duchess of Kingston for bigamy.

Very few women have ever made themselves more notorious than this eccentric personage had done in her youthful days. The history of her life has all the interest of a romance, and indeed may be said to bear out the correctness of Byron's apophthegm, that truth is stranger than fiction. Prints of her are still to be found in the costume (or to speak nearer the truth no costume, unless the slender covering of our first mother in the garden of Eden can be so termed) in which she appeared at a fancy dress ball given by the Venetian ambassador in London. She was then the beautiful Miss Chudleigh, one of the maids of honour to the queen of George the Second. While she retained this situation she was privately married to the Hon. Augustus Hervey; but having, as the story goes, detected a delinquency of a very peculiar nature committed by her husband, she renounced all connexion with him very shortly after their nuptials. Some time afterwards, she bethought herself that it would be advisable to destroy all evidence of the ceremony ever having been performed; and accordingly, posting down to the village in Hampshire where it had taken place, she tore out the leaf from the parish register with her own hand. Upon his coming to the title and estates of Earl of Bristol, she changed her mind upon this score, and conceived it might be desirable to have the means of proving her marriage in case of need, for which purpose she got the register once more into her possession, and substituted an entry in her own writing for the one she had cancelled. When she had married and buried the Duke of Kingston, Lord Bristol being all the while alive, the heirs of his grace got information of this first match; and as the dowager had been treated by the will much more liberally than comported with their interests, they resolved to establish the fact of bigamy. The lady was in Italy when the proceedings were begun, but she resolved on appearing to take the chances of her trial; and having compelled her banker, pistol in hand, to deliver certain funds she was in want of for her journey, and which he was rather reluctant to yield, she arrived in London prepared to abide the event. As if she had not by this time furnished sufficient matter of conversation for the gossips of the town, she next contrived to engage herself in a paper war with no other an antagonist than Samuel Foote. This unprincipled wit

had come to the knowledge of some private incidents of her life, through the medium of a woman who had formerly been her confidante, and these he introduced into a play or farce, called the "Trip to Calais," in which she was to be brought forward under the name of Lady Kitty Crocodile. When he had finished this notable performance, so that it was ready for the stage, he gave her an intimation of what he had done, and had the effrontery to ask two thousand pounds for the suppression of his libel. It is said he actually refused sixteen hundred. Fortunately he was altogether foiled in his infamous plot, for the lord chamberlain refused to license the piece, and though he threatened to publish it, a counter-threat of an action at law made him abandon this project. Thereupon he wrote to inform the duchess that the affair was at an end, and she very foolishly published his letter, together with her own answer to it. This drew forth a reply from Foote, and in the encounter of their wits her grace certainly had not the best of it, although she laid aside ceremony so far as to inform him that she was writing to the descendant of a merry-andrew, and prostituting the name of manhood by applying it to him: whereas he chose rather to trust his pen with keen satire than with mere abuse. All this increased the excitement and anxiety as to her trial, which created even more general interest than that of the rebel lords had done thirty years before; the rather that their doom was tolerably certain, and that hers remained in suspense. She herself was very sanguine in the expectation of an acquittal, relying upon a sentence formerly pronounced in the Ecclesiastical Court, in a collusive suit between herself and the Earl of Bristol, by which sentence she conceived their marriage had been declared void. This, however, was not precisely the fact. The suit had been merely one of jactitation of marriage, and the effect of the sentence was consequently nothing more than that, for anything that had appeared before the court, there had been no marriage at all; leaving the real fact open to further investigation on other evidence. This plea, as it were, of *autrefois acquitte*, consequently availed nothing, and the duchess was convicted by the House of Peers of bigamy, notwithstanding more than one very long speech of her own, in which she descanted very learnedly upon the law, quoted precedents in abundance, and,

as may be supposed, uttered no small quantity of nonsense. Had her situation and circumstances been any other than they were, she informed their lordships at the opening of her great oration, 'no words of hers should have beaten the air.' There were many other specimens of rant in her speech equally bombastic and absurd. We are told that in the course of the proceedings she gave vent to her anger against Thurlow, who, as Attorney-General, conducted the prosecution, by publicly reproaching him with certain amours of his own, to which he did not think it at all necessary to give the sanction of matrimony. If this be true, it is certain that nothing of the kind appears in the report of the case, though it appears very full and minute, even to the most trivial particulars. Possibly the rebuke may have been conveyed, as many pithy things are said on the stage, in an *aside*. The trial began on the 15th of April, 1776, and was concluded on the 22nd, having lasted four days.

It was about two years after this, that the resignation of Lord Chancellor Bathurst occasioned a vacancy in that seat, to occupy which is the utmost aim of a successful lawyer's ambition. Lord Mansfield had already more than once declined the great seal; and no one had a stronger claim upon the minister than Thurlow. That claim was not disregarded. Though Lord North could ill spare him from the House of Commons, where he was his very ablest and most efficient coadjutor, he made no difficulty about removing him to the woolsack; and accordingly, on the 2nd of June, 1778, he was appointed Chancellor, being raised to the peerage on the same day by the title of Baron Thurlow, of Ashfield, in the county of Suffolk.

It may be remarked that, when a promotion of this nature takes place, there seldom fails to exist, among those who watch the career of the newly ennobled lawyer, a certain feeling of curiosity as to the footing he will maintain for himself, when he becomes fairly settled in the upper house. Men are anxious to know whether he, who commanded the respect and the attention of his audience when he addressed the Commons, will be heard with equal complacency by the assembled Peers: whether they will welcome him to their ranks as a recruit who confers quite as much honour on their order as he receives from it, or whether

they will treat him as a mere intruder into their body: and above all, should they endeavour to reduce him into insignificance, whether he will tamely submit, or manfully convince them that against him all such attempts are likely to prove abortive. It so happened, that not very long after his admission into the House of Lords, Thurlow had an opportunity of asserting his own dignity in this aristocratic assembly; and he did it in a manner that at once took away from his brother peers all desire of calling it in question for the future. It was in the course of the inquiry into Lord Sandwich's administration of Greenwich Hospital (the same subject which had first called forth the brilliant eloquence of Erskine in the Court of King's Bench) that the Duke of Grafton thought proper to taunt him with his humble birth, and the recent date of his creation as a peer. The descendant of an illegitimate child of Charles the Second might have been fought with his own weapons, when he chose to take up the topic of the want of illustrious birth. But Thurlow did not descend to this petty species of cavilling. He took much higher ground. "His Lordship," says Mr. Butler, who was present at the time, "had spoken too often, and began to be heard with a civil but visible impatience. Under these circumstances he was attacked in the manner we have mentioned. He rose from the woolsack, and advanced slowly to the place from which the Chancellor generally addresses the house. Then fixing on the duke the look of Jove when he grasps the thunder, 'I am amazed,' he said, in a level tone of voice, 'at the attack the noble duke has made on me. Yes, my lords,' considerably raising his voice, 'I am amazed at his grace's speech. The noble duke cannot look before him, behind him, or on either side of him, without seeing some noble peer who owes his seat in this house to his successful exertions in the profession to which I belong. Does he not feel that it is as honourable to owe it to these, as to being the accident of an accident? To all these noble lords the language of the noble duke is as applicable and as insulting as it is to myself. But I don't fear to meet it single and alone. No one venerates the peerage more than I do; but, my lords, I must say, that the peerage solicited me, not I the peerage. Nay more, I can say, and

will say, that as a peer of Parliament, as speaker of this right honourable house, as keeper of the great seal, as guardian of his majesty's conscience, as lord high chancellor of England, nay, even in that character alone in which the noble duke would think it an affront to be considered, as a man, I am at this moment as respectable,—I beg leave to add, I am at this time as much respected, as the proudest peer I now look down upon.' The effect of this speech," Mr. Butler adds, "both within the walls of Parliament and out of them, was prodigious. It gave Lord Thurlow an ascendancy in the House which no Chancellor had ever possessed: it invested him, in public opinion, with a character of independence and honour; and this, though he was ever on the unpopular side in politics, made him always popular with the people."

In private as well as in public, Lord Thurlow was equally above the wretched and contemptible feeling, which so often prompts men to deny or gloss over the obscurity of their origin. His parents had been of that class in life which, in the literal as well as in the more commonly received acceptation of the term, is well entitled to the designation of respectable; but they had no title to illustrious descent, and he had too much spirit or too much sense, or both, to claim any dignity from his ancestry. It is told of him that, when one of his acquaintance was endeavouring to make out how he could claim kindred with the secretary of Cromwell, whose family had been settled in the county adjoining Suffolk, he interrupted the obsequious genealogist by telling him, in a tone and manner that would have befitted his contemporary, Johnson,—"Sir, there were two Thurlows in that part of the country: Thurloe the secretary, and Thurlow the carrier. I am descended from the last." It would have been well had he entertained on all points the same sound and healthy feeling which dictated this rebuke. But it was not always thus where his personal interest was involved. Superficial observers were wont to be misled in his case, as in many others, by the affected bluntness, or (to speak plainly) the downright bearishness of his manner, which such persons are apt to consider a certain indication of honesty and straightforwardness of purpose; as if sincerity and politeness were so wholly incompatible, that the want of the one

must necessarily ensure the possession of the other. Whether all his coarseness were natural to him, or whether he exaggerated it for the sake of humouring this vulgar prejudice, it is very certain that he was considerably the gainer by it in point of popularity. The poet of all ages, writing two centuries before Thurlow was born, has depicted this peculiarity of his as accurately as if he had sat for the portrait; and the application is too obvious not to have been often made: —

> ——————"This is some fellow,
> Who, having been praised for bluntness, doth affect
> A saucy roughness, and constrains the garb
> Quite from its nature. He cannot flatter, he;
> An honest mind and plain; he must speak truth;
> An they will take it, so—if not, he's plain."

Among the many who suffered themselves to be won over by this "saucy roughness," was one very worthy and excellent man,—more famous, however, for his merits as a virtuous husband and a skilful farmer, than for acuteness in the discrimination of character,—namely, George the Third. The moral monarch even went so far as to overlook in Thurlow irregularities which he could never pardon in Fox, so much was he captivated by a virtue that, like charity, could cover a multitude of sins. Other courtiers had their smiles and their bows, but they were not the exclusive property of his Majesty; whereas in the royal presence alone was the Chancellor's usual ruggedness softened down into something like suppleness and amenity. We take no account of the caresses of a spaniel that licks the hand of all alike; but the fondness of the mastiff for his master is valued because it is lavished on him alone, and forms a striking contrast with the surly growl bestowed on all besides him.

This personal favour of the sovereign Lord Thurlow turned to the account of his own interest, by affecting to class himself among those persons, numerous enough in his time, who were wont to style themselves the king's friends, and thought there could be no better mode of evincing their friendship than that of steadfastly retaining their offices through all changes of measures or of ministry. "A new system," wrote Junius in those days, "has not only been adopted in fact, but professed upon principle. Ministers are no longer the public

servants of the state, but the private domestics of the sovereign. One particular class of men are permitted to call themselves the king's friends: as if the body of the people were the king's enemies; or as if his majesty looked for a resource or consolation in the attachment of a few favourites, against the general contempt and detestation of his subjects." The Chancellor, it is true, did not go the whole length of Lord Barrington, and certain other political vicars of Bray, whose favourite doctrine was, that everything like opposition to the king's government for the time being was nothing less than faction, if not downright rebellion. But if it was the king's good pleasure that he should remain in office, a change of party he did not by any means consider an insuperable obstacle to the fulfilment of the royal will. This he very fully proved on the resignation of Lord North, in March, 1782. The Rockingham party, who then reaped the benefit of their long and arduous opposition, might well have expected that the seals would be at their disposal. They however found it otherwise. The King insisted that Lord Thurlow should be suffered to remain where he was; and shewed himself so resolutely bent upon carrying this point, however easily he might cede others, that the leaders of the party had no alternative but compliance. The man, therefore, whose political existence was identified with unflinching advocacy of the war against America (only to mention one measure of the North administration), was now seen occupying a place in a cabinet which owed its birth to the failure of that war, and was under the most solemn obligation to make the entire discontinuance of it one of its first ministerial acts.

The manner in which Lord Thurlow chose to act up to his assumed character of the king's friend, was certainly not calculated to render him a very valuable ally to the Whig party. He seemed, indeed, to consider that he was placed in the cabinet rather in the capacity of a check upon their measures, than an active promoter of them; and that the part he had to play was, not a supporter of his colleagues, but simply the guardian and the champion of royal prerogative against all its enemies, whether in the ranks of his colleagues or elsewhere. Thus, while the two ministerial bills (the one for preventing contractors from sitting in Parliament, and the other for prohibiting persons employed in the customs and ex-

cise from voting at elections) were passing through the upper house, Lord Mansfield himself, and the other avowed leaders of the opposition, were not a whit more strenuous than he in their endeavours to throw them out. There were some persons foolish and ignorant enough to dignify this sort of conduct with the name of independence. But men of sense could never fall into so gross a delusion. They might very well understand the independence of one who resigns office, power, and emolument, rather than retain the munder a set of ministers against whom his whole political career had been marked by uncompromising opposition ; nay, they might even go so far as to admit that, after having once consented to enlist among them, he might still claim some pretensions to the title of independent, by quitting their ranks and his own office so soon as he found them pledged to a course he could not conscientiously, or at least consistently, approve; but they very naturally laughed at the notion of bestowing the appellation on one who, with all his show of consistency in opinion, held no opinion so firmly as the very common one, that all sacrifices were to be preferred to the sacrifice of office. As to the ministers themselves, whose plans were thus thwarted by an enemy in their own camp, it may well be supposed the reluctance they had originally felt to admit him there was not likely to be dispelled by the line of conduct he thought fit to pursue. Indeed, when the coalition was formed between Fox and Lord North, the year after the birth of the Rockingham administration (February 1783), the members of the new alliance agreed one and all that it was wholly out of the question for them to think of retaining so treacherous an ally in their body. The king, who was guided entirely by the counsels of Lord Thurlow, insisted on the other hand, that whatever changes might take place, (and he was ready to concede every other point), the Chancellor should remain at his post; and as this was an arrangement to which no inducement could prevail on them to give their consent, a considerable delay took place in the formation of the new cabinet. At length, however, George the Third found himself compelled to yield, and the Duke of Portland became the nominal premier, on the understanding that the great seal should be put in commission. Lord Loughborough, then Chief Justice of the Common Pleas was ac-

cordingly appointed chief commissioner; and Thurlow retired, to lie in wait for the next opportunity that might present itself of reinstating himself in the office he had thus struggled so hardly, but so fruitlessly, to retain.

His impatience on this score was not put to a very severe test. The Coalition ministry, as every body knows, did not outlive the year in which it had its birth; and its dissolution was of course the immediate prelude to his resuming his seat on the woolsack. It was only because there was absolutely no other alternative, that George the Third had consented to admit Fox and his party into the royal councils: his confidence they never possessed. Their personal intercourse with the sovereign was but barely as frequent as the occasions of the state demanded, and was then invariably marked by the extreme of coldness and restraint on his part. When he found himself completely in their power, his despondence was so great that he remained in melancholy seclusion at Windsor lending no public countenance to his ministers, withdrawing himself from the gaze of the people, foregoing his accustomed sports and occupations; in short, completely overcome by dejection. Lord Thurlow was one of the very few visitors admitted at the castle during this retirement of the king, who, placing as he did entire confidence in the personal attachment the integrity, and the ability of the ex-Chancellor, looked to him for solace and for counsel in the pressing strait to which he considered himself reduced. It is known that at one time he very seriously meditated, what he had more than once previously threatened, a retirement to Hanover, where there was no intractable House of Commons to thwart the free exercise of his royal pleasure. He was, however, dissuaded from the project by Thurlow, who consoled him with the assurance, that if Fox were left to himself, he would sooner or later suffer his natural impetuosity to hurry him into some step that would be the cause of his downfall as a minister. The prediction was very soon verified. The India Bill proved the rock on which the coalition vessel split. The royal influence was exerted in its very fullest extent to procure the opposition of the peers to this measure; and Thurlow, who had been the most active of the managers behind the curtain, was not less great, as the theatrical phrase is, when he appeared

on the stage. He gave it out as his firm conviction, that if the king should assent to such a measure, he would do neither more nor less than take the crown from his own head to adorn the brows of Fox; a hint which Lord Abingdon improved upon, by openly taxing the obnoxious minister with entertaining the views of Cromwell. The end of all this was, that the bill was thrown out by the peers. His majesty, unable to contain his satisfaction, immediately dispatched messages, at one o'clock in the morning (19th December), to both the secretaries of state, North and Fox, intimating that he had no further occasion for their services, and that as a personal interview would be disagreeable to him, they were required to send back their seals of office instead of delivering them in the usual manner. On the following day, William Pitt, then not quite twenty-five years of age, was declared prime minister; and Lord Thurlow's appointment to the chancellorship immediately took place as a matter of course. He took this opportunity of putting one of his early associates, Kenyon, in the place of Attorney-General, though he had not gone through the probationary stage, at that time more usual than it has been since, of the solicitorship. This latter office was filled by Sir Pepper Arden.

Great as afterwards became the popularity and the power of the new premier, it was with no small difficulty that he at first contrived to hold good his footing with Parliament. There the coalition still maintained all its influence. The opposition, indeed, was at one time so strong, that he hinted to the king his fears that he should shortly be obliged to quit the field; and it is said, was only prevented from doing so by the earnest dissuasion of the monarch, who declared that if his minister resigned, he must resign also. The disgust, and indeed the dread, he felt of the opposition were certainly not lessened by Erskine's motion for an address, calling on the sovereign to refrain from dissolving the Parliament (which he was then just about to do), on account of the quantity of public business that still remained to be got through. George the Third, who on certain points of prerogative was hardly less touchy than some of his Stuart predecessors, looked upon this as a direct blow aimed at his kingly power, and felt quite as desirous as his ministers could wish him to be of nipping this dangerous

scheme in the bud. It was accordingly very well understood that the Parliament was about to be dissolved, and it was known also, that the usual preliminary prorogation would take place on a certain day, the 24th of March, 1784. Now, it was generally supposed that a dissolution could not take place without the great seal; and it so happened that, on the very day before the prorogation, the great seal was stolen from the drawer of the writing-table in Lord Thurlow's private study, at his house in Ormond Street. The fact that nothing else was taken but the seal, was a sufficient proof that the theft was not the speculation of a common pilferer; and, all circumstances considered, there seemed to be very plausible reasons for suspecting that some of the influential members of the Whig party were concerned in the affair. Whether there were really any foundation for such a suspicion, it is now impossible to determine, as neither principals nor accessories were ever discovered, although a reward of two hundred pounds was offered by proclamation, with a promise of full pardon to the informer, if he was implicated in the transaction. One man was, indeed, apprehended for the theft; but whether guilty or not, sufficient evidence could not be procured against him, and he was discharged without having made any disclosures. Whoever may have been the instigators of the theft, it had no effect in retarding the dissolution of Parliament. A royal warrant was instantly issued for the preparation of a new great seal; but it was not even thought necessary to wait for its completion. The prorogation took place on the very day that had been originally appointed, and Parliament was dissolved the day afterwards.

In the new House of Commons, shortly after formed by the result of the general election, the premier contrived to secure such majorities as placed his power on a secure basis, and left Lord Thurlow little to fear on the score of the permanency of his office. It was not till the sudden discovery of the king's insanity, in 1788, that the stability of the ministry appeared to be even threatened; but to judge from appearances, its footing was then rapidly sinking from under it. During the adjournment that took place immediately after the meeting of Parliament, the Prince and his party were upon the alert, making active preparations

for the assertion of his claim to the regency, and there seemed every reason to believe that the very utmost Mr. Pitt would be able to effect in opposition to them would be the fettering that high office with restrictions; a measure which was not very likely to increase his chance of remaining in power under the new order of things. It was chiefly with a view of counteracting such a design, that the Prince's party were anxious to gain over Lord Thurlow, of whose political honesty they appear to have formed a very accurate estimate. Captain Rayne, the comptroller of the Prince's household, was one of those who took a very active part in the negotiations and intriguings that were set on foot to procure recruits for the strengthening of their body. In one of his letters to Sheridan, who was busily occupied in the same business, he says: "I think the Chancellor might take a good opportunity to break with his colleagues, if they propose restriction. The law authority would have great weight with us, as well as preventing even a design of moving the city." And in another; "I enclose you the copy of a letter the Prince has just written to the Chancellor, and sent by express, which will give you the outline of the conversation with the prince, as well as the situation of the king's health. I think it an advisable measure, as it is a sword that cuts both ways, without being unfit to be shown to whom he pleases, but which he will, I think, understand best himself." The captain was not mistaken. Lord Thurlow understood very well what was meant, and took his measures accordingly. The pretext of paying frequent visits to the king in his confinement, afforded him ample opportunity for conversing with the Prince and his confidents, without, as he thought, affording any handle for suspicions of treachery and desertion on the part of his avowed colleagues. It was of course his object to keep them, if possible, in entire ignorance of his daily communications with the opposite party; and to a certain extent he no doubt succeeded; but though every interview might not be detected, it was known, or at least guessed, among them that he was putting matters in a train for a seasonable defection. Had there been no other means of coming at the secret of these mysterious visits, his own inadvertence would have betrayed him; for he made his appearance one day without his hat, in the

apartment of the palace where the council was sitting; and on being reminded of it, incautiously said that he supposed he must have left it in the other room. The looks of those present immediately made him conscious of the false step he had made, but it was too late to retrace it*.

The wary Chancellor, however, took good care not to commit himself in any positive engagements with the enemy, while the fortunes of the contest remained undecided, and while it was still doubtful whether fidelity to his own party might not be the most profitable line of conduct he could follow. It soon became clear to him that this was likely to be the case. The prospect of forming one of the main-springs of the phantom (as the proposed substitute for a monarch was aptly styled), and still more the amendment of the king's health, which promised to place matters again on their former footing, convinced him that the broad straightforward path would lead him more surely to the object he had in view, than the crooked windings of private intrigue; and the result was that he broke off entirely with the Whigs. No sooner was this done, than he gave a free scope to the warmest of protestations, both in the House of Lords and out of it, of attachment to the king, of sorrow for his illness, and of affectionate anxiety for the care of his royal person; all which had the effect of elevating him high in the estimation of the short-sighted multitude, who looked upon such professions as the pure and disinterested ebullitions of a grateful heart, overteeming with the finest sympathies of humanity. The admiration of the people was especially excited in his behalf, when the newspapers informed them that the rugged countenance of the Chancellor had been moistened with tears, while he wound up one of these declamations in the House of Lords by exclaiming, "My debt of gratitude to his majesty is ample, for the many favours he has graciously conferred upon me; and when I forget it, may my God forget me!" The Whigs in the other house, who had been behind the curtain, were not, it may easily be imagined,

* Mr. Moore, in his life of Sheridan, says that Thurlow brought the Prince's hat under his arm, instead of his own, and thus gave a clue to the discovery of his recent interview with that personage; but our version of the anecdote is given on the authority of a distinguished statesman, who had it from the mouth of Pitt himself.

much disposed to share in the popular enthusiasm respecting the propounder of these high-flown sentiments; and their taunts upon the subject were profusely dealt forth. "The lords," Burke said a few days afterwards, "had perhaps not yet recovered from that extraordinary burst of the pathetic which had been exhibited the other evening; they had not yet dried their eyes, or been restored to their former placidity, and were unqualified to attend to new business. The tears shed in that house, on the occasion to which he alluded, were not the tears of patriots for dying laws, but of lords for their expiring places. The iron tears which flowed down Pluto's cheek rather resembled the dismal bubbling of the Styx, than the gentle-murmuring streams of Aganippe." There were many other sarcasms of this kind delivered in public, but certainly none that out-did, in point and terseness, the pithy observation made by Wilkes, in a private company: "God forget you! He will see you d——d first."

By the recovery of the King, not only the continuance of the ministers in office was no longer doubtful for the time, but it seemed as if they had gathered fresh strength and fresh security from the peril that had recently impended over them; and the disconsolate Whigs saw themselves shut out from all prospect of probable change in the royal councils. Lord Thurlow, in particular, to those who were cognizant of the part he had taken in public (and of nothing more) during the regency question, appeared to have acquired a new title to the esteem and the favour of the King; so that, even in the event of any of those vicissitudes to which cabinets are always liable, it seemed likely that George the Third would be disposed to make still greater sacrifices than he had offered at the time of the coalition, for the sake of retaining the Chancellor. But these appearances were deceitful. Pitt was well acquainted with the secret history of that vehement explosion of loyalty which had astonished the House of Lords, and it is very probable that in the course of time it was contrived his majesty should be as little in the dark respecting the matter as his prime minister. However this may be, there could be no doubt that Thurlow very much overrated his personal influence with the King, when he imagined that it could stand a competition with the influence of Pitt; and of this he was afterwards convinced to his cost.

The premier was not a man to be satisfied with a lukewarm adherence to himself and his party; nor was he disposed to tolerate in his colleagues assumption or arrogance founded upon any pretensions, but least of all on the score of the King's personal regard, of which, in the case of Thurlow, he might already have entertained some little feeling of jealousy. Thurlow, on the other hand, ill brooked the supremacy of Pitt. He fancied he had cause of complaint against him for countenancing the prosecution against Warren Hastings, which he himself from the outset had warmly opposed; and during the whole course of the trial, he did all that lay in him to render it nugatory, by continually affording the ex-governor the assistance of his professional knowledge. This was only one of many causes that conduced to the bringing about of an open rupture between the premier and the Chancellor. The main breach was no doubt begun at the period of the King's illness. The beginning once made, every petty misunderstanding contributed in some degree to widen it; and before the opening of the session of 1792, it was very evident that the same cabinet could not much longer contain both Pitt and Thurlow. Many who were not in the intimacy of either, nor possessed particular facilities for close observation of their conduct, could foretel the approach of the coming storm. Lord North, among the rest, not only foresaw it, but predicted the result. "Your friend, Lord Thurlow," he said, in conversation with a gentleman known to the Chancellor, "thinks that his personal influence with the King authorises him to treat Mr. Pitt with *humeur*. Take my word for it, whenever Mr. Pitt says to the King, 'Sir, the great seal must be in other hands,' the King will take the great seal from Lord Thurlow, and never think any more about him." The necessity of making such a representation to the King was soon forced upon the premier; for the Chancellor thought fit to measure his strength with him, by violently opposing the ministerial measures in the House, conducting himself exactly after the same manner that he had formerly done when a member of the Rockingham cabinet. The progress of two bills through the Upper House (one for continuing the sinking fund and providing one for the future with every loan, the other for encouraging the growth of timber in the New Forest) afforded

him the occasion of publicly unfurling the standard of defiance against the ministers with whom he was associated. In the speeches he delivered on the last of these subjects, he openly taxed them with endeavouring to mislead the king, declared the proposed measure to be a dangerous attack upon the prerogative, in short, affected to stand forward as the avowed champion of his sovereign's rights, and for that reason the vehement opponent of the ministry. With what view this display was made is pretty obvious; but the issue proved that it was possible for Lord Thurlow to enact the part of king's friend, without timing his performance so as to maintain the more important character he had been accustomed to couple with it, namely, that of his own friend. In fact, Lord North's prediction was strictly verified. Pitt at once intimated to the king that it was impossible he should remain in office together with the Chancellor, and expressed his intention of resigning if the great seal were not immediately taken from him. The king hereupon consented—apparently without much difficulty—to remove Lord Thurlow from his post; and on the 15th of June (1792), the same day in which Parliament was prorogued, he was required to deliver up the great seal. "I have no doubt," writes the same person to whom Lord North had prophesied the event, "that this conduct of the king was wholly unexpected by Lord Thurlow: it mortified him most severely. I recollect his saying to me, 'No man has a right to treat another in the way in which the king has treated me: we cannot meet again in the same room.'"

On this, his final dismission from office, Lord Thurlow, as a member of the House of Peers, found himself in a most forlorn condition. He had no ties to connect him with any party, and indeed there was none that would not, after such specimens of political inconsistency as he had afforded, have distrusted his alliance. Some attempt, it appears, was made a few years afterwards to secure his co-operation in the formation of a new cabinet; but the project of the intended administration was never realized, and the failure of the scheme was not much regretted, except perhaps by those immediately concerned in it. With the exception of this one unsuccessful endeavour to take service under a new banner, he remained an isolated combatant in the political strife, belonging to

neither host, and having consequently no stake in the event. There was, indeed, properly speaking, no course left open to him but that of what is called an independent member. This course he according followed, and it is needless to add, by adopting it, lost very much, if not the whole, of that weight and influence he might have commanded, by propping up his own personal qualifications with the support of either of the leading bodies in Parliament. It then became evident how much of his authority had previously been owing to his station and his party. As the official organ of the ministry in the Upper House, he had been always able to command attention, if for no other reason than because it was supposed every measure he advocated had been previously considered by him, in conjunction with his colleagues. And here his station had acquired him a species of credit he was very far from deserving; for as regards this branch of duty, he had always been known, by those who were behind the scenes, as the most inefficient of all the members of the cabinet. Nay, he was often worse than inefficient; he delighted to throw impediments in the way; and it used to be said of him, that he proposed nothing, opposed every thing, and was ready to vote for anything. To make a show at the same time of his indolence or incapacity, and of his want of breeding, it was by no means unusual with him, to throw himself back in his chair, after a cabinet dinner, and fall fast asleep while the rest of the company were engaged in discussions upon the business for which they had been assembled. But this was known at the time to comparatively few persons, and consequently had little or no effect in lessening the weight of the opinions he delivered in the House of Lords. When he came to stand alone, he had of course none but his own resources to depend upon.

For some Chancellors Westminster Hall is the most successful scene of exertion. This was not the case with Lord Thurlow. He was in the strictest sense a political Chancellor, who had been elevated to the bench, not because he had outshone all competitors in ability as a lawyer, but because he had been a serviceable ally to the ministers in the House of Commons, and was likely to prove so in the House of Lords. The experience he had acquired in the course of his practice as a king's counsel, and as Attorney and Solicitor-General, was probably

such as to qualify him in some degree for the duty of an equity judge; but it is very certain, that had this duty been (as surely it ought, and we confidently hope one day or other it will be) the only, or even the principal one of the Chancellor he would not have been the person selected to fill the office. However, the next best thing to have in a functionary of any sort fully competent to the discharge of his duties, is to have one conscious of his incompetence, and at the same time anxious to remedy the deficiency as best he may. The philosopher of old was justly considered to have attained no small proficiency in knowledge and wisdom, when he proclaimed as the result of his studies, "hoc scio, me nil scire;" and if every guardian of the great seal (to go no further) could be furnished with the same faculty of measuring the extent of his legal acquirements, the business of the court might possibly be better done than it sometimes has been. Thurlow is entitled to the credit of having foreseen from the first that, whether from his inexperience, from his want of the requisite legal learning, from his indolence, or from the multiplicity of his other avocations, it would be out of the question for him to take the whole weight of the judicial duties upon his own shoulders; and he very prudently made up his mind to call some assistance to his relief. For this purpose, he addressed himself to Mr. Hargrave; and that gentleman undertook to perform for him exactly the same sort of labour which is done for many a barrister in very large practice by some less fortunate wight of his own calling, who in familiar parlance goes by the rather homely name of his "devil." This labour, as possibly our readers are aware, consists in searching the authorities, and preparing the materials for the arguments, if not occasionally in framing the arguments themselves, which are afterwards delivered in court by the practitioner. By thus getting the chief drudgery of his duty taken off his hands, an advocate is never considered as forfeiting any of the credit he might acquire, if he chose, or rather if his occupations would allow him, to go through it without any assistance; nor do we see why a Chancellor (whose time is even more fully and more variously engaged) should be censured for resorting to a similar mode of lightening his toil. But, putting all things together, we cannot help suspecting that a very great

share of the profound legal learning attributed by some to Lord Thurlow, was in fact the legal learning of Mr. Hargrave, and that it was by the assistance of this gentleman's vast store of erudition that his lordship contrived to keep up the character of a consummate lawyer. Mr. Butler, who speaks of this Chancellor from his own knowledge and observation, tells us that his decrees were "strongly marked by depth of legal knowledge and force of expression, and by the overwhelming power with which he propounded the result; but they were too often enveloped in obscurity, and sometimes reason was rather silenced than convinced." Now this is exactly the impression that would be given by the argument of one, who enounces a conclusion at which he has not arrived by travelling himself through every stage of the reasoning that leads to it; by one who does not so much express his own thoughts as repeat a lesson.

Neither among the suitors, the solicitors, nor the bar of the Court of Chancery, were Lord Thurlow's manners likely to render him very popular. He seems to have taken a pride in carrying rudeness and churlishness to an extreme, insomuch that he was commonly designated in the profession by the nick-name of the tiger. Some, indeed, called him the lion, and Mr. Hargrave his provider; but in both cases, a ferocious animal was chosen as the fittest emblem to typify the harshness of his temper and deportment. It was remarked, that after his first secession from office, when he returned to take his seat in Lincoln's Inn Hall, there was a visible change for the better in his demeanour. Perhaps the want of an opportunity for domineering during his retirement may have caused him unconsciously to lay aside for the time his usual haughtiness of manner. In private life, and even in his official intercourse with members of the cabinet and others, he seldom gave himself the trouble to check the accustomed oaths, wherewith, after the manner of his predecessor, Lord Northington, he was in the habit of occasionally garnishing his discourse. It is told of him, that when a sharp dispute arose between him and Mr. Pitt, touching the appointment of a Master of the Rolls, just before Sir Pepper Arden was named to fill that office, he at length finished the controversy, by saying to the minister, "I care

not whom the devil you appoint, so that he does not throw his own d——d wallet on my shoulders, instead of lightening my burthen." And when the same office afterwards became vacant, having a made up his mind to confer it on his old associate Kenyon, he rebutted the pretensions of an aspirant who had written to know if his claims were not to be preferred to all others, by sending him the laconic epistle, consisting of neither more nor less than these words: "No, by G—! Kenyon shall have it." With this habit he had given himself, of calling indifferently upon God and the devil to witness his asseverations, it is to be supposed he had some difficulty in restraining the indulgence of the propensity while sitting in the Court of Chancery, where, indeed, the potentate of the nether regions is by many held to be, if not in his proper person, at least in intendment and contemplation of law, or rather equity, as constantly present as the king himself in the Court of King's Bench. He did, however, contrive to repress the inclination; though those that watched him in his not unfrequent moods of irritation, used to assert that the rising of the oath to his lips, and the hard struggle to gulp it down before it could escape their portals, were often distinctly visible. When he was once leaving the court, at the close of the legal season, without making any farewell compliment to the bar, one of the juniors remarked to his neighbour, in tones sufficiently audible to reach the bench, "I think he might at least have said 'd— you.'" Whether the Chancellor felt the justice of the rebuke for his incivility, or whether he was pleased with the form of the salutation suggested by the young barrister, or whether, in fine, for it is but fair to presume such a thing probable, his want of politeness on the occasion had been inadvertent, he certainly did turn round and repair the omission, by taking a formal leave.

To these few traits of character and manner, we may add a slight sketch of his personal appearance in court, taken (it does not appear at what time) by the veteran farce writer O'Keefe. "I saw Lord Thurlow in court: he was thin, and seemed not well in health; he leaned forward with his elbows on his knees, which were spread wide, and his hands clutched in each other. He had on a large three-cocked hat, his voice was good, and he spoke in the usual judge style, easy and familiar."

The long arrear of business that remained undisposed of during his chancellorship, was imputed by the public entirely to his indolence and want of zeal in the discharge of his judicial functions. We consider it, if not a more striking proof, at least quite as discreditable an effect, of these failings, that while he remained in office, he did not achieve, nor indeed attempt, either as judge or legislator, a single measure calculated to strike at the root of those delays and abuses which have so long formed a favourite theme of complaint against the Court of Chancery. With respect to the mere irregularity of his attendance, or the shortness of the time he occasionally devoted to his legal occupations, there are many excuses to be made. Among others, it should be recollected that in his time there was no deputy speaker of the House of Lords; and he considered it a paramount duty to be in his place there, whatever other business might be delayed for the want of his presence elsewhere.

He was also subject to occasional fits of illness, particularly to violent attacks of the gout, which from time to time wholly incapacitated him from labour or exertion of any kind, insomuch that his friends were often induced to fear he would not live to enjoy the honours he had acquired. In one of Cowper's letters to Mr. Hill, dated May 6th, 1780, the poet says; "These violent attacks of a distemper so often fatal, are very alarming to those who esteem and respect the Chancellor as he deserves. A life of confinement and anxious attention to important objects, where the habit is bilious to such a terrible degree, threatens to be but a short one; and I wish he may not be made a text for men of reflection to moralize upon, affording a conspicuous instance of the transient and fading nature of all human accomplishments and attainments." In a letter of another date (June 9th, 1786) to the same person, he writes, "The paper tells me that the Chancellor has relapsed, and I am truly sorry to hear it. The first attack was dangerous, but the second must be more formidable still." And in allusion to their juvenile intimacy he goes on: "It is not probable that I should ever hear from him again if he survive; yet of the much that I should have felt for him, had our connexion never been interrupted, I still feel much. Every body will feel the loss of a man whose

abilities have rendered him of such general importance." There are other allusions of a similar kind in Cowper's Correspondence, shewing that he took a pleasure in looking back to the period when the Lord Chancellor, at that time a not very promising student of the Inner Temple, was his constant companion. Thus, in a letter to Mr. Hill, written a month after Lord Thurlow's first retirement from office, (May 1783) he says:—"I have an etching of the late Chancellor hanging over the parlour chimney. I often contemplate it, and call to mind the day when I was intimate with the original. It is very like him, but he is disfigured by his hat, which, though fashionable, is awkward; by his great wig, the tie of which is hardly discernible in profile; and by his band and gown, which give him an appearance clumsily sacerdotal. Our friendship is dead and buried." This last sentence appears to have been prompted by the neglect with which a volume of his poems had been treated by the Chancellor, to whom they had been sent by Cowper the year preceding, (February 1782), with a suitable letter of compliment. "Among the pieces I have the honour to send," said this letter, "there is one for which I must entreat your pardon. I mean that of which your lordship is the subject*. My best excuse

* "Round Thurlow's head in early youth,
And in his sportive days,
Fair Science pour'd the light of truth,
And Genius shed his rays.

'See!' with united wonder, cried
Th' experienced and the sage,
'Ambition in a boy supplied
With all the skill of age!

'Discernment, eloquence, and grace
Proclaim him born to sway
The balance in the highest place,
And bear the palm away.'

The praise bestow'd was just and wise;
He sprang impetuous forth,
Secure of conquest, where the prize
Attends superior worth.

So the best courser on the plain,
Ere yet he starts is known,
And does but at the goal obtain
What all had deem'd his own."

is, that it flowed almost spontaneously from the affectionate remembrance of a connexion that did me so much honour." To this letter no reply was sent, or at least nearly two months after the delivery of it, Cowper expressed to another correspondent (Mr. Unwin) some pique at not having then received any, which he had till then reconciled himself to by recollecting how much the Chancellor's time was occupied. It seems, however, that Lord Thurlow did, long afterwards, communicate with him by message, if not by letter. Hayley was chosen to be the bearer of his lordship's acknowledgments; and from a letter of Hayley's, dated so late as December 1797, we are led to conclude that he still took an interest in his former friend. To all appearance he set more value on Hayley's rhymes than on the poetry of Cowper. There is preserved in the memoirs of the versifier, a note from the Chancellor (1788) complimenting him upon one of the effusions he had just inflicted upon the public. There was at that time no acquaintance between them; but a common friend subsequently introduced them, and Hayley thus describes (November 11th 1788) a visit he paid to the Chancellor, by invitation, at breakfast time. "On my entrance, I told him that I was particularly flattered in being admitted at that friendly hour; for that I was such a hermit and such a humorist, that I had a horror of dining with a great man. As we came away, he said he hoped I would come some day to a private dinner with him, when there was no more form than at his breakfast table; to which I replied that if I found his dinner like his breakfast, I would come whenever he pleased. In short, we are become agreeably acquainted, and politely familiar." If we do not add more of these details, touching the intercourse of Mr. Hayley with Lord Thurlow, it is not for want of the means which the correspondence of the former supplies to a greater extent than we think it needful to avail ourselves of. To several other men of letters Thurlow had an opportunity of marking his favour, by conferring church preferment on them; for instance, to the Rev. Richard Shepherd, a voluminous author on poetry and divinity, to Robert Potter, the translator of Sophocles and Euripides, and to Horsley. Mr. Potter had been his school-fellow, and took divers opportunities of reminding him of his existence, and his calling, by regularly

transmitting him a copy of each of his own works immediately after its publication. No notice whatever had been taken of these presents for some years, till at length the reverend translator was one day agreeably surprised by the receipt of a short note from the Chancellor, thanking him with one sweep of the pen for them all, and offering, at the same time, to his acceptance something more substantial than thanks, namely, a prebendal stall in the cathedral of Norwich. With Horsley Lord Thurlow had never had any acquaintance, and knew him only by the repute of his edition of Newton, and his controversy with Priestley, when he gave him a prebend at Gloucester. They afterwards became intimate, and in consequence the prebendary became Bishop of St. David's. It was in the dedication of an anonymous treatise on the prosody of the Greek and Latin languages, that Horsley paid those compliments to his patron's classical learning to which (and to the value that may reasonably be set upon them) we have already made allusion. "Although," he says, "I wish at present to be concealed, I cannot persuade myself to send this tract abroad, without an acknowledgment which perhaps may betray me, of how much my mind has been informed, and my own opinions upon this subject have been confirmed, by conversations which many things in this essay will bring to your recollection." It is but fair to add, that this was published after the Lord Chancellor's retirement from office.

There is another case on record of Lord Thurlow's patronage of literary merit which does him great honour; we mean that of Dr. Johnson. Though little personally known to each other, they always professed, and doubtless felt, a mutual respect and esteem, which the similarity of their manners, not to say of their characters, may probably have done much to encourage. Johnson more than once declared there was but one man in England for whose conversation he should think it necessary to prepare himself, and that was Lord Thurlow; a high compliment certainly, coming as it did from one who dealt not much in compliments of any kind. Had this been said of Johnson by Thurlow, there would have been little to remark, though the one was hardly more given to flattering speeches than the other. However, the peer had it in his power to

proffer something better than compliments, and he certainly used the power with much delicacy and generosity. He had been applied to by Johnson's friends to solicit from the government a sum sufficient to cover the expenses of a foreign journey, which they considered necessary for his health, and he readily undertook the task. The application failed of success; and Lord Thurlow immediately volunteered to furnish the means required, to the amount of five or six hundred pounds, taking care to instruct Sir Joshua Reynolds, who was the bearer of this offer, that, to make the obligation sit light upon Johnson, the gift (for as such it was intended) should have the appearance of a loan, of which payment was to be secured by the mortgage of the doctor's pension. The letter in which Johnson expresses his gratitude for the offer, though at the same time he declines it, has, we have no doubt, been perused and admired by every one of our readers; but as it may not be present to the recollection of every one, we subjoin it at the foot of the page*.

What makes it singular that Johnson should always have professed such esteem for Lord Thurlow, is, that the latter was very well known to entertain opinions upon the subject of religion, such as in many other cases were wont to kindle

* "My Lord—After a long and not inattentive observation of mankind, the generosity of your lordship's offer raises in me not less wonder than gratitude. Bounty so liberally bestowed I should gladly receive, if my condition made it necessary; for to such a mind who would not be proud to owe his obligations? But it has pleased God to restore me to so great a measure of health, that, if I should now appropriate so much of a fortune destined to do good, I should not escape from the charge of advancing a false claim. My journey to the Continent, though I once thought it necessary, was never much encouraged by my physicians; and I was very desirous that your lordship should be told of it by Sir Joshua Reynolds, as an event very uncertain: for if I grew much better I should not be willing; if much worse, not able to migrate. Your lordship was first solicited without my knowledge; but when I was told that you were pleased to honour me with your patronage, I did not expect to hear a refusal; yet as I have had no long time to brood hope, and have not rioted on imaginary opulence, this cold reception has been scarce a disappointment; and from your lordship's kindness I have received a benefit, which only men like you are able to bestow. I shall now live, *mihi carior*, with a higher opinion of my own merit."

in the breast of the great lexicographer the flames of that direst of all sorts of hatred, the *odium theologicum*. This inconsistency he committed in common with George the Third, who also made the Chancellor an exception to his general dislike against those who openly transgressed the bounds of morality and decorum, by indulging themselves with the conveniences of matrimony without calling upon the church to sanctify their connubial proceedings. Of both of these crimes Lord Thurlow was guilty; and made no secret of his guilt, at least with respect to the latter, since he lived for many years with a mistress, and with an illegitimate family till the time of his death. As to his notions on the subject of religion, it is probable he did not proclaim them quite so openly. Whether he did so or not, there were some, at all events one person, who took great pains to make it be believed that his opinions were within the pale of orthodoxy. That person was his brother, the Bishop of Durham; and our readers, we think, are likely to be amused, if not edified, by an account of the mode in which he once set about proving his position. A very learned and excellent dignitary of the church and of the university of Oxford (who still lives to tell the story) was lamenting to the bishop that his brother, the Chancellor, who had so much church patronage in his gift, and might indeed, in some respects, be said to possess the attributes of an ecclesiastic, should be insensible to the great truths of Christianity, and in fact be notoriously neither more nor less than a professed deist. "Ah! my dear doctor," responded the prelate, "I regret, indeed, to find that you too labour under this very common misapprehension. I know very well the public believes my brother to be in the deplorable condition you describe; but I can confidently assure you, and indeed give you full proof, that he is not so. I myself can safely vouch that in the extremities of pain and suffering he always looks for consolation where alone it is to be found; for I have often sat with him in his chamber when he was enduring the acutest torments of the gout, and he scarcely ever underwent a particularly excruciating twinge that he did not loudly cry out 'Oh! Christ Jesus!'"

Such a defender of character was worth rewarding with

some of the good things in the Chancellor's disposal; and the Reverend Thomas Thurlow, who had begun his ecclesiastical career as a simple fellow of Magdalen College, Oxford, passed successively through the easy stages of rector of the great living of Stanhope, Master of the Temple, Dean of Rochester, Dean of St. Paul's, and Bishop of Lincoln, (the two last at one time), until at length he settled down in that much coveted resting-place, the Bishopric of Durham. His son also was made to feel the comforts and advantages of having an uncle upon the woolsack, being appointed clerk of the hanaper, and putting into his pocket (if the statements lately made in the House of Lords be correct) no less than nine thousand a year of the public money. Another nephew of the Chancellor, the son of his younger brother, who was a trader and alderman of Norwich, contented himself with a prebend in the cathedral of that city.

Lord Thurlow himself had contrived to amass a very respectable portion of the pecuniary gifts of fortune in the course of his official career. He had purchased property at or near his native place in Suffolk, and he also became master of an estate in another part of the same county, namely, at Thurlow, on the borders of Essex and Cambridgeshire. In the second patent of his peerage, which he procured shortly after his last resignation of the seal, for the purpose of having it entailed on the issue male of his two brothers, he was designated as Lord Thurlow, of Thurlow, in Suffolk, though he had not at the time entirely completed the purchase there. We believe he never had a residence either at Ashfield or Thurlow. His principal abode, especially after he had entirely quitted office, was a house he erected himself, at the cost of a considerable outlay of temper and money expended in debates with the builder, near Dulwich, at the distance of a very few miles from town. This place he called Knights' Hill. Though he constantly kept up an establishment in London, first in St. James's Square, and afterwards in George Street, Westminster, he made use of his town residence, merely for the convenience of its proximity to the House of Lords. He never resided, nor, indeed, even slept in town, but used to drive down at night to Dulwich after his at-

tendance in Parliament. His family consisted of three illegitimate daughters. He had also had a son by the daughter of a dean of Canterbury, to whom some supposed he had been married in early life, but the young man died while completing his studies at Cambridge. The daughters always resided with him till they married, and to two of them he left by his will the sum of seventy thousand pounds each. The third, Mrs. Brown, offended him by contracting a match against his consent, and though he forgave her so far as to take her back into his house on her separation from her husband, he did not provide for her so liberally, bequeathing her only an allowance of fifty pounds a month, to be paid so long as she continued to live apart from him, and no longer. The object of this arrangement evidently was to prevent the obnoxious Mr. Brown from being a gainer by his marriage. With these ladies he used to make frequent visits to Brighton, Bognor, and other places on the coast, as well as to Buxton, and Scarborough, and Bath, where the state of his health rendered it advisable for him to pass a considerable portion of his time. It is especially recorded of him, that being once at the last-mentioned place, and having walked into the rooms booted and spurred, the master of the ceremonies came up to him, and gave him to understand that, by the rules he had the honour to administer, spurs were a forbidden appendage to the person. His lordship did not attempt to dispute such authority, but immediately caused the offensive weapons to be taken off, good-humouredly remarking, that the rules of Bath were not to be disputed, and desiring the autocrat of the pump-room to make an apology in his name to the rest of the company, for the involuntary breach of etiquette. Such prompt obedience to the *lex loci* was warmly applauded by the by-standers, the rather that it contrasted favourably with a recent instance of mutinous conduct on the part of a bishop's lady, to whom it was possibly intended as a wholesome rebuke. This is one of very few specimens we could quote of his amenity of manner; of his gruffness and rudeness there is no lack. It is but justice, however, to add, that he seldom displayed these qualities towards his inferiors in rank; but reserved them almost entirely for the society of such as it is to be presumed were least accustomed to meet with them in others. Whether this was

done from an affectation of eccentricity, or from a morbid desire to make it apparent, even in the most trivial matters, that he stood in no awe of rank and station however elevated, we do not pretend to determine. Certain it is that, in the presence of his equals, he often chose to emancipate himself altogether from the restraints of politeness. For example, he was visiting once at the mansion of a nobleman in Yorkshire, and as he was being conducted by the host, together with a large party, through the grounds, he was asked, on approaching the conservatories, whether he would not like to go in and taste the grapes. "Grapes, indeed," growled he, "did not I just now tell you I had got the gripes?"

Of his ordinary manner and appearance during the latter part of his life, we are fortunately able to present our readers with a very graphic description. What we are about to quote on this head is a short extract from the manuscript diary of a gentleman* who, at that time, passed two evenings in his society at Brighton, and appears to have directed his observation particularly towards the ex-Chancellor. The date is 1806, the year in which Lord Thurlow died:

"*Brighton*, 1806.

"We afterwards dined at ——, to meet Lord Thurlow and his daughter, Mrs. Brown. A large party were assembled there. I was never more struck with the appearance of any one than with that of Lord Thurlow. Upon entering the drawing-room, where he was seated on a sofa, we were all involuntarily moved to silence, and there was a stillness which the fall of a pin would have disturbed. He did not move when we came into the room, but slightly inclined his head, which had before hung down on his breast. He was dressed in an old-fashioned grey suit, buttoned very loosely about him, and hanging down very low; he had on a brown wig, with three rows of curls hanging partly over his shoulders. He was very grave and spoke little. His voice is rough, and his manner of speaking slow.

"Lord Thurlow is, I believe, only seventy-five; but from

* The late Edward Jerningham, Esq., the brother of the present Lord Stafford. We owe the extract to the kindness of his son, Mr. C. E Jerningham.

his appearance, I should have thought him a hundred years old. His large, dark, heavy eyes, which he fixes at intervals upon you, are overshadowed with perfectly white eyebrows, and his complexion is pallid and cadaverous. Upon literary subjects he ordinarily converses with much seeming pleasure, but having been this morning to the races, he was fatigued, and said very little. At dinner he drank a good deal, but nothing afterwards. In the course of conversation, Mr. M. [Mr. Mellish] being remarked as a great favourite of the populace, Lord Thurlow said, 'They like him as a brother blackguard;' and then added, 'I am of their opinion. I dislike your pious heroes; I prefer Achilles to Hector, Turnus to Æneas.' Lord Thurlow has a surprising memory, and will not allow of the want of it in any one else; but says that it is want of attention, and not of memory, that occasions forgetfulness. Being asked how long it was since he had been in Norfolk, he replied, 'About fifty or sixty years ago.'

"He went home very early, calling loudly for his hat, which I remarked as being of black straw, with a very low crown, and the largest rim I ever saw. It is easy to see that in his observing mind the most trifling incidents remain graven. Thus upon Lady J. being asked a second time, at the end of dinner, whether she would have any wine, Lord Thurlow immediately exclaimed, in a gruff voice, 'Lady J. drinks no wine.'

"We went to-day to dine at Lord Thurlow's, and upon being summoned from the drawing-room to dinner, we found him already seated at the head of his table, in the same costume as the day before, and looking equally grave and ill. Lord Bute being mentioned, and some one observing that his life was going to be written, Lord Thurlow sharply observed, 'The life of a fly would be as interesting.'"

Lord Thurlow died (12th Sept. 1806) not very long after the dinner-parties here described, being suddenly seized, while at Brighton, with an attack of illness which carried him off in two days. His remains were privately conveyed to his house in Great George-Street, whence they were removed to the Temple church for interment. The funeral procession was a very splendid one, and attended by a great concourse of persons, including many high in rank and office; among others,

the Lord Chancellor, the Chief Baron of the Exchequer, the Duke of Newcastle, Lord Ellenborough, Lord Eldon, and Sir William Scott, who officiated as pall-bearers. Lord Eldon was appointed one of the executors, but, we believe, refused to act as such. His talent as a lawyer had been, from his first coming into practice, fully appreciated by Lord Thurlow, who, it is said, at one time offered him a mastership in Chancery. However, his then rapidly increasing business induced him to decline the appointment.

There remains but little for us to say of Lord Thurlow as a lawyer or a statesman. Whatever capabilities he may have possessed for distinguishing himself in either character, he must of course be judged, not by what he could have done, but by what he actually did; and that, as we have already shewn, was very little. In the cabinet he was always little better than a cypher; in the Court of Chancery, if he shone with more lustre than elsewhere, he certainly was far from being a star of the first magnitude; and, even such as he appeared, he glittered in part with a borrowed light. The two Houses of Parliament seem to have afforded him the most favourable arena for displaying that native strength and vigour of mind, which to a certain extent he undoubtedly possessed; and yet, upon the whole, his career as a politician certainly cannot be said to furnish matter of panegyric. No power of argument, no command of language, no degree of ability as an orator or as a statesman, can cover over a stain, such as the want of political integrity has left upon his character. When he deserted his party to secure his place, he must have known very well that the power and the emolument he coveted could not be retained but by a sacrifice of his fair fame. That sacrifice he voluntarily and deliberately made: he paid the price, and concluded what he considered an advantageous bargain. It is now too late to dispute about the reasonableness of the contract. There is no retracting from this kind of engagement. It is like paying for admission to the theatre; when once you have entered, if you are not pleased with the performance you may retire if you please, but no money is returned. If, therefore, without fear of arousing from his grave the classic ghost of Dr. Parr, we might venture to suggest so barbarous an interpretation of the word

fortuna as that which is conveyed by the most common acceptation of our English word *fortune*, that is, wealth, we should say that in this sense, as well as in the more obvious and correct one, we may readily admit the justice of the remark applied to Lord Thurlow by the learned prefacer of Bellendenus: "Fuit ei, perinde atque aliis, fortuna pro virtutibus."

LORD ASHBURTON*.

AMONG those eminent lawyers who have been called to the bench, there are very few whose celebrity as barristers has not in a great degree merged in their celebrity as judges. Possibly the adventitious circumstances of rank and station may often have some influence in this respect, so far as regards the opinion of their contemporaries; and of course it must generally be pretty much in proportion as the attention of their contemporaries is directed towards them, that posterity will feel interest in their history, or, if they feel any, will have the means of gratifying it. There is another very obvious reason why the merits and character of the judge should be better known than those of the advocate; which is, that as the very change from the one station to the other has of itself the effect of giving authority to the opinions of him who is thus promoted, so it follows, as a matter of course, that those opinions are recorded with much greater care, and studied with much more earnestness after the change has taken place. Thus, for example, the present generation of lawyers knows very little, and probably thinks still less, of the speeches delivered at the bar by Mr. Philip Yorke, or Mr. William Murray; but many of them have almost daily occasion to renew their acquaintance with the decisions pronounced from the bench by Lord Hardwicke and Mansfield. The reputation of the advocate is even more perishable still, if his labours have not

* Although Lord Ashburton never filled a strictly judicial office, the reader, it is hoped, will not be displeased at this memoir being included in the volume.

been crowned with the reward of a judicial appointment. He dies and leaves no trace behind him, except perhaps some few floating traditions of his wit or his learning, or his other qualities good and evil, which are speedily chased from the memory by the present feats of his successors; and after the generation of his immediate contemporaries has passed away, his very name ceases to be remembered. Some there may be who have escaped this common fate; but they are far too few to disturb the general applicability of the rule. The most striking exception to it we know is he of whom we are now about to sketch a brief memoir. The long estrangement of his party from power deprived him of all opportunity of aspiring to the honours of his profession, until it was too late for him to bear them in conjunction with the duties attached to them; and the title which he then thought it worth his while to receive had none but a nominal connexion with a judicial office. His course, therefore, was run entirely at the bar; and his reputation (no mean one) depends altogether upon what he achieved within that career.

John Dunning began life without any of the advantages attendant upon birth and fortune. His family was originally from Gnatham, in the neighbourhood of Tavistock, in Devonshire*; but his father had settled at Ashburton, in the same county where he practised as an attorney. He had married the daughter of a Mr. Henry Judsham, of Old Port, in the parish of Modbury; and the fruits of the match were in all three children, the eldest of whom, a boy, died in his infancy, and the youngest, a daughter, at a more advanced age, but unmarried. The John Dunning of whom we have here to speak was his second son. He was born on the 18th of October, 1731, in the house where his father resided and carried on his business, which house is still standing, and is pointed out at this day to the stranger by the townspeople of

* The name of Dunning seems to be of some antiquity in the county. We have met with a quarto pamphlet by one Richard Dunning, bearing the date of 1686. It contains suggestions for the better and more economical management of the office of overseer of the poor in Devonshire, whereby, as the title page holds out, £9000 a year may be saved. This Richard Dunning styles himself *gent.* (*quære* one &c.) and dedicates his pamphlet "to the right worshipful and my honoured masters, the justices of the peace for the county of Devon."

Ashburton, with no little pride and complacency. They have also John Ford, the dramatic author, to boast of as a native of their town, or at least of its immediate vicinity, and of its having produced, in more modern times, two men of considerable note in the world of letters; namely, Dr. Ireland, Dean of Westminster, and Mr. Gifford, the late editor of the Quarterly Review. Each of these received either the whole or a portion of his education at the free grammar school of Ashburton. Dunning was sent thither when he was about seven years old, at a time when it had for its master the Rev. Hugh Smerdon, curate of the neighbouring parish of Woodlands; the same person by whose instructions Gifford profited some five and twenty years later, and to whose situation in the school it was at one period of his life (as may be seen in the memoir affixed to his edition of Juvenal) the utmost soaring of his ambition to succeed.

At this school Dunning remained during about five years; and whatever knowledge he acquired afterwards must have been the fruit of his own unassisted studies, for all the tuition he ever received was while he continued under the care of Mr. Smerdon. The period was short, no doubt, for a regular course of education, and, what was worse, it comprehended a very juvenile portion of his life. But such advantages as he had he certainly made the most of. Young as he was on his first entrance into the school, he very soon distinguished himself from the rest of the boys by the rapidity of his progress. His memory was so remarkably retentive, that he required only a few hours to commit a whole book of Virgil to memory. His reasoning faculty also signalized itself in his fondness for the study of mathematics, of which he very early mastered the elements. When he was little more than ten years old, he had gone through the first book of Euclid; and the diagrams, which he drew on the whitened wainscot of the school-room, were visible there for a long time afterwards. Mr. Polwhele, who has commemorated these particulars of his youthful studies in his History of Devonshire, says Dunning has often been heard to declare later in life, that he owed all his success to Euclid and Newton. Whatever intimacy he had cultivated with the last of these was not commenced, we are inclined to think, at Ashburton school.

When taken from thence, he could not have been more, at the utmost, than thirteen years of age; and he was immediately placed as an articled clerk in the office of his father, who at that time had no other views for his son than to make him first his partner and afterwards his successor. The talent and the assiduity of young Dunning caused a change in this plan. It was not very long before he qualified himself to take a leading part in the business of the office. Several monuments of his industry as a clerk are still to be met with in the neighbourhood of Ashburton, such, for instance, as family deeds and settlements, written throughout by his own hand, and bearing his signature as an attesting witness. Many pages also, of the proceedings in the parish books are of his writing, and are signed J. Dunning, junior: these occur not only during the time when he was residing in his father's house, but afterwards when he was merely making occasional visits there. He continued thus to perform the duties of a clerk till he was about nineteen, when his talent and the knowledge of law he had already acquired were discovered by one who foresaw their chances of success on a more lofty theatre, and suggested to his father the propriety of sending him to the bar. It is said that this came about in the following manner. A deed or legal instrument of some kind was to be drawn up in the office, and the task fell upon young Dunning, who completed it and sent it off in his father's absence to the person for whom it was intended, and who, being a lawyer, was to settle it himself. The old gentleman, on his return home, heard what had been done, and, full of anxiety for the credit of his office, immediately dispatched a note of apology, excusing himself for any errors that might happen to be found in the draft, on the ground of his not having had an opportunity of revising and correcting it with his own hand, the whole having been written by his son, a lad under nineteen. It proved, however, that there was no sort of necessity for excuse. No fault of any kind could be found with the draft, and indeed it was such as to give a very favourable idea of the proficiency of the youth who had drawn it. The lawyer to whom it had been sent was no other than Sir Thomas Clarke, the Master of the Rolls, who had a considerable property in the neighbourhood, and for many years had employed old Mr. Dunning

as his steward. He immediately set about inquiring further into the young man's ability, and finding the expectations which this first sample had created more than realized, he strenuously recommended the father to send him at all sacrifices to the bar, offering, if need might be, to assist him with his own purse, during the preparatory period of keeping terms. In pursuance of this counsel, young Dunning was entered of the Middle Temple.

The date of his admission, according to the entry in the Society's books, is May 8th, 1752, at which time he was in the twenty-first year of his age. The chambers he occupied, if not from his first coming into residence, at least during a portion of the time he remained a student, and for a long while after he was called to the bar, are known, by a tradition current in the Temple, to have been the second floor set at No. 1, Pump Court, on the side farthest from the cloisters. Here he laid up the greater part of those stores of legal knowledge, which afterwards stood him in such good stead, when he came to have daily opportunities of drawing upon the hoard. He is said rarely to have quitted his rooms before the evening, except when attending the Courts; the fore part of the day being entirely devoted to reading. We have no means of knowing what method he pursued in his studies, nor can it be stated with certainty, whether he pursued them entirely alone, or with the assistance of any practitioner either at or under the bar: there is reason, however, to believe that he never became pupil to a pleader, though he strongly recommends such a course to others. In a letter written by him much later in life, to a young man about to commence his studies for the bar, he gives some directions as to the choice of books, and the different means of acquiring legal knowledge, among which it is to be supposed are to be found some at least of those which he himself adopted. We shall extract a passage from this:—

"I would always recommend a diligent attendance on the courts of justice; as by that means the practice of them, a circumstance of great moment, will be easily and naturally acquired. Besides this, a much stronger impression will be made on the mind by the statement of the case, and the pleadings of the counsel, than from a cold uninteresting detail of

it in a report. But above all, a trial at bar, or a special argument, should never be neglected. As it is usual on these occasions to take notes, a knowledge of short hand will give such facility to your labours, as to enable you to follow the most rapid speaker with certainty and precision. Commonplace books are convenient and useful; and as they are generally lettered, a reference may be had to them in a moment. It is usual to acquire some insight into real business under an eminent special pleader, previous to actual practice at the bar. This idea I beg leave strongly to second; and indeed I have known but a few great men who have not possessed this advantage."

If Dunning himself contrived to attain the highest pitch of eminence as a lawyer, without this and some other helps which are now considered little less than indispensable in professional education, his initiation in the practice of an attorney's office gave him, on the other hand, a great advantage over the majority of legal students. Indeed, he had gained a long start on most of his competitors in the race. There was another young man at the same time a student in the Temple, whose career in this respect had been similar, and whose success afterwards kept pace with his own; namely Kenyon, who became the successor of Lord Mansfield in the Court of King's Bench. Dunning and he were on terms of very close intimacy. Horne, better known afterwards as Horne Tooke, who was then keeping terms at the Inner Temple, was one of their habitual associates *; and from his account of their mode of living, it appears that they all three found it advisable to circumscribe their expenses within the very strictest bounds of economy. Out of term, they used generally to dine at a small eating-house near Chancery Lane, where their meal was supplied to them at the charge of sevenpence halfpenny a head. "Dunning and myself were generous," added Tooke, when telling this to his friend Mr. Stephens, "for we gave the girl who waited upon us a penny a-piece; but Kenyon, who always

* It is a singular instance of the vicissitudes of life, that on Horne Tooke's first trial at the suit of the Attorney-General (Thurlow) he should have had Dunning for his defender; and many years afterwards (1794), on a similar occasion, Lord Kenyon for his judge.

knew the value of money, sometimes rewarded her with a half-penny, and sometimes with a promise."

For some time after his call to the bar, which is recorded as having taken place on the 2nd of July, 1756*, matters did not mend with Dunning, so far as regarded his finances. "He travelled the western circuit," says Mr. Polwhele, in his History of Devonshire, "but had not a single brief; and had Lavater been at Exeter in the year 1759, he must have sent counsellor Dunning to the hospital of idiots. Not a feature marked him for the son of wisdom." His appearance, indeed, was singularly unprepossessing. His stature was of the smallest, and his limbs, though none of them absolutely deformed (unless, indeed, considerable bandiness, and an unusual protusion of the shin bones in front, may be said to have merited that title for his legs), were ill-shaped and awkwardly put together; nor were the defects of his figure at all atoned for by any counterbalancing beauties of countenance. The feature that would most probably have produced upon Lavater the unfavourable impression above hinted at, was a short and peculiarly cocked nose, which, if we recollect right, the philosopher of Zurich upholds to be an unfailing symptom of small intellect. However, fortunately for Dunning, all men are not believers in the infallible science of physiognomy. There was one person at least, who, in spite of the turned-up nose, gave him credit for a considerable share of talent, and found means to furnish him with a very good opportunity of displaying it. This was Mr. Hussey, a king's counsel. The piece of duty for which this gentleman recommended him was not, strictly speaking, a professional one; but it had the effect of bringing his name into notice, perhaps, as much as would have been done by any exhibition which he could be likely to have an opportunity of making in the character of a junior counsel. The occasion was the adjust-

* It is manifest that there must be some mistake in the entry either of Dunning's admission or of his call, since there is a less interval than five years between the two. We lately had occasion in the case of Thurlow to notice something similar in the books of the Inner Temple. However, as there can be no higher authority than these records to appeal to, the inaccuracy, so far as we are concerned, must remain uncorrected. We have reason to think the error here is in the date of the call, and not of the admission.

ment of the disputes that had been pending two years and more between the Dutch and English East India Companies. After the final overthrow of the dominion of the French in the East, the Dutch, being naturally jealous of our greatly increased power in that quarter of the globe, and having, perhaps, some real grounds of complaint, had sent home to their government a memorial, wherein they complained of the English for having violated their privileges as neutrals, and interrupted their commerce. After some communication between the two governments on the subject of these allegations, at length, in October, 1761, Mr. Hop, then envoy extraordinary from the States, transmitted the Dutch company's memorial to Lord Bute, who forthwith directed the English company to answer it. While the Court of Directors were considering to whom it would be prudent to commit the task of drawing up the reply, Mr. Hussey presented Dunning to Mr. Lawrence Sullivan, who was at the time their chairman, and recommended him as a young man every way qualified to perform it. He was accordingly engaged to do so. The result was, that early in the following year (23d February, 1762), a counter-memorial was delivered to the king. It afterwards made its appearance in the shape of a quarto pamphlet of forty-five pages, under the title of "A Defence of the United Company of Merchants of England trading to the East Indies, and their servants, (particularly those at Bengal), against the complaints of the Dutch East India Company; being a memorial from the English East India Company to his Majesty on that subject." This has been designated as a most masterly performance, a consummate specimen of argumentative eloquence, and the like; but we must own we have found nothing in it to warrant such exaggerated praise. Indeed, the performance has appeared to us, upon the cursory inspection we have given it, to be one that might be produced by any man with a clear head and a tolerable degree of practice in literary composition; nor have we the slightest doubt that the Directors of the East India Company might readily have found (at least we are quite sure they could at present find) twenty young men to do their work equally well, without going beyond the gates of the Temple to look for them. Thus much we say, not with the view of

detracting in the slightest degree from the merit of Dunning, who executed his task well and in workmanlike fashion; but simply to put this matter upon what we conceive to be its right footing. The best eulogium that can be given to the pamphlet is, that it achieved the object it was intended to accomplish; for it produced a conciliatory answer from the Dutch government, and, what Dunning no doubt considered a much greater triumph of authorship, it procured him an acknowledgment from the seat of empire in Leadenhall-street, couched in the agreeable form of a draft for five hundred guineas.

There can be no doubt that the credit he gained, and the connexions he formed by means of this performance, had shortly a very material influence upon the amount of his practice. Previously to the year 1763, when we find him holding a junior brief with Thurlow, we have not observed his name to occur once in Burrow's Reports. After this, however, we trace symptoms of his increasing business, in some of the cases brought into the Court of King's Bench from the Western Circuit. Here, indeed, the lucky accident of a leading counsel being suddenly laid up with an attack of the gout, and entrusting him with the management of some briefs which he thus was prevented from attending to himself, had given Dunning an additional opportunity of displaying his ability. In the case of Combe v. Pitt, (Trinity term, 1763), which arose out of the election for Ilchester in Somersetshire, it fell to his task to argue a demurrer; and the ability with which he acquitted himself upon the occasion drew forth a handsome compliment from Lord Mansfield.—"The gentlemen on both sides," he said, (the other was Mr. Yates, not long afterwards a judge of the court), "had both argued like lawyers, and had uttered not a word too much or a word too little."

About this time his practice is said to have netted him nearly a thousand a year, and he had every prospect of seeing it gradually augmented, by that steady increase which almost every man of perseverance and ability may fairly count upon at the bar, when he has once got what Dunning had now obtained, but what so many of the profession are, like Archimedes, vainly looking out for all their lives, namely, a

spot whereupon to place the fulcrum. At the conclusion, however, of this year (1763), he had the good fortune to be engaged in a case, upon the event of which the attention of the whole kingdom may be said to have been most anxiously directed, and in consequence he found himself raised, at one single bound, to the eminence he might otherwise have toiled many a weary year to attain. The case we allude to was the prosecution instituted by Leach the bookseller against the messengers, who had seized his papers and imprisoned his person, under the authority of the general warrant issued by the Secretary of State, for the arrest of the persons concerned in the publication of the North Briton. For his brief in this cause he was indebted to the recommendation of his friend Wilkes. They had been on terms of intimacy from a very early period of Dunning's professional career, a time when both were frequent attendants of an evening at Nando's, George's, and the Grecian, and other coffee-houses about the Temple, which, though principally patronized by the lawyers who had their residence in the immediate neighbourhood, still retained sufficient of their former character as the resort of literary men, to secure them the occasional presence of the same class of loungers who had been wont to haunt them in the days of the Tatler and the Spectator. This was not the only occasion of Dunning's being indebted for business to Wilkes, before his celebrity at the bar had placed him above the want of any such exertion of friendship in his behalf.

The effect which we have already stated to have been produced by Dunning's holding a brief in the case of Leach, was not the immediate consequence of the original trial in December 1763. There the part he played was simply that of a junior counsel at Nisi Prius, which, as every body knows, affords little or no room for display of any kind. But a bill of exceptions against the sufficiency of the evidence then admitted by Chief Justice Pratt (Lord Camden) was tendered on behalf of the king's messengers, and errors having been assigned thereupon, the duty of arguing them in the Court of King's Bench devolved, according to professional etiquette, entirely on him. The first hearing did not come on till the 18th of June, 1765; the Solicitor-General, De Grey, appearing on behalf of the plaintiffs in error; and the second

and last, when Charles Yorke, as Attorney-General, took his place, was on the eighth of the following November. It was on the first of these days that the memorable speech of Dunning against the validity of general warrants was delivered. Scarcely any idea of it, as a specimen of eloquence, can be formed from the brief heads of the several arguments, as they are jotted down in Burrow's Reports (p. 1758), but these are quite sufficient to convey a very high opinion of his ability as a reasoner, and it is certain that he appears to advantage even contrasted with his opponent in the discussion, who was nevertheless a lawyer of acknowledged talent. From this time forward, no counsel in Westminster Hall was more anxiously sought after by clients than Dunning. He was soon afterwards chosen Recorder of Bristol; and scarcely two years and a half had elapsed, before he was selected (23rd December, 1767) to fill the office of Solicitor-General, then vacant by the promotion of Mr. Edward Willes, the son of the former Chief Justice of the Common Pleas, to a seat on the bench.

At the general election in 1768 (the same that first introduced Thurlow into Parliament), Dunning was returned by Lord Shelburne as member for Calne, for which borough he continued to sit during the whole time he remained in the House of Commons, being re-chosen at the general elections of 1774 and 1780. So long as he occupied the place of Solicitor-General, he does not appear, from any thing that remains on record, to have distinguished himself in any great degree as a parliamentary orator. Possibly he may have felt a more perfect freedom from restraint, when he was emancipated from the ties of office; or it may be that the excitement of speaking in opposition called forth his powers more fully; or lastly, the scantiness of the materials from which the Parliamentary History of that period has been compiled, may be the cause that little or nothing is known to have been achieved by him within the walls of the House of Commons, during the first two years he sat there. His formal resignation of office took place some little time after the accession of Lord North to the premiership; but he had refused to act, even before the total dissolution of the Duke of Grafton's administration. His successor, Thurlow, was not appointed till March 1770; and Dunning, not having previously taken the

rank of king's counsel, when he appeared in court on the first day of the following Easter term, had donned anew the stuff gown, and was fain to take up his old place outside the bar. However, if he felt any annoyance from this change of position and costume, the courtesy of Lord Mansfield immediately relieved him from it; for, after he had taken his turn to move, his lordship informed him, that in consideration of the office he had held, and of his extensive practice, the Court intended thenceforward to call upon him for his motions immediately after the serjeants and the Recorder of London. The two seniors of the outer barristers, Mr. Caldecott and Mr. Cox, expressed their concurrence in this arrangement, and indeed said they had had it in contemplation to propose something of the kind themselves.

What amount of business Dunning had by this time acquired may be seen by the constant recurrence of his name in the law reports of the period. His professional gains had come to average full ten thousand a year; and as he was frequently known to conduct causes gratuitously, when the interest of indigent or oppressed parties were confided to him, we may easily conceive that he had quite as much upon his hands as he could contrive to attend to. By his own account he had even more. He one day told a friend, who was inquiring how he managed to get through the immense quantity of business that was thrust upon him, that some of it did itself, some he did, and the rest remained undone. However, if any of it really did fall into the last predicament, it was not because the fee was a small one, and that papers better indorsed claimed a precedence; for Dunning has always been especially praised for the impartiality with which he bestowed the requisite attention on every case he undertook; making not the slightest distinction (and some counsel are apt to make a great deal) between the most profitable and the least. Before the Courts in banc and at nisi prius he was equally, both as to practice and ability, the leading common-law barrister of Westminster Hall; and it was a question with many, in which situation of the two he appeared to the greatest advantage. He had all the legal learning and the sound logic which could qualify him for shining in the first; and he wanted not the acuteness, the wit, or the eloquence, that may

be displayed in the second. In legal argument, though his diction was more concise than in his addresses to juries, he seldom neglected a single topic that could be adduced in his favour, and rarely sat down without having completely exhausted his subject; leaving little else for the junior, who had to follow on the same side, but repetition. His fluency was almost unbounded. Such an accident as stopping short for want of words was unknown to him; for if by chance it so happened that the appropriate expression did not suggest itself to his mind simultaneously with the idea, and he was for the moment at a loss, he had the art never to betray the embarrassment by hesitation, but to repeat part of the last sentence he had uttered, as if merely for the sake of impressing it with greater earnestness; in the course of which process, brief as it was, he had full time to find the word he was in search of. With all this, his utterance was extremely rapid; and yet it is a singular fact, that while many distinguished orators in the habit of speaking very slowly, Mansfield and Thurlow for instance, have been remarked to commit frequent inaccuracies of grammar, the extreme volubility of Dunning scarcely ever betrayed him into any. His diction was for the most part neat and perspicuous; and though occasionally a sentence might be lengthened out into parentheses one within the other, or so involved in quaint turns as to form a labyrinth whence none of his hearers could see the outlet, he had a peculiarly happy facility in finding the close. In short, his periods might dangle in the air ever so long, but in the end were sure to fall to the ground, and fall too upon their legs. This kind of sentences occurred just often enough in his discourse to give the whole the air of entire extemporisation, which the generality of Dunning's auditors never doubted his speeches to be, and which in the common routine of cases they no doubt were. We need hardly say how important a quality is the appearance of improvisation in public speaking.

To this sketch of his style of oratory, we will here add an extract from a character of Dunning, written by Sir William Jones. If any thing should appear exaggerated in the passage we mean to quote, (the account of his wit, for example), it will be only necessary to recollect that Dunning had been the friend and patron of the author.

"His language was always pure, always elegant, and the best words dropped easily from his lips into the best places, with a fluency at all times astonishing, and when he had perfect health, really melodious. His style of speaking consisted of all the turns, oppositions, and figures which the old rhetoricians taught, and which Cicero frequently practised, but which the austere and solemn spirit of Demosthenes refused to adopt from his first master, and seldom admitted into his orations, political or forensic. Many at the bar and on the bench thought this a vitiated style; but though dissatisfied as critics, yet, to the confusion of all criticism, they were transported as hearers. That faculty, however, in which no mortal ever surpassed him, and which all found irresistible, was his wit. This relieved the weary, calmed the resentful, and animated the drowsy; this drew smiles even from such as were the object of it, scattered flowers over a desert, and, like sunbeams sparkling on a lake, gave spirit and vivacity to the dullest and least interesting cause. Not that his accomplishments as an advocate consisted principally in volubility of speech or liveliness of raillery. He was endowed with an intellect sedate yet penetrating, chaste yet profound, subtle yet strong. His knowledge, too, was equal to his imagination, and his memory to his knowledge. He was no less deeply learned in the sublime principles of jurisprudence and the particular laws of his country, than accurately skilled in the minute but useful practice of our different courts. In the nice conduct of a complicated cause, no particle of evidence could escape his vigilant attention, no shade of argument could elude his comprehensive reason: perhaps the vivacity of his imagination sometimes prompted him to sport where it would have been wiser to argue; and, perhaps, the exactness of his memory sometimes induced him to answer such remarks as hardly deserved notice, and to enlarge on small circumstances which added little to the weight of his argument; but those only who have experienced, can in any degree conceive, the difficulty of exerting all the mental faculties in one instant, when the least deliberation might lose the tide of action irrecoverably. The people seldom err in appreciating the merits of a speaker; and those clients who were too late to engage Dunning on their side never thought themselves

secure of success, while those against whom he was engaged were always apprehensive of a defeat."

To the highest flights of impassioned eloquence, such as the genius of Erskine revelled in, Dunning never soared, nor attempted to soar, either in Courts of Justice or in Parliament. He cannot therefore be ranked in the first class of orators; but in the second he deserves a conspicuous place. Nothing gives us a stronger impression of the intrinsic merits of his speeches, than the fact that the soundness of the arguments and the vivacity of the illustrations could convince and charm his audience, notwithstanding such disadvantages of action and delivery, as certainly nothing but extreme excellence of matter could possibly overcome. We have already given some notion of his figure. Then his voice, notwithstanding what Sir William Jones says of it, was peculiarly bad, and was moreover almost always obstructed by a kind of complaint he was continually labouring under, especially after he became rather advanced in life; which complaint, whether an affection of the lungs, or whatever else, resembled in its effects a perpetual cold. To such an extent did this latterly operate, that in the House of Commons, the members used to be forewarned of his intention to address them, by a much more disagreeable mode than was wont to be practised in the days of Elizabeth by old Sir Nicholas Bacon, who, when he had got fat and pursy, used to announce the recovery of his breath, exhausted with ever so short a walk, simply by striking forcibly with his staff. The herald of an approaching speech from Dunning was a series of sonorous efforts to clear his throat, which, after all, he could not succeed in relieving from more than a small portion of the huskiness that choked it. So far, all his disadvantages were his misfortune, and not his fault. For his action in speaking he alone was to blame, except perhaps for one singularity in it (which might be a physical defect, and probably was, since it increased as he grew older and of more feeble health), a constant shaking of the head, very similar to the motion of one afflicted with the palsy. But the mode in which he used to dispose of his hands was altogether his own. He constantly drew them up close together to the height of his breast, whereupon resting his wrists, he kept up a continual

paddling with his outspread palms, moving them with a rapidity corresponding to the motion of his tongue. We have heard it said by those who have seen him while thus employed, that his whole appearance reminded them of some particular species of flat fish (we believe the maid), which may occasionally be seen hanging alive outside the fishmongers' shops in London, the body wholly motionless, but certain short fins in front vibrating up and down unceasingly. To others the exhibition suggested the idea of a kangaroo seated on its hind legs, and agitating its fore paws in the manner that animal is wont to do. All, however, add, that it was only at the first glance they were susceptible of any thing about him approaching to the ridiculous. After listening to him for a very few minutes, the attention became wholly engrossed by what he said, and all consciousness of his awkward gesticulations was entirely absorbed in the interest aroused by his discourse. This, as we have already declared, we consider the most satisfactory testimony to the greatness of his oratorical powers.

In Court, Dunning was too often in the habit of displaying that sort of overbearing and arrogant manner into which successful counsel are so apt to be betrayed, a fault that once subjected him to a punning rebuke from the witty Solicitor-General, Lee, best known among his professional brethren by the familiar appellation of Jack Lee. Dunning was relating to him how he had just completed the purchase of some capital manors in his native county. "Ay, in Devonshire," said Lee; "but what a pity it is you have no good manners in Westminster Hall." Sometimes he was touched upon a more tender point, one, indeed, on which he was peculiarly alive to the flattering suggestions of his own vanity; and this, incredible as it may appear, was the attraction of his person, of which he entertained any thing but an unfavourable opinion. The fact may justify, if any thing ever could, the exclamation, "*où Diable la vanité va-t-elle se nicher!*" but so it was, that no handsome young coxcomb of nineteen was ever more proud of his beauty, and no young lady of the same age more fond of admiring the reflection of her own features in the looking glass, than was Dunning. He was particularly fond of having it believed that he was a favourite

with the sex, and that he owed their good graces, not to the capacity of his purse, (which occasionally did in fact put him upon a tolerably good footing with the venal fair), but solely to the irresistible charms of his face and figure. Many of our readers have probably heard it related, how he was endeavouring one day to persuade some of his friends that a celebrated Cyprian, then lately dead, had entertained so lively an affection for him, as to have been holding a letter of his in her hand at the moment she expired; and how Foote, who was present, accounted for the circumstance by specifying the peculiar act and position in which, as he would have it, she gave up the ghost. We do not care to particularize the details of this anecdote more minutely. It was of certain rebuffs he is reported to have encountered in Court, that we were about to tell; and the following may serve for a sample of the consequences he brought upon himself by an unsuccessful attempt at browbeating a witness.

It was in a crim. con. case, where he was retained for the defendant. To prove the fact of adultery, the lady's maid had been called, and had deposed to the having seen the defendant in bed with her mistress. When it came to Dunning's turn to begin the cross-examination, he desired the witness, in a stern tone, to take off her bonnet, that he might have a full view of her face, and convince himself by her looks whether she was speaking the truth. The girl happened to be an abigail of that description which the inimitable Molière has so well pourtrayed in the persons of his Lisettes and Toinettes, so it may be imagined she was not easily to be abashed; and having a pretty face to shew, she felt not the slightest objection that bench, bar, attorneys, jurors, and by-standers should command a full view of it. When the bonnet was removed, Dunning began, and endeavoured to shake her testimony as to the identity of her mistress's bedfellow:—

"Was she sure it was not her master she had seen in that conjugal capacity?"

"Perfectly sure."

"What! did she pretend to say she could be certain, when the head only appeared above the bed clothes, and that enveloped in a nightcap?"

"Quite certain."

"You have often found occasion then to see your master in his nightcap?" continued the questioner.

"Yes, very frequently."

"Now, young woman, I ask you upon your oath, does not your master occasionally go to bed with you?"

"Oh!" answered Toinette, nothing daunted, "that trial does not come on to-day, Mr. Slabberchops."

A loud shout of laughter all around achieved the discomfiture of Dunning, who had nothing for it but to adjust his bands, change the position of his wig, and look very foolish. Lord Mansfield leant back on the bench in an uncontrollable burst of mirth, and he had not more than half recovered the judicial gravity of tone, when he asked whether Mr. Dunning chose to put any more questions. A short negative was the answer.

Another instance has been recorded of a shock to his personal vanity, which was perhaps the more effective, that it was given apparently without intention, and in perfect simplicity of heart. An old woman, a witness in an assault case, administered this bitter dose. Here, too, his object was to invalidate the evidence as to the identity of a party; but here he went about it with such gentleness. Something like the following dialogue took place between them:—

"Pray, my good woman," he said, "are you very well acquainted with this person?"

"Oh yes, your worship, very well indeed."

"Come now, what sized man is he? Is he short or tall?"

"Quite short and stumpy, Sir; almost as small as your honour."

"Humph! What kind of nose has he?"

"What I should call a snubby nose, Sir; much such a one, just for all the world, as your own, Sir, only not quite so cocked up like."

"Um. His eyes?"

"Why he has a kind of a cast in them, Sir; a sort of squint. They are very like your honour's eyes."

"Psha! You may go down, woman."

Those personal graces, whereof Dunning was so proud, were once exhibited before a very dignified and brilliant concourse of spectators, in a manner with which we should think

the possessor of them must have had small reason to be pleased. He took it into his head, it seems, to employ the leisure of a long vacation in an expedition to Berlin, and accordingly provided himself with the necessary introductions for appearing with advantage at the court of Frederick the Great. His companion in this expedition was Colonel Barré, his colleague in the representation of the borough of Calne. Both were of course presented to his Majesty by their proper titles; and the military monarch, unconscious of the meaning of the word Solicitor, or thinking, perhaps, that Solicitor-General was English for major or lieutenant-general, gave the distinguished British warriors, as he took them both to be, a highly flattering reception. Of course, to such guests no species of entertainment could possibly give more gratification than a review; and to a review they were invited, a notification being sent them at the same time that they need be under no anxiety as to their equipage or appointments, as the royal stables would furnish them the means of appearing on the ground in a manner suitable to their rank. To keep up the proper dignity of this rank, Dunning attired himself on the appointed morning in full court suit, bag wig, dress sword, and buckles of extreme resplendency both on shoes and garters. When the time came for setting forward, he descended to the door of his hotel, prepared to assume a becoming attitude in the carriage he expected to find in attendance; but what was his astonishment and his dismay, when, instead of landau, chariot, or barouche, he beheld two orderly dragoons holding by the bridles as many snorting chargers, caparisoned for the field, and pawing the ground with impatience to start for the scene of action! We may easily believe Mr. Solicitor's heart sank within him at this sight. But time pressed: Colonel Barré was already in the act of mounting; the king and his tall grenadiers could not be kept waiting, and there was no alternative but to trust his person to the precarious mode of conveyance at hand. It is the mark of a superior mind, they say, to be capable of framing sudden resolves for unexpected emergencies: so, seeing there was no help for it, he, after some little delay, manfully made up his mind for the worst; and with the assistance of some strenuous legging-up, as it is

called, from the dragoons, he at length found himself ensconced in the hollow of a demi-pique saddle. Fortunately for him, the topling cantle behind, and the equally lofty pommel, to say nothing of the holsters, in front, between which his diminutive person was more than half buried, wedged him in sufficiently close to secure him from any immediate apprehension of encountering the hard fate that befel Judge Twisden of yore. But against the destiny of John Gilpin these were no protection; and the good citizens of Berlin were indulged that morning with much such a spectacle as was formerly enjoyed by those who dwell between Edmonton and Ware. The mettlesome steed was quicker than his royal master had been, in apprehending the unmilitary character of the rider who now bestrode him; and taking his own way without restraint, went curveting and prancing along, till he arrived at his wonted station in the field, near the person of his Majesty. Dunning was by this time convinced that it was a much easier task to jockey juries than chargers, and that however skilful he might have approved himself in the first of these offices, he had no vocation for the last; wherefore, wisely resolving to desist, while it was yet time, from such adventurous pursuits, he besought his friend Barré, or some other benevolent person, to rescue him at once from his perilous situation. When the king and the officers about him had done laughing at the ludicrous exhibition, his majesty very naturally inquired how it came to pass that an English general could be no better equestrian than our dismounted hero; and he then, for the first time, learnt that we islanders have generals in Westminster Hall, as well as at the Horse Guards.

The length to which we have unwittingly extended the relation of these casual mishaps, may serve for an illustration of the well-known truth, that misfortunes, whether severe or trivial, in the history of nations or of individuals, generally furnish more matter for the recollection than uninterrupted prosperity. It will cost us comparatively but very few words, to commemorate the uniformly dignified course held by Dunning as a member of the House of Commons. With the exception of Lord Mansfield, before he was called to the bench, we know of no lawyer of the last century who commanded so

much respect and attention in that assembly. On all the legal and constitutional questions (and they were neither few nor unimportant) that came under the consideration of the House, while he had a seat in it, his professional character naturally imparted the greatest weight to his opinions. But it was not on these subjects alone that he was listened to with deference. In discussions on matters of domestic or foreign policy, he approved himself equally capable of conceiving luminous views, and of supporting them by forcible arguments; nor were there many statesmen by profession, devoting their whole time and care to the consideration of those matters, whose notions upon them were heard more attentively, or looked up to as of higher authority. Sitting in Parliament, as he always did, in the character of a representative for a borough of Lord Shelburne's, he of course attached himself to the party, or rather the section of a party, of which that nobleman was considered the chief; in other words, he professed himself generally a Whig, but took service under this one in particular of the several banners that were unfurled in opposition to the Tory government. By his own account, however, which there is not the slightest ground for suspecting to be other than strictly true, his connection with his immediate leader had nothing of the servile character that sometimes marks such alliances. In vindicating his colleague, Colonel Barrè, from the charge which was made against him in the warm debates of 1780, of being a dependant on Lord Shelburne, he took occasion to disclaim, both for the colonel and himself, any less honourable relation than such as was a consequence of his lordship's friendship and intimacy, which both equally enjoyed.

"If that intimacy and friendship," he said, "be a state of dependence, I am happy in classing myself among that noble lord's dependants. I will assure those, who have alluded to what they call dependence, that it is a state of dependence accompanied with perfect freedom. It is true my honourable friend has been honoured with the noble lord's friendship for upwards of twenty years; but I think I know the frame of mind and disposition of my honourable friend too well to be persuaded that he would purchase any man's intimacy upon

any terms short of perfect equality and mutual confidence; and I think I may likewise add, that if any person should attempt to purchase the noble lord's friendship by mean or improper concessions, there is not a man on earth who would more readily see through or despise it."

Many of Dunning's speeches in the House of Commons are reported with more or less fullness in the Parliamentary Debates; but it would scarcely be fair to form an estimate of his ability as a parliamentary orator, solely from the examples there preserved. One of his finest speeches, and, if we are to believe contemporary opinion, one of the finest specimens of argumentative eloquence ever delivered in the House, was his defence of the remonstrance against the conduct of ministers, made by the City of London, just before he had formally resigned the office of Solicitor-General: yet of this no record whatever remains. As an acknowledgment of their admiration and approval of his exertions on this occasion, the City voted him the freedom of the corporation. Another of his speeches made about a year afterwards, in which the same body had reason to feel deeply interested, was that against the motion, in the case of Crosby, that the Lord Mayor and one of the Aldermen should be sent to the Tower, for having obstructed the execution of the speaker's warrant. One of the principal arguments he employed against the right of the House to punish the breach of privilege, would probably have found more favour at present than it did at the time. This was neither more nor less than a bold denial of the assertion that the voice of the House of Commons was the voice of the people of England—a specious fallacy, which the enumeration of a few facts concerning the representation enabled him to expose as such.

As a leading member of the opposition to Lord North's ministry, it is needless to say that Dunning denied the justice and the policy of the war with America. Indeed, some of his happiest efforts as a political orator were called forth by the discussions upon this subject. Nevertheless, towards the conclusion of the hostilities, in 1782, when all chance of ultimate success against the colonists had come to be considered hopeless, he considered himself justified by the usual practice

of parliamentary tactics, in protesting against the recognition of the independence of the United States; the measure being proposed while Lord North was still clinging, with unabated tenacity, to his seat on the Treasury bench. He might have been the more anxious upon this occasion to adhere strictly to the prudent maxim of not throwing a single chance away, since the object he was then pursuing, the dislodgement, namely, of the imperturbable premier from his post, had been two years before apparently within his reach, and had eluded his grasp at the very moment when it seemed as if nothing within the range of probability could wrest it from him. It was in the session of 1780 that he achieved the signal triumph over Ministers, which had been looked upon as so certain a prognostic of their total defeat. The opposition had been already gaining ground for some time previous, in their endeavours to bring about an economical reform; they had just procured the abolition of the Board of trade and plantations, and they had forced from Lord North a bill for the revision and better regulation of the public accounts. Following up this incipient success, Dunning, on the sixth of April, brought before the House his memorable motion, that the influence of the crown had increased, was increasing, and ought to be diminished; and after an animated debate, during which no member on either side played a more prominent part than himself, he had the satisfaction of carrying it by a majority of eighteen. With this motion had been coupled a supplementary one, asserting the competency of the House to correct abuses in the expenditure of every branch of the public revenue, including that of the civil list; and within a few days he brought forward another proposition, to the effect that, in order to preserve the purity and independence of Parliament, exact returns should be made at the commencement of every session, specifying what sums, in the shape of salaries or pensions, were received, and on what account, by any member of the House of Commons. It may appear at first sight that this was merely a corollary of the foregoing resolution, and must have been supported by all who had lent their votes to it. Here, however, the majority dwindled down from eighteen to two, so that Dunning and his party had little more to boast of than a drawn battle. Their

next engagement ended in their utter defeat. On the twenty-fourth of the same month, Dunning, still acting as general, took the field with a proposal for an address to the King, praying against a dissolution or even a prorogation of parliament, until such time as the grievances complained of in the numerous petitions before the house were redressed. But Lord North had now marshalled all his forces for the encounter, and had moreover recruited them with a tolerable number of deserters from the opposite camp; the result of which was, that a majority of fifty-one proclaimed him the conqueror. Dunning afterwards returned to the charge, with a motion for the confirmation of a vote passed by the whole House in committee, to prevent certain officers of the royal household from sitting in Parliament; but the fortune of war still went against him, and his discomfiture was completed by a majority of forty-three on the other side.

The spring of 1782, however, opened a brighter prospect for the Whigs. Notwithstanding the intelligence of Lord Cornwallis's surrender at York Town, Lord North had contrived to open the session by carrying the address with a majority of eighty-nine; but this was a short-lived success. The motion brought forward by the opposition on the fifteenth of March following, that the House had no further confidence in ministers, was negatived by a majority of nine only; and on the twentieth, the premier interrupted the discussion on a motion of similar import, by acquainting the house that he had resigned. Place, power, and profit, were now at the disposal of the Whigs; and what a scramble there was among them for the spoil of their adversaries, needs not to be here commemorated. As it was understood that Lord Shelburne, though nominally only one of the Secretaries of State in the new administration, was to have an equal degree of power with the Marquis of Rockingham, who became first Lord of the Treasury, Dunning had the start of his competitors in the race for preferment, and he straightway laid his clutch upon a coronet. His patent of peerage bore the date of April 8th, 1782, the title being Lord Ashburton, of Ashburton, in the county of Devon. If we are to believe the assertion of Sir Nathaniel Wraxall (not always a very safe authority), the

negotiation with the king for this dignity was made by Lord Shelburne without the privity of his colleague, who had no notice of any intention to confer it till the new peer kissed hands upon his creation; and, in order to put himself on a level with the Secretary of State, the Marquis of Rockingham demanded that Sir Fletcher Norton should, at his recommendation, be forthwith, and without the delay of the usual forms, advanced to the same rank, which demand produced his immediate elevation to the barony of Grantley.

In less than a week after this accession of rank (13th April) Dunning became Chancellor of the Duchy of Lancaster, thereby securing to himself a seat in the cabinet. Had he chosen to stop short here, we should have little or nothing to animadvert upon in the use he made of his influence as a member of the new administration. It is true the suppression of this very post had been over and over again recommended by himself, as well as by all those who had advocated Burke's system of economical reform; and indeed the whole of the appointments connected with the Duchy had been denounced by them, as useless and burthensome to the nation. However, we all know by experience the difference which, perhaps in some degree necessarily, exists between the line of conduct adopted by a party when it is in power, and the course it recommends to its adversaries when it is in opposition. We might therefore make allowances for the Rockingham cabinet, so far as regards their declining to suppress these places, at least immediately after their accession to office; and since, so long as the places remained, they must be filled, it would be easy to justify Dunning for appropriating one of them to himself. But this did not satisfy him. No sooner had the death of the Marquis of Rockingham secured to Lord Shelburne the post of premier, than he put in his claim for a pension, and saddled the nation with a burden of 4000*l.* a year. Now, against the manifold abuses of the pension list no one had declaimed more strenuously than himself. The subject had not very long before been brought under the consideration of Parliament and of the public; quite as much warm and even vehement discussion had been excited by it as has been done of late (by the bye with about as much effect); and in scarcely

any other debates had Dunning taken a more prominent part, bringing argument and satire, and every other engine of eloquence he had at command, to bear against the misappropriation of the public money. He now thought fit to give the lie to all his former professions. And what excuse had he to urge for so glaring a want of consistency? Was he needy; in absolute want of money? He had realized an ample fortune. Had he made any sacrifices to the state, that could authorize him to claim a compensation from its purse? He had but newly possessed himself of a lucrative public appointment, and that a sinecure. Put the case as we will, we can say no better of it than that, in grasping at this pension, he did that which was an act of meanness as a private man, and of profligacy as a public one. This may appear too severe a judgment to those (and we know them to be a very numerous class) who are accustomed to consider that fault sof this kind, which so many have committed and do still continue to commit, must needs be very venial backslidings. If this principle were to be generally applied, there certainly would be very few crimes, of however deep a dye, which might not easily be softened down into excusable errors. For it is unfortunately but too true, that if precedents were allowed to be as good authority for dishonest and unworthy acts as they are for legal acts, a goodly host of them might be produced to justify almost every enormity that ever has or can be perpetrated. Nobody, however, thinks in private life of justifying the commission of a crime by the frequency of its occurrence, and we search in vain for a reason why that which is not admitted to be an excuse, nor even a palliation, in ordinary delinquencies, should be so held in those of public men: why, in short, there should be one measure for private and another for political morality. What is right and what is wrong must be so in both, intrinsically and absolutely. To discriminate the right from the wrong is a task within the capacity of every one; so ample are the rules by which the judgment is guided in the process. By those rules must Dunning's conduct in this affair be tried; and, being so tried, we repeat without hesitation, that it will be found such as we have just designated it.

To comment upon this unworthy termination of a political career otherwise honourable, is no very agreeable duty; and we turn from it with pleasure to mention a few further particulars of Dunning's private life. While he remained a bachelor, which was till he was very near fifty years of age, though his professional engagements engrossed too much of his time to leave him any great deal of leisure at his command, yet the little he could procure he contrived to turn to such account as made it equivalent to a larger quantity. During his intervals of relaxation, he mixed freely with the world, and had access to the best society of London. Besides the acquaintances his standing as a leading member of the whig party procured him, he was intimate with some of the principal literary characters of his day. He was a member of the Literary Club, and occasionally gratified Johnson by becoming one of his listeners at the weekly meetings. When Boswell once related to his oracle, how Dunning had professed to take a pleasure in hearing the words of wisdom that used to fall from him, and, in communicating the intelligence, modestly insinuated that from such a man this was a flattering compliment, the Doctor complacently observed: "Yes, sir, this is a great deal from him. Here is a man willing to listen, to whom the world is listening all the rest of the year." The same worthy gossip who records this, has mentioned Johnson's taking notice that Dunning had not entirely freed himself from all remains of provincial accent. "Sir," he once said, "when people watch me narrowly, and I do not watch myself, they will find me out to be of a particular county: in the same manner Dunning may be found out to be a Devonshire man."

We have already made mention of Dunning's early intimacy with Horne Tooke. This philological politician, in 1778, addressed to him his letter on the English particle, which he afterwards expanded into the larger work known by the title of Επεα πτεροεντα, or the Diversions of Purley. With some other men of letters, who were also men of pleasure, he lived at different times on equally intimate terms. Such, for instance, were Samuel Foote and Arthur Murphy, the last a member of his own profession, and at one time not altogether

unsuccessful at the bar, though, upon the whole, better known in the theatrical green rooms than in Westminster Hall. It might be to his intimacy with Foote that Dunning owed a kind of antipathy to Garrick, who was seldom or never on the best of terms with the rival manager. It is reported by Mrs. Serres, in the life of her uncle Dr. Wilmot, that he was one evening sitting with the Doctor at Nando's, when the great actor came in, and, seating himself in an adjoining box, called for his wine in a loud and pompous tone Hereupon the Doctor observed, "The vagabond smells of his trade."—"No, d— him," (we quote literally) said Dunning, "he stinks of his king of shreds and patches."—"True," rejoined the other, "he is the prince of pismires." All this was overheard by Garrick, as probably the speakers intended it should be; and he took his revenge by asking the waiter "who were those fellows in the next box?" According to our authority, however, Dr. Wilmot here introduced such a cutting observation (though we confess we are dull enough not to perceive the point of it) that the discomfited hero of the sock and buskin immediately "sneaked out of the room," and made his appearance there no more that evening.

While Dunning's practice was not so extensive as always to occupy his evenings, he used to be in the habit of associating with such companions as these at Nando's, or George's, or the Grecian, whither he generally resorted, after the business of the day was over, to indulge, like North, in "a petit supper and a bottle." Afterwards, when his increasing professional engagements, and his duties as a member of the House of Commons, left him little or no opportunity for this kind of relaxation, he used to make up a party of his friends, and carry them down with him on Saturday to his house at Fulham, whence they would all return to town together at an early hour on Monday morning. His style of living was liberal, and his entertainments were such that those who had once partaken of them generally cared not how soon they were invited to do so again. We never, indeed, heard of any one to whom his hospitality gave dissatisfaction, excepting his mother. The old lady was a thrifty housewife, and had trained up her boy John in the ways of strict frugality, a fact whereof some

amusing illustrations are still traditionally preserved among the townspeople of Ashburton. Although, therefore, she knew him to be in the receipt of some 10,000*l.* a year or thereabouts, she fully expected that he would still adhere to the good principles of economy her maternal solicitude had instilled into him when a youth. What then was her amazement and indignation, on making a visit to London, and finding herself, for the first time, seated at the head of her son's table, with a party of his friends around, to behold dish following dish, course succeeding course, and costly wines flowing in abundance, to find plate, attendants, in short every essential of a well ordered dinner party, provided with a profusion that appeared to her the last extreme of prodigality. If her son expected to be complimented by her on his style of living, he was grievously disappointed; for the first opportunity she could find of speaking with him in private, she employed in giving a full vent to her displeasure. It was to no purpose that he assured her his income was fully adequate to the maintenance of such a table. She would believe no such thing. Two tureens of soup, and two dishes of fish, for one dinner, she said, would in time be the ruin of him, or of any one; no fortune could support such shameful extravagance; and if he persisted in such doings, she declared she could not find in her heart to stay and witness them.

We know not whether, as the wife of an attorney, she would have been equally disposed to disapprove of what might appear another scandalous instance of her son's inattention to his own pecuniary interests,—his refusal to concern himself with an action at law for the redress of an injury done to his property at Fulham. A neighbouring proprietor had cut down a tree which had its root in Dunning's premises, and the lawyer's gardener had boasted of the ample retribution that his master, above all other men, could and would take for so barefaced a violation of his rights. To the astonishment, however, of this zealous servant, his master flatly refused to take any share in the management of the law-suit, if law-suit there must be. He did not, it is true, go quite so far as another eminent lawyer, who used frequently to declare that if any one should set up a claim to the coat on his back, he

would not only immediately give it up, but would surrender the waistcoat with it as a compensation for any other contingent claim, rather than contest the matter in an action. But if it became absolutely incumbent on him to seek redress from the Courts, he was at least wise enough not to place himself in the predicament of those who are proverbially admitted to have fools for their clients; that is, who conduct their own causes.

The satisfaction which Dunning's father naturally felt at his son's advancement, was not diminished even by the drawbacks that threw such a weight upon his wife's spirits. The fondest hopes of his parental ambition had been fulfilled; and we much doubt whether the son himself received half so much gratification from the wealth and the fame he was daily acquiring, as did old Mr. Dunning, the attorney of Ashburton. It is told of him, that during one of his visits to town, he called at the treasurer's office in one of the Inns of Court, to sign the usual bond for some young friend of his who was just entering into commons there; and the subtreasurer, on seeing his name, asked him if he was any relation to the great Mr. Dunning. The glow of honest pride instantly suffused the cheek of the old man, and drawing himself up to his full height, he answered with a slight faltering of his voice, "I am John Dunning's father, Sir."

The elder Dunning lived till the beginning of December, 1780. Not long before this, his son, being then between forty-eight and forty-nine years of age, bethought him, no doubt, that if he intended to provide himself with a wife he had not much time to lose, and accordingly married (March 31st, 1780), Miss Elizabeth Baring, the daughter of Mr. John Baring of Exeter, who was or had been a retail trader, though his son then represented the county of Devon in Parliament. By this lady he had two boys; John, born in October, 1781, and Richard Barré in September the year following; but the eldest of them only lived to the age of eighteen months. The death of this son (April, 1783) is said to have had a very material effect upon the health of Dunning, who was devotedly attached to both his children: at all events, the complication of maladies of which the seeds

may be said to have formed part of his physical organization, and which shortly afterwards brought him to the grave, appeared to acquire new strength from the shock of this domestic misfortune. He had been in the habit of repairing the wear and tear of his constitution by an annual residence of as many weeks as he could spare at Teignmouth, which was his favourite watering-place; and there, by the way, the house he used to inhabit (now tenanted by a chemist and druggist), is still shown as one of the lions of the town. The illness under which he now laboured was beyond the reach of art, and he was advised as a last resource to try once more the effect of the sea breezes of his native county. Travelling accordingly by easy stages, on his first day's journey from London he went no farther than Bagshot. By a singular coincidence, it happened that Wallace, the attorney-general, an almost equally celebrated lawyer, once his competitor in Westminster Hall, and his opponent in the House of Commons, but then, like himself, posting rapidly towards the grave, was on his way to London for the benefit of the best medical advice, and had just alighted at the same inn. Their meeting was, it may well be supposed, a melancholy one; but they passed the evening together with such an approach towards conviviality as the state of their health would allow, and then separated to meet no more. Wallace pursued his route to London, where he lingered on till the following November: Dunning repaired to Exmouth, and there on the eighteenth of August (1783) he terminated his mortal career.

His remains were interred in the parish church of Ashburton, where a handsome monument has been erected to his memory. The title devolved upon his infant son, together with a very considerable landed property in the neighbourhood of Ashburton. Spitchweek, the seat, which is only four miles from the town, on the banks of the river Dart, and near the borders of Dartmoor, had been purchased by Dunning, on very advantageous terms, of the Cresswell family, together with Bagter (a manor of itself, within the manor and parish of Ilsington, near Ashburton), once the inheritance of the Fords, and the birth place of the dramatic poet of that name. We believe a considerable portion of this estate will revert in

about twelve years hence to the possession of the Cresswells. Besides all this landed property, Lord Ashburton left about a hundred and eighty thousand pounds in money. The title is now extinct, the successor of the first lord having died some years since without heirs.

It is said that the attorney who had the arrangement of Dunning's papers immediately after his death, discovered among them a proof-sheet of Junius's Letters, corrected in his hand-writing; and Dr. Tucker, of Ashburton, has put forth a pamphlet with the intent to prove that he was actually the author of them. Mrs. Olivia Wilmot Serres, too, in the publication wherein she claims this distinction for her uncle, Dr. Wilmot, says she has no doubt, from letters found among his papers, that both Dunning and Lord Shelburne were in the secret of the authorship at the time of the publication. This last assertion is certainly more feasible than the hypothesis of Dr. Tucker, and is quite compatible with an averment often made by the late Lord Lansdowne (Shelburne), that Dunning wrote not one word of the letters; but the authenticity of her statement must of course depend upon the fact of Dr. Wilmot's being the real Junius; a fact which the public, we believe, have somewhat ungallantly refused to take upon trust from his niece. We are not about to plunge into the depths of this intricate controversy; nor indeed do we consider it at all necessary, in order to show that Dunning was not the man. That Junius cannot have been a professional lawyer appears, as Mr. Butler has very aptly remarked, from the inaccuracy of his legal expressions; as, for instance, where he says that "the King, Lords, and Commons are the trustees, not the owners of the estate; the fee simple is in the people;" whereas in all trusts of the inheritance, the fee simple is in the trustees. To this we shall only add that Junius's first letter is dated January 21st, 1769, that Dunning was at that time Solicitor-General, and that he did not resign his office till more than a year afterwards.

Another work of very minor importance has been supposed to be in part the composition of Dunning; an octavo pamphlet of fifty-three pages, dated April, 1764, bearing the title

of "A Letter to the Proprietors of East India Stock, on the subject of Lord Clive's Jaghire." There is not, however, the shadow of an authority for attributing any share in this production to him; though it is not difficult to conceive how the notion may have first arisen, from his being avowedly the writer of another pamphlet on East India affairs. That pamphlet is, so far as we know, the only authenticated work of his pen. If he ever had the taste, he never could spare the time for literary composition; and accordingly his fame, unsupported by durable monuments of genius, is of that perishable character which we represented at the outset as the general lot of the most eminent members of the English Bar.

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